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Illinois Anti-Predatory Lending Database Program



1203039087

Doc#: 1203039087 **Fee:** \$114.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/30/2012 01:53 PM Pg: 1 of 39

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 09-21-107-052-0000

Address:

Street: 1865 Miler Street

Street line 2:

City: Des Plaines

State: IL

ZIP Code: 60016

Lender: PNC Bank, National Association

Borrower: Des Plaines Busse Storage LLC

Loan / Mortgage Amount: \$16,051,100.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: BDE89B0A-D8E8-4A29-888F-8678804EF9F0

Execution date: 01/24/2012

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PREPARED BY:

Barbara A. McIntyre
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308

UPON RECORDATION RETURN TO:

PNC Bank, National Association
10851 Mastin
Overland Park, KS 66210
Attention: Jeannette I. Butler, Senior Vice President

Loan No: 94-0960126

DES PLAINES BUSSE STORAGE LLC, a Delaware limited liability company, as mortgagor
(Borrower)

to

PNC BANK, NATIONAL ASSOCIATION, a national banking association, as mortgagee
(Lender)

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT

Dated: As of January 24th, 2012

Location: 1865 Milner Street
Des Plaines, IL 60016
County: Cook County, IL

Tax Identification Numbers: 09-21-107-052-0000 Vol. 91; 09-21-107-053-0000 Vol. 91; 09-21-107-054-0000 Vol. 91

ATLANTA:5356439.1

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Security Instrument**") is made as January 24, 2012 by **DES PLAINES BUSSE STORAGE LLC**, a Delaware limited liability company, having its principal place of business at c/o Metro Storage LLC, 13528 Boulton Boulevard, Lake Forest, Illinois 60045, as mortgagor ("**Borrower**") to PNC BANK, NATIONAL ASSOCIATION, a national banking association, having an address at 10851 Mastin, Overland Park, KS 66210, as mortgagee (together with its successors and/or assigns, "**Lender**").

RECITALS:

Borrower and the entities listed on **Schedule 1** (the "**Other Borrowers**") and Lender have entered into a Loan Agreement dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), pursuant to which Lender is making a secured loan (the "**Loan**") to Borrower in the principal sum of SIXTEEN MILLION FIFTY-ONE THOUSAND ONE HUNDRED AND 00/100 DOLLARS (\$16,051,100.00), which Loan is evidenced by that certain Promissory Note, dated as of the date hereof, made by Borrower and the Other Borrowers in favor of Lender (such Promissory Note, together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter referred to as the "**Note**"). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

Borrower desires to secure the payment of the Debt and the performance of the Other Obligations (as such term is defined in **Section 2.02** below).

This Security Instrument is given pursuant to the Loan Agreement, and the terms and provisions of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents dated as of the date hereof made by Borrower in favor of Lender delivered in connection with this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and all other documents evidencing or securing the Debt or executed or delivered in connection therewith, are hereinafter referred to collectively as the "**Loan Documents**").

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby:

ARTICLE I. GRANTS OF SECURITY

Section 1.01. **Property Mortgaged.** Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to and grant a security interest to Lender and its successors and assigns in all of Borrower's estate, right, title and interest in, to

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and under any and all of the following described property, whether now owned or existing or hereafter acquired, arising or created (collectively, the "Property"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof, together with all estates and development rights now or hereafter acquired for use in connection therewith (the "Land");

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

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

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

(e) Minerals and Other Rights. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land.

(f) All Other Assets of Borrower. All other assets of Borrower, of every kind and nature, now existing and hereafter acquired, arising or created, and wherever located, including without limitation, accounts, deposit or reserve accounts, commercial tort claims, letter of credit rights, chattel paper (including electronic chattel paper), documents, instruments, investment property, general intangibles (including payment intangibles), software, goods, inventory, equipment, furniture, furnishings, and fixtures, including, without limitation, the following;

(i) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) inventory, goods and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever

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owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in priority to the Lien of this Security Instrument, together with all deposits and payments now or hereafter made by Borrower with respect thereto;

(ii) **Leases.** All leases, subleases or subsubleases, lettings, licenses, concessions, occupancy agreements, or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land or any space in the Improvements, and every extension, renewal, replacement, modification, amendment, restatement or other agreement relating thereto (whether before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws); and all right, title and interest of Borrower, its successors and assigns in and under the Leases, including, without limitation, all guarantees, letters of credit or other credit support given by any tenant or other Person to guarantee or secure the performance and observance of covenants to be performed by any other party to any Lease (collectively, "**Leases**");

(iii) **Rents.** All rents (including, without limitation percentage rents), ground rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents (including, without limitation, damages and other claims arising from any rejection by a tenant of its Lease under any Creditors Rights Laws), revenues, issues, royalties and profits from the Land (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, deposits (including, without limitation, cash or securities deposited under any Lease to secure the performance by the lessee of its obligations thereunder, utility deposits and other deposits), accounts, cash, charges for services rendered, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, operating expenses or other reimbursables to Borrower (or to Manager for the account of Borrower), under any Lease, all Lease Termination Payments, all other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Land or the Improvements, all proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land and/or the Improvements (whether paid or accruing before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws), and all proceeds or streams of payment from the sale or other disposition of any Lease or any Rents (collectively, the "**Rents**") and the right to receive and apply the Rents to the payment of the Debt, and the right to do all other things which Borrower or a lessor is or may become entitled to do under the Leases or with respect to the Rents;

(iv) **Awards.** All awards, payments or other compensation paid by any Governmental Authority, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain

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(including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property (collectively, "**Awards**");

(v) **Insurance Proceeds.** All Insurance Proceeds paid with respect to any of the Policies required to be maintained by Borrower pursuant to the Loan Agreement, and all unearned premiums on any such Policies, including, without limitation, the right to receive and apply Insurance Proceeds, or the proceeds of any claims awards, judgments, or settlements made in lieu thereof, in connection with any Casualty which damages or destroys, in whole or in part, the Property; together with all proceeds of any Title Insurance Policy and any unearned premiums thereon (collectively, "**Insurance Proceeds**");

(vi) **Tax Certiorari.** All refunds, rebates or credits in connection with (i) a reduction in Taxes, including real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property; (ii) and a reduction in any Other Charges, including maintenance charges; impositions (other than as set forth in subsection (i)), and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(vii) **Conversion.** All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims;

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

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

(x) **Intangibles.** To the maximum extent assignable under applicable laws, all trade names, trademarks, servicemarks, symbols, logos, copyrights, goodwill, books and records, all rights, interests and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements, and all other general intangibles relating to or used in connection with the operation of the Property, including all names by which the Land or the Improvements may be operated or known, and all rights to carry on business under such names;

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(xi) **Account Collateral.** All Account Collateral including all reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, and all complete securities, investments, property and financial assets held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof; and

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

(g) **Other Rights.** Any other or greater rights and interests of every nature in, and income from, the items set forth in **Subsections (a) through (f)** above; and

(h) **Proceeds Etc.** All cash and noncash proceeds (including without limitation Insurance Proceeds) products and profits, arising from the conversion, voluntary or involuntary of any of the foregoing into cash or a stream of payments, and all additions and accessions thereto, substitutions therefor and replacements and betterments thereof, all liquidation claims applicable thereto, all warranties and guaranties relating thereto, and all supporting obligations of any of the foregoing.

Section 1.02. **Assignment of Leases and Rents.**

(a) Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only.

(b) Nevertheless, subject to the terms of **Article IX** hereof, Lender grants to Borrower a revocable license to operate and manage the Property in order to enable Borrower to take any and all actions, including the collection of the Rents, necessary for the property management and operation of the Property. Lender's right to revoke the license granted to Borrower is in addition to all other rights and remedies available to Lender following an Event of Default, provided that such license can only be revoked by Lender if an Event of Default has occurred and is continuing.

(c) [intentionally omitted]

(d) For purposes of giving effect to this assignment of Leases and Rents, Leases and Rents shall not be deemed to be part of the "Property" as that term is defined in **Section 1.01** hereof. If, however, this assignment of Leases and Rents is not enforceable by its terms under the laws of the State, then Leases and Rents shall be included as part of the Property and it is Borrower's intention that, in this circumstance, this Security Instrument creates and perfects a Lien on the Leases and Rents in favor of Lender, which Lien shall be effective as of the date of this Security Instrument.

(e) **Security Agreement.** This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial

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Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (as herein defined), a security interest in the Property to the full extent that the Property, or any portion thereof, may now or hereafter be subject to the Uniform Commercial Code.

Section 1.03. **Fixture Filing.** This Security Instrument shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code upon all of the Property which is or is to become "fixtures" (as that term is defined in the Uniform Commercial Code), upon being filed for record in the real estate records of the county wherein such fixtures are located, and for such purpose the following information is given:

Name of Debtor: Des Plaines Busse^h Storage LLC

Address of Debtor: c/o Metro Storage LLC
13528 Boulton Boulevard
Lake Forest, Illinois 60045

Organizational Identification Number of Debtor: 5008534

Description of the collateral: See **Section 1.01** hereof.

Description of real estate to which the collateral is attached or upon which it is or will be located:

See **Exhibit A** attached hereto.

Section 1.04. **Pledge of Monies Held.** Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender in escrow or reserve or on deposit, including, without limitation, any Account Collateral, Insurance Proceeds and Awards, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

CONDITIONS TO GRANT

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

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations (as herein defined), these presents and the estate hereby granted shall cease, terminate and be void.

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ARTICLE II. DEBT AND OBLIGATIONS SECURED

Section 2.01. **Debt.** This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the Debt, including without limitation,

(a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America;

(b) the payment of interest (including, without limitation, interest at the Default Rate), late charges and other sums, as provided in the Note, the Loan Agreement, this Security Instrument or the other Loan Documents;

(c) the payment of the Prepayment Consideration, if any;

(d) the payment of all other moneys agreed or provided to be paid by Borrower and the Other Borrowers in the Note, the Loan Agreement, this Security Instrument or the other Loan Documents;

(e) any and all Protective Advances made by Lender pursuant to the terms of this Security Instrument; and

(f) the payment of all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any modification, amendment, renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower, the Other Borrowers or Lender.

Notwithstanding the foregoing, this Security Instrument shall not secure the obligations of Borrower or the Other Borrowers under the Environmental Indemnity or the obligations of Guarantor under the Guaranty (the "**Excluded Obligations**").

Section 2.02. **Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (the "**Other Obligations**"):

(a) the performance of all other obligations of Borrower contained herein;

(b) the performance of each obligation of Borrower and the Other Borrowers contained in any other agreement given by Borrower and the Other Borrowers to Lender which is for the purpose of further securing the obligations secured hereby, and any renewals, extensions, substitutions, replacements, amendments, modifications and changes thereto; and

(c) the performance of each obligation of Borrower and the Other Borrowers contained in any renewal, extension, amendment, modification, consolidation, change

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of, or substitution or replacement for, all or any part of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

Notwithstanding the foregoing, this Security Instrument shall not secure the Excluded Obligations.

Section 2.03. **Debt and Other Obligations.** Borrower's and the Other Borrowers' obligations for the payment of the Debt and the performance of the Other Obligations (other than the Excluded Obligations) shall be referred to collectively below as the "**Obligations.**"

ARTICLE III. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.01. **Payment of Debt.** Borrower will pay the Debt at the time and in the manner provided in the Loan Documents.

Section 3.02. **Incorporation by Reference.** All the covenants, conditions and agreements contained in the Loan Agreement, the Note and all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.03. **Insurance.** Borrower shall obtain and maintain, or cause to be maintained, insurance in full force and effect at all times with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.04. **Payment of Taxes, Etc.** Borrower shall promptly pay all Taxes and Other Charges in accordance with the terms of the Loan Agreement.

Section 3.05. **Maintenance and Use of Property.** Borrower shall cause the Property to be maintained in a good and safe condition and repair in accordance with the terms of the Loan Agreement. Subject to the terms of the Loan Agreement, the improvements and the Personal Property shall not be removed, demolished or materially altered or expanded (except for normal replacement of the Personal Property) without the consent of Lender. Subject to the terms of the Loan Agreement, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Except as otherwise permitted by the Loan Agreement, Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

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Section 3.06. **Waste.** Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.07. **Leasing Limitations.** All Leases entered into by Borrower with respect to the Property, and all of Borrower's rights with respect to such Leases, and Borrower's actions in exercising (or not exercising) such rights, in each case shall conform with the requirements of the Loan Agreement.

Section 3.08. **Payment for Labor and Materials.** Subject to Borrower's right to contest pursuant to the Loan Agreement, Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof, except for the Permitted Encumbrances.

Section 3.09. **Obligations upon Condemnation or Casualty.** Borrower shall comply with all obligations required under the Loan Agreement in the event the Property is damaged by a Casualty or becomes involved in any Condemnation. All Insurance Proceeds or Awards recovered or payable to Borrower as a result of a Casualty or Condemnation shall be paid to, and administered by Lender, in accordance with the Loan Agreement.

Section 3.10. **Performance of Other Agreements.** Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of the Loan Agreement, any other Loan Documents and any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing the Obligations and any amendments, modifications or changes thereto.

Section 3.11. **Change of Name, Identity or Structure.** Except as may be permitted under the Loan Agreement, Borrower will not change Borrower's name, identity (including its trade name or names) or corporate, partnership or other structure without first obtaining the prior written consent of Lender. Borrower hereby authorizes Lender, prior to or contemporaneously with the effective date of any such change, to file any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

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Section 3.12. **Property Use.** The Property shall be used exclusively for purposes and other appurtenant and related uses permitted by the Loan Agreement.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that: Borrower has good and insurable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest in the same, and Borrower possesses a fee simple absolute estate in the Land and the Improvements, and Borrower owns the Property free and clear of all Liens whatsoever except for the Permitted Encumbrances. The Permitted Encumbrances, individually and in the aggregate, do not and will not materially adversely affect or interfere with the value, or materially adversely affect or interfere with the current use or operation, of the Property, the security intended to be provided by this Security Instrument, or with the current ability of the Property to generate net cash flow sufficient to enable Borrower to repay the Debt or to perform the Other Obligations or to pay its other obligations when due. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all Persons whomsoever.

ARTICLE V. OBLIGATIONS AND RELIANCES

Section 5.01. **Relationship of Borrower and Lender.** Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents between Borrower and Lender be solely that of debtor and creditor, and that Lender shall have no fiduciary or other special relationship with Borrower. Nothing herein or therein is intended to, nor shall anything contained herein or therein be construed to, constitute Lender as a joint venturer, partner, tenant in common, joint tenant or agent of Borrower, nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender, nor to render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

Section 5.02. **No Reliance on Lender.** The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 5.03. **No Lender Obligations.**

(a) Notwithstanding the provisions of **Section 1.01(f)(ii), Section 1.01(f)(iii), Section 1.01(f)(ix), Section 1.01(f)(x)** or **Section 1.02** or any other provision hereof, neither the granting of this Security Instrument to Lender, nor Lender's exercise of any rights or remedies with respect to this Security Instrument, shall be construed (i) to make Lender a "mortgagee in possession" of the Property in the absence of Lender itself taking actual possession of the Property or (ii) to obligate Lender to take any action with respect to the Leases,

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including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower. Without limiting the foregoing, this Security Instrument shall not operate to place on Lender any obligation or liability for: (i) the control, care, management or repair of the Property; (ii) for carrying out any of the terms and conditions of the Leases; (iii) any waste committed on the Property by tenants or any other parties; (iv) any dangerous or defective condition of the Property (including, without limitation, the presence of any Hazardous Materials); or (v) any negligence in the management, upkeep, repair or control of the Property resulting in injury or death to any tenant or any other party or any loss of personal property. Borrower, for itself and any Person claiming under or through Borrower, hereby releases and discharges Lender from any such liability to the fullest extent permitted by law. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease the Property after an Event of Default.

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

Section 5.04. **Reliance.** Borrower recognizes and acknowledges that in accepting the Loan Documents, (a) Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 3 of the Loan Agreement and Article 4 hereof without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; (b) that such reliance existed on the part of Lender prior to the date hereof; (c) that such warranties and representations are a material inducement to Lender in accepting the Loan Documents; and (d) that Lender would not be willing to make the Loan and accept the Loan Documents in the absence of the warranties and representations as set forth in Article 4 of the Loan Agreement and Article 4 hereof.

ARTICLE VI. FURTHER ASSURANCES

Section 6.01. **Recording of Security Instrument, Etc.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of this Security Instrument or any of the other Loan Documents, and any such instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts,

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assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, the other Loan Documents, or any such instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 6.02. **Further Acts, Etc.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and all rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with any Legal Requirements. Borrower, on demand, will execute and deliver and hereby authorizes Lender to file one or more financing statements or execute in the name of Borrower to the extent Lender may lawfully do so, one or more chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property or any Collateral. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this **Section 6.02**.

Section 6.03. **Changes in Tax, Debt Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the amount so deducted from the Debt or such tax, with interest and penalties thereon, if any. If any such payment by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable by written notice of not less than ninety (90) days to declare the Debt immediately due and payable; provided, however, no Prepayment Consideration shall be required solely as a result of a prepayment required by any such declaration.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable; provided, however, no Prepayment Consideration shall be required solely as a result of a prepayment required by any such declaration.

(c) If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Note,

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

Section 6.04. **Replacement Documents.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Documents, Borrower will issue, in lieu thereof, a replacement Note or other Loan Documents, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Documents in the same principal amount thereof and otherwise of like tenor.

Section 6.05. **Performance at Borrower's Expense.** Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of Collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "**Event**"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.

Section 6.06. **Legal Fees for Enforcement.** (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the preparation of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property (including commencing any foreclosure action), whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower. The reasonable attorneys' fees due hereunder shall include the attorneys' fees: (i) incurred by Lender both before and after a judgment is obtained, (ii) incurred by Lender during any levy or execution proceedings, and (iii) incurred during or as a result of any appeal.

ARTICLE VII. DUE ON SALE/ENCUMBRANCE

Section 7.01. **Lender Reliance.** Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in

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agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for payment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 7.02. **No Sale/Encumbrance.** Neither Borrower nor any Restricted Party shall Transfer the Property, or any interest therein, or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

ARTICLE VIII. PREPAYMENT; RELEASE OF PROPERTY

Section 8.01. **Prepayment.** The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

Section 8.02. **Release of Property.** Borrower shall not be entitled to a release of any portion of the Property from the Lien of this Security Instrument except in accordance with the terms and conditions of the Loan Agreement.

ARTICLE IX. EVENTS OF DEFAULT; RIGHTS AND REMEDIES

Section 9.01. **Events of Default.** The occurrence of an "Event of Default" as that term is defined under the Loan Agreement shall constitute an "Event of Default" under this Security Instrument.

Section 9.02. **Remedies.** (a) Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (i) declare the entire unpaid Debt to be immediately due and payable;
- (ii) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the

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continuing Lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(iv) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in the other Loan Documents,

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(vii) as a strict matter of right, have a receiver, trustee, liquidator or conservator appointed for the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor or of any other Person liable for the payment of the Debt, and Borrower does hereby irrevocably consent to such appointment, and waives any and all notices of and defenses to such appointment;

(viii) subject to any applicable law, the license granted to Borrower under **Section 1.02** hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses

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in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(ix) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of any Collateral (including, without limitation, the Personal Property) or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral (including without limitation, the Personal Property), and (ii) request Borrower at its expense to assemble the Collateral, including without limitation, the Personal Property, and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral, including without limitation, the Personal Property, sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The Collateral may be sold in such manner, portions, order or parcels as Lender may determine, with or without having first taken possession of same. The right of sale arising out of any Event of Default shall not be exhausted by any one or more sales or attempted sales, any other action, proceeding, or other exercise of a remedy, and the liens granted by this Security Instrument shall continue unimpaired.

(x) apply any Account Collateral to the payment of the following items in any order in its sole discretion:

- (1) Taxes and Other Charges;
 - (2) Insurance Premiums;
 - (3) interest on the unpaid principal balance of the Note;
 - (4) amortization of the unpaid principal balance of the Note; or
 - (5) all other sums payable pursuant to the Loan Documents,
- including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(xi) surrender the Policies, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect and apply such Insurance Premiums;

(xii) foreclose by power of sale or otherwise and apply the proceeds of any recovery to the Debt in accordance with **Section 9.03** hereof or to any deficiency under this Security Instrument;

(xiii) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale, or otherwise and apply the proceeds of any recovery to the Debt in accordance with **Section 9.03** hereof or to any deficiency under this Security Instrument; or

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(xiv) pursue such other remedies as Lender may have under applicable law or in equity,

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

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

(c) Upon any sale made under or by virtue of this Security Instrument pursuant to any judicial proceedings or any judgment or decree of foreclosure and sale, Lender may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefore, to the extent allowed by applicable law, the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.

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

Section 9.03. **Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 9.04. **Right to Cure Defaults.** Upon the occurrence and during the continuance of any Default or Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, take such actions to cure the Default or Event of Default in such manner

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and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided below, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Default or Event of Default shall bear interest at the Default Rate for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender and shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 9.05. **Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 9.06. **Recovery of Sums Required to be Paid.** Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default existing at the time such earlier action was commenced.

Section 9.07. **Other Rights, Etc.**

(a) Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or any other Loan Document shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. Borrower shall not be relieved of Borrower's obligations hereunder by reason of: (a) the failure of Lender to comply with any request of Borrower or any Guarantor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof, of the Note or the other Loan Documents; (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof; or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note or the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any of the Other Obligations without prejudice to the right of Lender thereafter to foreclose this Security Instrument.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate

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as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to the Property or any other Collateral not in Lender's possession.

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

Section 9.08. **Right to Release Any Portion of the Property.** Lender may release any portion of the Property for such consideration as Lender may require, without the necessity of any notice to or consent from any Person, and without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate Lien holder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other Lien holder. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

Section 9.09. **Right of Entry.** Subject to the terms of the Loan Agreement, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 9.10. **Subrogation.** If any or all of the proceeds of the Note have been used to pay, satisfy, discharge, extinguish, extend or renew any indebtedness secured by a mortgage or other Lien encumbering the Property ("**Prior Lien**"), then, to the extent of the funds so used, Lender shall automatically be subrogated to all of the rights (including Lien priority), claims, Liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of the indebtedness secured by any such Prior Lien, and such former rights, claims, Liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the Lien and security interest created herein as cumulative security for the payment of the Debt, and the performance of the Other Obligations.

Section 9.11. **Right to Make Protective Advances.** Lender shall have the right to make advances to protect or preserve the Property or the Lien or security interest created hereby on the Property, or for Taxes or Other Charges, Insurance Premiums or for performance of any of the Other Obligations or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances) ("**Protective Advances**"). All Protective Advances shall bear interest at the

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Default Rate from the date such Protective Advances are made to the date of payment to Lender, shall be deemed to constitute a portion of the Debt, shall be secured by the Lien of this Security Instrument and the other Loan Documents, and shall be immediately due and payable upon demand by Lender therefor.

ARTICLE X. INDEMNIFICATIONS

Section 10.01. **General Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Liabilities imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Legal Requirements; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument. The foregoing indemnification shall not relate to Liabilities arising from the gross negligence or willful misconduct of any Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this **Section 10.01** shall bear interest at the Default Rate from the date any such Liabilities are incurred to the date of payment to an Indemnified Party, shall be deemed to constitute a portion of the Debt, shall be secured by the Lien of this Security Instrument and the other Loan Documents, and shall be immediately due and payable upon demand therefor.

Section 10.02. **Mortgage and/or Intangible Tax** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Liabilities imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument or the other Loan Documents.

Section 10.03. **Environmental Indemnity.** Simultaneously with this Security Instrument, Borrower and Guarantor have executed and delivered the Environmental Indemnity.

Section 10.04. **Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon request by an Indemnified Party, Borrower shall defend such Indemnified Party (if requested by an Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Party. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include Borrower, any Guarantor and any Indemnified Party, and Borrower or such Guarantor and such Indemnified Party shall

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have reasonably concluded that there are any legal defenses available to it and/or to other Persons or Indemnified Parties that are different from or in addition to those available to Borrower or any Guarantor, then such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party; provided, however, no compromise or settlement shall be entered into without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and out of pocket disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 10.05. **Survival.** The obligations and liabilities of Borrower under this **Article X** shall survive any termination, satisfaction or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Property by foreclosure or acceptance of a deed in lieu of foreclosure, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in each such case, shall benefit both the Indemnified Parties and any assignee or transferee), any exercise of any rights and remedies pursuant to the other Loan Documents, any transfer of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment of this Security Instrument or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from its obligations under this **Article X**.

ARTICLE XI. WAIVERS

Section 11.01. **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument or the other Loan Documents, or the Obligations.

Section 11.02. **Marshalling and Other Matters.** Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Legal Requirements.

Section 11.03. **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Security Instrument, the Loan Agreement or any other Loan Document, specifically and expressly provides for the giving of notice by Lender to Borrower, and (b) with respect to matters for which Lender is required by any applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which

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this Security Instrument and the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 11.04. **Waiver of Homestead.** Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part hereof.

Section 11.05. **Waiver of Trial by Jury.** BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM OF ANY NATURE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THIS SECURITY INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY ACTS OR OMISSIONS OF LENDER, OR ANY OF ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH RESPECT TO ANY OF THE FOREGOING. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER CONFIRMS THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) BY INDEPENDENT LEGAL COUNSEL FREELY CHOSEN BY BORROWER CONCERNING THE LOAN, THE LOAN DOCUMENTS AND SPECIFICALLY THE WAIVER OF JURY TRIAL CONTAINED HEREIN AND THAT BORROWER HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SUCH COUNSEL. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY SUCH ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

ARTICLE XII. EXCULPATION

Section 12.01. **Exculpation.** Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower to pay the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Note, the Loan Agreement and the other Loan Documents shall be limited as set forth in **Section 11.3** of the Loan Agreement.

ARTICLE XIII. SUBMISSION TO JURISDICTION

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN OR FOR THE CITY OF CHICAGO, ILLINOIS AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY

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NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Illinois Corporation Service Company

801 Adlai Stevenson Drive

Springfield, IL 62703

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN OR FOR THE CITY OF CHICAGO, ILLINOIS, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF ILLINOIS. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE CITY OF CHICAGO, ILLINOIS (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (II) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE CITY OF CHICAGO, ILLINOIS OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

ARTICLE XIV. APPLICABLE LAW

Section 14.01. APPLICABLE LAW.

(a) THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS WERE NEGOTIATED IN THE STATE OF ILLINOIS. THE PARTIES AGREE THAT THE STATE OF ILLINOIS HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, AND THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER 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 (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF

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THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE LAND IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF ILLINOIS SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS.

(b) NOTWITHSTANDING THE FOREGOING, THE UCC IN EFFECT IN THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED IN THE ACCOUNT COLLATERAL.

Section 14.02. Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Legal Requirements.

ARTICLE XV. DEFINITIONS

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

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ARTICLE XVI. MISCELLANEOUS PROVISIONS

Section 16.01. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be given and shall become effective as provided in **Section 13.6** of the Loan Agreement.

Section 16.02. **No Oral Change.** This Security Instrument may not be modified, amended, extended, discharged, terminated, changed, and no provision hereof may be waived, orally or by any act or failure to act on the part of Borrower or Lender, and no consent to any departure by Borrower therefrom shall be effective, except by a writing signed by the party against whom enforcement is sought, and then such modification, amendment, extension, discharge, termination, change, waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 16.03. **Binding Effect; Joint and Several Obligations.** Whenever in this Security Instrument any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Security Instrument, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender. Borrower may not delegate or transfer this Security Instrument or any of its rights or obligations hereunder without the prior written consent of Lender. Each Person constituting Borrower shall be jointly and severally liable hereunder.

Section 16.04. **Severability.** Wherever possible, each provision of this Security Instrument shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Security Instrument shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Instrument.

Section 16.05. **Duplicate Originals; Counterparts.** This Security Instrument may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Security Instrument (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Security Instrument even though all signatures do not appear on the same page. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 16.06. **Principles of Construction.** All references to sections and exhibits, if any, are to sections and exhibits in or to this Security Instrument unless otherwise specified. Article and section headings are for convenience only and shall not be used in interpretation of this Security Instrument. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise

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specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument; the word “section” refers to the entire section and not to any particular subsection, paragraph or other subdivision; the word “or” shall be deemed to include “and/or”; and “Security Instrument” and each of the Loan Documents referred to herein mean each such agreement as originally executed and as hereafter amended, restated, replaced, supplemented or otherwise modified from time to time, but only to the extent such modifications are not prohibited by the terms hereof or by the terms of any of the other Loan Documents. References to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referenced. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined, and pronouns shall be construed to cover all genders.

Section 16.07. **Lender’s Discretion.** Whenever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the good faith business judgment of Lender and shall be final and conclusive.

Section 16.08. **Preservation of Rights.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. Lender’s rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Lender may have under other agreements, at law or in equity. Any representations, warranties, covenants or indemnification liabilities for breach thereof contained in this Agreement shall not be affected by any knowledge of, or investigations performed by, Lender. Any one or more Persons comprising Borrower, or any other party liable upon or in respect of this Agreement or the Loan, may be released without affecting the liability of any party not so released.

Section 16.09. **Unsecured Portion of Obligations.** If any part of the Obligations cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the Lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Security Instrument.

Section 16.10. **Interest After Sale.** In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Property is located), bear interest at the Default Rate.

Section 16.11. **Costs and Expenses.** Wherever pursuant to this Security Instrument it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.

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Section 16.12. **Servicer.** Pursuant to Section 11.4 of the Loan Agreement, the Loan may be serviced by a Servicer. All references to Lender herein shall refer to and include any such Servicer to the extent applicable.

ARTICLE XVII. STATE SPECIFIC PROVISIONS

Section 17.01. **Inconsistencies.** In the event of any inconsistencies between the terms and conditions of this Article XVII and the other provisions of this Security Instrument, the terms and conditions of this Article XVII shall control and be binding.

Section 17.02.

(a) This Security Instrument shall only secure future advances to the extent such future advances are made within twenty (20) years from the date hereof.

(b) The lien of this Security Instrument shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located as provided in Section 5/15-1302(b)(1) and Section 5/15-1302(b)(3) of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 1101, et seq., as amended from time to time (the "**Act**").

(c) This Security Instrument is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby; provided, however, that the maximum amount secured by this Security Instrument shall not exceed an amount equal to two times the face amount of the Note plus Protective Advances (as defined below) and other costs and expenses which Lender is entitled to add to the Obligations pursuant to the terms of this Security Instrument.

(d) The final maturity date of the Obligations is February 1, 2019.

(e) The obligations and liabilities of Borrower and the Other Borrowers under the Loan Documents bear interest at an interest rate or rates based upon the terms and provisions set forth therein, which provisions are incorporated herein by reference as if fully set forth herein.

(f) Without limiting any other provision hereof, any receiver or receivers shall have all the rights and powers described in Section 15-1704 of the Act.

(g) In addition to any provision herein authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, exercisable upon the occurrence and during the continuance of an Event of Default and in accordance with Sections 5/15-1701 and 5/15-1702 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 Security Instrument, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

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(h) Upon the occurrence of an Event of Default, Lender shall have the right to proceed with foreclosure (judicial or nonjudicial) in accordance with applicable law of the liens and security interests hereunder without declaring the entire Obligations due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Obligations; and any such sale shall not in any manner affect the unmatured part of the Obligations, but as to such unmatured part this Security Instrument shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided herein.

(i) If any provision in this Security Instrument shall be inconsistent with any provision of the Act or the other foreclosure laws of the state where the Property is located, the provisions of such laws shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with such laws. If any provision of this Security Instrument shall grant to Lender any rights or remedies upon an Event of Default which are more limited than the right that otherwise would be vested in Lender under the Act from time to time in the absence of said provision, Lender shall be vested with the rights in the Act to the full extent permitted by law. If 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.

(j) All advances, disbursements and expenditures made 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 Security Instrument or by the Act (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act herein below referred to:

(1) all advances by Lender in accordance with the terms of this Security Instrument to: (1) preserve or restore the mortgaged real estate; (2) preserve the lien of this Security Instrument or the priority thereof; or (3) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(2) payments by Lender of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) when due installments of real estate taxes and general and special assessments, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other obligations authorized by this Security Instrument; or (4) 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 5/15-1505 of the Act;

(3) advances by Lender in settlement or compromise of any claims asserted by claimants under any senior mortgages or any other prior liens;

(4) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Security Instrument as referred to in Sections 1504 (d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against Lender for

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the enforcement of the Security Instrument or arising from the interest of Lender hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to the Security Instrument or the mortgaged real estate;

(5) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(6) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act;

(7) expenses incurred and expenditures made by Lender for any one or more of the following: (1) premiums for casualty and liability insurance required by the Loan Documents 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 Lender takes possession of the Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner or occupant 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; and (4) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property.

(k) All Protective Advances shall be so much additional amounts or obligations secured by the Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents.

(l) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

(m) 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) determination of the amount of obligations secured by this Security Instrument at any time;

(2) the amount found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional amount 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 Borrower in this Security Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(4) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 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 Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

(n) Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.

(o) Pursuant to Section 5/15-1601(b) of the Act, Borrower hereby waives any and all right to redemption.

(p) The proceeds of the Obligations shall be used solely for business purposes and in furtherance of the regular business affairs of Borrower and the Other Borrowers, and the entire principal obligation secured hereby constitutes (i) a "business loan" as that term is defined in 815 ILCS 205/4(1)(c); and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(c).

(q) If at any time Borrower fails to provide Lender with evidence of the insurance coverage required by this Security Instrument and the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower may make 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 this Security Instrument and the other Loan Documents. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of that insurance, including interest and any other charges that Lender imposes in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation secured hereby. The costs of the insurance may be more than the costs of insurance that Borrower may be able to obtain through Borrower's own efforts. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Borrower hereby acknowledges Lender's right pursuant to this paragraph to obtain collateral protection insurance.

(r) Borrower hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.

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(s) All references to the Uniform Commercial Code in Section 1.03 of this Security Instrument shall refer to such code as in effect in the State of Illinois. This Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Property is located under the Illinois Uniform Commercial Code with respect to any Property which now or hereafter may become fixtures.

(t) Notwithstanding anything to the contrary contained in 765 ILCS 5/31.5, Borrower agrees that the mere recordation of the Security Instrument entitles Lender immediately to collect and receive Rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, including providing notice to Borrower, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Lender's right to the Rents does not depend on whether or not Lender takes possession of the Property as permitted under Section 9.02. In Lender's sole discretion, Lender may choose to collect Rents either with or without taking possession of the Property. It is the express intention of Borrower and Lender to "otherwise agree" as permitted in 765 ILCS 5/31.5 that after an Event of Default, Lender is entitled to immediately collect rents (and Borrower hereby agrees it will immediately pay all such rents to Lender) without Lender having to take any steps to enforce the assignment.

(u) Any property management agreement between Borrower or any agent of Borrower and a property manager for or relating to all or any part of the Property, whether now in effect or entered into hereafter, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Security Instrument and the Loan Documents any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law (including, without limitation, 770 ILCS 60/0.01). Such property management agreement or a short form thereof including such subordination shall, at Lender's request, be recorded with the Office of the Recorder of Deeds for the county in which the Property is located. Borrower's failure to cause any of the foregoing to occur shall constitute an Event of Default under Section 9.01 of this Security Instrument.

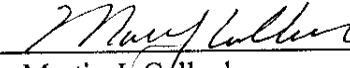
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IN WITNESS WHEREOF, Borrower has caused this Security Instrument to be duly executed by its duly authorized representatives, as of the day and year first above written.

BORROWER:

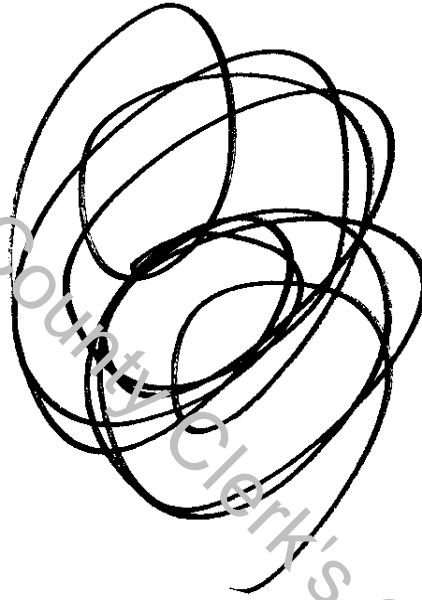
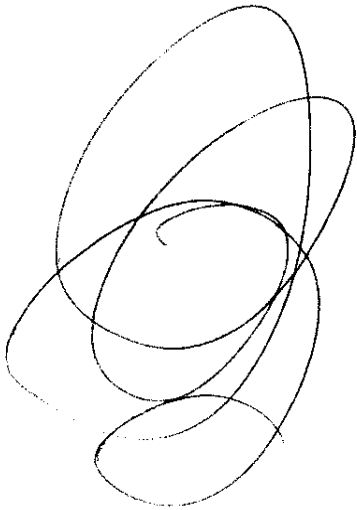
DES PLAINES BUSSE STORAGE LLC, a
Delaware limited liability company

By: 

Name: Martin J. Gallagher

Title: President

Property of Cook County Clerk's Office



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STATE OF ILLINOIS :
: ss.
COUNTY OF LAKE :

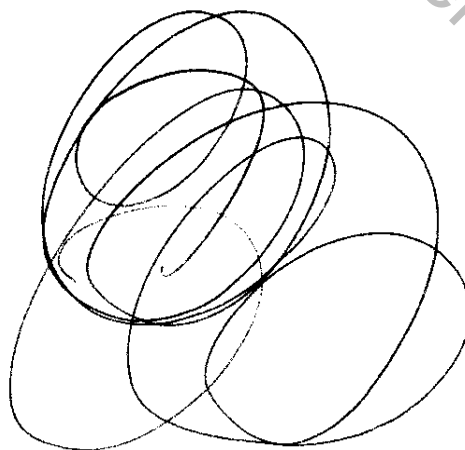
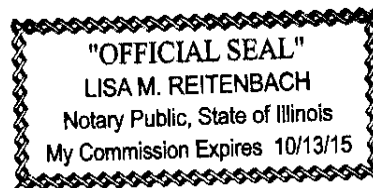
I, Lisa M. Reitenbach, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Martin J. Gallagher, personally known to me as President of DES PLAINES BUSSE STORAGE LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such they signed and delivered the said instrument pursuant to proper authority given said limited liability company, as his/her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23rd day of January, 2012.

Lisa M. Reitenbach
Notary Public

[SEAL]

My commission expires:
10/13/15



Property of Cook County Clerk's Office

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EXHIBIT A

(Description of Land)

Real property in the City of Des Plaines, County of Cook, State of Illinois, described as follows:

PARCEL 1

THAT PART OF LOT 3 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN THE TOWN OF RAND, PART OF LOT 24 IN COUNTY CLERK'S SUBDIVISION AND LOTS 38 AND 39 IN ALBERT E. CLARK'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4 OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 3, 1987 AS DOCUMENT NUMBER 87426203 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 135.20 FEET; THENCE NORTH 37 DEGREES 10 MINUTES 10 SECONDS EAST, A DISTANCE OF 141.90 FEET; THENCE NORTH 52 DEGREES 49 MINUTES 50 SECONDS WEST, A DISTANCE OF 107.59 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 60.47 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN G.T.E. RESUBDIVISION, AFORESAID; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 1 TO THE SOUTHWEST CORNER THEREOF; THENCE SOUTH ALONG THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 1 TO THE NORTHEASTERLY RIGHT OF WAY LINE OF BUSSE HIGHWAY; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 414.65 FEET TO THE POINT OF BEGINNING (EXCEPTING THEREFROM, THAT PART DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTHWESTERLY ALONG THE SOUTHERLY LINE OF LOT 3, ALSO BEING THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 414.65 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF LOT 172 IN THE TOWN OF RAND, AFORESAID, A DISTANCE OF 20.60 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE NORTHEASTERLY ON A LINE DRAWN AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 73.84 FEET; THENCE NORTHWESTERLY ON A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 55.98 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH THE EAST LINE OF SAID LOT 172; THENCE SOUTH ALONG SAID LINE PARALLEL WITH THE EAST LINE OF LOT 172, A DISTANCE OF 92.66 FEET TO THE PLACE OF BEGINNING), IN COOK COUNTY, ILLINOIS.

PARCEL 2

LOT 4 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN TOWN OF RAND, PART OF LOT 24 IN THE COUNTY CLERK'S DIVISION AND OF LOTS 38 AND 39 IN ALBERT E. CLARKE'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4

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OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3

THAT PART OF LOT 3 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN TOWN OF RAND, PART OF LOT 24 IN THE COUNTY CLERK'S DIVISION AND OF LOTS 38 AND 39 IN ALBERT E. CLARKE'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4 OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTHWESTERLY ALONG THE SOUTHERLY LINE OF LOT 3, ALSO BEING THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 414.65 FEET TO A POINT FOR THE PLACE OF BEGINNING; THENCE NORTH PARALLEL WITH THE EAST LINE OF LOT 172 IN TOWN OF RAND, AFORESAID, A DISTANCE OF 20.60 FEET; THENCE NORTHEASTERLY ON A LINE DRAWN AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 73.84 FEET; THENCE NORTHWESTERLY ON A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 55.98 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH THE EAST LINE OF SAID LOT 172; THENCE NORTH ALONG AFORESAID PARALLEL LINE, 284.74 FEET, MORE OR LESS, TO A POINT IN THE SOUTHERLY LINE OF MINER STREET, 251.77 FEET WESTERLY (AS MEASURED ALONG SAID SOUTHERLY LINE) OF THE INTERSECTION OF SAID SOUTHERLY LINE OF MINER STREET WITH THE EASTERLY LINE OF SAID LOT 172; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF MINER STREET, 70.61 FEET TO THE MOST EASTERLY WEST LINE OF SAID LOT 3; THENCE SOUTH ON SAID WEST LINE, 145.72 FEET; THENCE WEST ON A LINE DRAWN AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 130.47 FEET TO THE MOST WESTERLY LINE OF SAID LOT 3; THENCE SOUTH ALONG SAID LINE, 91.00 FEET TO A POINT IN THE NORTHEASTERLY LINE OF BUSSE HIGHWAY; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 251.58 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCELS 1, 2 AND 3 ALSO KNOWN AS THE FOLLOWING PERIMETER LEGAL DESCRIPTION:

ALL OF LOTS 3 AND 4 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN THE TOWN OF RAND, PART OF LOT 24 IN COUNTY CLERK'S SUBDIVISION AND LOTS 38 AND 39 IN ALBERT E. CLARK'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4 OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 3, 1987 AS DOCUMENT 87426203, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTH 00 DEGREES 00

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MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, BEING ALSO THE WEST LINE OF LOT 167 IN THE TOWN OF RAND, 135.20 FEET; THENCE NORTH 37 DEGREES 10 MINUTES 10 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT 3, 141.90 FEET; THENCE NORTH 52 DEGREES 49 MINUTES 50 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LOT 3, 107.59 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, BEING ALSO THE WEST LINE OF LOT 167 IN THE TOWN OF RAND, 60.47 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN G.T.E. RESUBDIVISION, AFORESAID; THENCE NORTH 89 DEGREES 48 MINUTES 46 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1, 330.43 TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 1, 274.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, BEING A POINT ON THE SOUTHERLY LINE OF MINER STREET; THENCE SOUTH 82 DEGREES 26 MINUTES 40 SECONDS WEST ALONG SAID SOUTHERLY LINE OF MINER STREET, 139.94 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 89 DEGREES 17 MINUTES 20 SECONDS WEST ALONG THE SOUTHERLY LINE OF MINER STREET, 138.40 FEET TO THE NORTHWEST CORNER OF LOT 4 IN G.T.E. RESUBDIVISION, AFORESAID; THENCE SOUTH 00 DEGREES 42 MINUTES 40 SECONDS WEST ALONG THE WESTERLY LINE OF SAID LOT 4, 75.91 FEET TO AN ANGLE POINT IN SAID LINE; THENCE SOUTH 37 DEGREES 10 MINUTES 10 SECONDS WEST ALONG THE WESTERLY LINE OF SAID LOT 4, 75.32 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4, BEING A POINT ON THE NORTHEASTERLY LINE OF BUSSE HIGHWAY; THENCE SOUTH 52 DEGREES 49 MINUTES 50 SECONDS EAST ALONG THE SOUTHERLY LINE OF LOTS 3 AND 4 IN G.T.E. RESUBDIVISION, AFORESAID, BEING ALSO THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, 820.93 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS. (CONTAINING 169,769 SQUARE FEET OR 3.897 ACRES)

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SCHEDULE 1

OTHER BORROWERS

Chicago 79th Storage LLC, a Delaware limited liability company

Chicago 87th Storage LLC, a Delaware limited liability company

Chicago 105th Storage LLC, a Delaware limited liability company

Stanhope Storage LLC, a Delaware limited liability company

Staten Island Storage LLC, a Delaware limited liability company

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