

UNOFFICIAL COPY

① 886 2010/201216430 *subject*

This instrument prepared by
and please return to:



Polsinelli Shughart PC
161 N. Clark, Suite 4200
Chicago, Illinois 60601
Attention: Jennifer L. Worstell, Esq.

Doc#: 1211412014 Fee: \$88.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/23/2012 09:05 AM Pg: 1 of 26

COMMONLY KNOWN AS: 325-333 W. OHIO STREET, CHICAGO, ILLINOIS
P.I.N.: 17-09-236-001-0000 and 17-09-236-028-0000

**THIS INSTRUMENT IS SUBJECT TO THE TERMS OF AN AMENDED AND
RESTATED SUBORDINATION AND INTERCREDITOR AGREEMENT DATED JULY
25, 2011 BY AND BETWEEN ASSOCIATED BANK, NATIONAL ASSOCIATION AND
METROPOLITAN CAPITAL BANK & TRUST, FORMERLY KNOWN AS
METROPOLITAN CAPITAL BANK**

MODIFICATION OF MORTGAGE AND ASSUMPTION AGREEMENT

This instrument is a Modification ("**Modification of Mortgage**") of a Junior Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing dated July 25, 2011 and recorded with the Cook County Recorder of Deeds on September 26, 2011 as Document No. 1126910043 ("**Mortgage**"), among Metropolitan Capital Bank & Trust, formerly known as Metropolitan Capital Bank, an Illinois banking corporation ("**Mortgagee**"), Chicago Title Land Trust Company, as Trustee under Trust No. 8002356812 ("**Trust**") dated June 1, 2011, and not individually ("**Trustee**"), Jean L. Jodoin, as Trustee of the Jean L. Jodoin Trust dated February 10, 2000 and Christopher S. Barry, as Trustee of the Christopher S. Barry Trust dated December 6, 1999 (collectively "**Original Beneficiaries**"), and Life Storage Centers of River North, LLC, an Illinois limited liability company ("**Assuming Beneficiary**"). Trustee, Original Beneficiaries and Assuming Beneficiary are collectively referred to herein as the "**Mortgagors.**"

S Y
P 26
S N
SC Y
INT OK

BOX 333-CT

UNOFFICIAL COPY

RECITALS:

A. Trustee holds fee simple title to certain real estate legally described on Exhibit A hereto and commonly known as 325-333 W. Ohio Street, Chicago, Illinois ("**Real Estate**"). Original Beneficiaries are the current beneficiaries of the Trust. Assuming Beneficiary owns certain tangible and intangible personal property located on the Real Estate.

B. On November 16, 2010, Original Beneficiaries and certain other related to Mortgagors (collectively "**Original Borrowers**") and Mortgagee entered into a Loan Agreement ("**Loan Agreement**") pursuant to which Mortgagee made a loan to Original Borrowers in the amount of \$3,250,000.00 ("**Loan**"). Concurrently therewith, Original Borrowers executed a Promissory Note Evidencing a Revolving Line of Credit in the amount of \$3,250,000.00 ("**Original Note**") along with other documents and items described in the Loan Agreement (collectively the "**Original Loan Documents**").

C. On or about July 25, 2011, Mortgagee agreed to modify the terms of the Loan to Original Borrowers, including forbearing exercising its rights and remedies set forth in the Original Loan Documents due to certain covenant violations thereunder, as set forth in that certain Loan Modification Agreement (the "**Modification**") of even date therewith, which was executed by Mortgagee, Original Borrowers, Mortgagors and certain other parties. Concurrently therewith, Original Borrowers, Mortgagors and certain other parties executed a Promissory Note Evidencing a Revolving Line of Credit in the amount of \$3,250,000.00 ("**Revised Note**") along with other documents and items described in the Modification (collectively the "**Revised Loan Documents**"). A copy of the Revised Note was attached to the Mortgage, which was recorded as set forth herein.

D. Original Borrowers, Mortgagors and certain other related parties (all of which parties are collectively referred to herein the "**Borrowers**") have now requested that Mortgagee: (1) increase

UNOFFICIAL COPY

the amount of the Revised Loan to Borrowers by the amount of \$500,000.00, for an aggregate loan in the amount of \$3,750,000.00 ("**Second Revised Loan**"), (2) continue to forbear exercising its rights and remedies under the Original Loan Documents, as modified by the Modification and the Second Modification described hereinbelow, and (3) consent to the assignment of the beneficial interest in the Trust from Original Beneficiaries to Assuming Beneficiary, which shall occur concurrently herewith. Mortgagee is agreeable to these requests subject to the covenants, conditions and restrictions contained herein, including but not limited to Borrowers' execution of a Second Loan Modification and Assumption Agreement (the "**Second Modification**"), Mortgagors' execution of this Modification of Mortgage and Assumption Agreement, and Borrowers' execution of a Promissory Note Evidencing a Revolving Line of Credit in the amount of \$3,750,000.00 ("**Second Revised Note**"), a copy of which is attached hereto as Exhibit B, and which evidences the Second Revised Loan (the documents in this Recital D are collectively referred to herein as the "**Second Revised Loan Documents**").

E. This Modification of Mortgage, the Second Modification, the Second Revised Note, the Second Revised Loan Documents, the Revised Loan Documents, the Modification and the Original Loan Documents, and all other documents executed concurrently therewith and herewith are collectively referred to herein as the "**Loan Documents.**" Mortgagors hereby acknowledge and agree that they will financially benefit from the granting of the Second Revised Loan and the execution of the Second Revised Loan Documents as described herein and in the Second Modification.

NOW, THEREFORE, in consideration of good and valuable consideration, which consideration is acknowledged and agreed by Mortgagors by the execution of this Modification of Mortgage, the parties agree as follows:

UNOFFICIAL COPY

1. The definition of "Indebtedness Hereby Secured" in the Mortgage is hereby modified and amended to reference the indebtedness evidenced by the Second Revised Note, a copy of which is attached hereto as **Exhibit B**, and to reflect the terms of this Modification of Mortgage and the Second Modification. The Mortgage and all of the other Loan Documents are hereby modified and amended to secure the Second Revised Note and all references to the Original Note and the Revised Note in the Loan Documents are hereby modified to refer to the Second Revised Note in place thereof.

2. Mortgagee hereby consents to the conveyance by Original Beneficiaries of their beneficial interests in the Trust to Assuming Beneficiary, and Mortgagee agrees that such conveyance shall not be an "Event of Default" as described in the Loan Documents. Mortgagee's consent herein shall not be considered as consenting to any future conveyance of any beneficial interest in the Trust. Assuming Beneficiaries hereby agree jointly and severally to pay Mortgagee the outstanding indebtedness of the Second Revised Loan, as evidenced by the Second Revised Note, and to continue to perform all covenants and conditions contained in the Loan Documents, including those set forth in the Mortgage and the Loan Agreement. Assuming Beneficiary hereby agrees to be joined as, and to become a party to, the Mortgage as a "mortgagor" thereunder, and assumes, jointly and severally, all obligations of the "mortgagor" set forth therein. Assuming Beneficiary agrees to, and will abide by, the terms, covenants and warranties of each and every one of the Original Loan Documents and Revised Loan Documents, including the Mortgage, and makes the covenants and representations contained therein, including but not limited to the grants of the security interests to Mortgagee contained in the Mortgage and other security documents.

3. The parties hereto hereby acknowledge and agree that the tax parcel identification number set forth in the Mortgage is incorrect and should be stated as "17-09-236-001-0000 and 17-

UNOFFICIAL COPY

09-236-028-0000" in lieu of "09-11-102-242-0000." Mortgagors hereby acknowledge and agree that this scrivener's error in the Mortgage is hereby corrected and that it has no effect on the obligations of Mortgagors or any other party hereunder or under the Second Modification or Second Revised Loan Documents, or on the legal effectiveness of such documents, or on the priority or effectiveness of the liens secured thereby or hereby.

4. This Modification of Mortgage shall be effective upon Mortgagee's receipt of this document executed by the parties hereto and the Second Revised Loan Documents as described in the Second Modification, along with a date down endorsement to Mortgagee's loan title insurance policy insuring the Mortgage, which extends the date of the policy to the date of recording of this Modification of Mortgage, subject only to such exceptions as Mortgagee shall reasonably permit, reflects that Trustee holds fee simple title to the Real Estate, and insures the Mortgage as a second lien on the Real Estate.

5. This Modification of Mortgage shall constitute a modification and amendment of the Mortgage, the Original Loan Documents and the Revised Loan Documents. Except as provided herein and in the Second Modification and other Second Revised Loan Documents, all other provisions of the Original Loan Documents and Revised Loan Documents are unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage, or the covenants, conditions and agreements therein contained or contained in the Loan Documents.

6. Mortgagors hereby renew, remake and affirm the representations and warranties contained in the Mortgage and the Loan Documents. Mortgagors hereby attest and agree that they are related to the parties described in the Recitals and described in the Loan Documents and that they will financially benefit from the modification of the Loan Documents as described herein and in the Second Modification.

UNOFFICIAL COPY

7. Mortgagors hereby agree to pay Mortgagee's expenses arising out of and in connection with this Modification of Mortgage including, but not limited to, title endorsement charges, recording fees and attorneys' fees performed in the preparation of necessary documentation.

8. **MORTGAGORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE MORTGAGE, THE SECOND REVISED NOTE, THE ORIGINAL LOAN DOCUMENTS, THE REVISED LOAN DOCUMENTS, THE SECOND REVISED LOAN DOCUMENTS, THE SECOND MODIFICATION, THIS MODIFICATION OF MORTGAGE, OR ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH MORTGAGEE, MORTGAGORS AND THE OTHER BORROWERS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE IN GRANTING ANY FINANCIAL ACCOMMODATION TO MORTGAGORS OR BORROWERS, OR ANY OF THEM.**

9. **MORTGAGORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON, AND MORTGAGORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. MORTGAGORS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN**

UNOFFICIAL COPY

INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. MORTGAGORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

MORTGAGORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST MORTGAGEE OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREIN ABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF MORTGAGEE TO BRING ANY ACTION OR PROCEEDING AGAINST MORTGAGORS OR BORROWERS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

10. Mortgagors warrant to Mortgagee that none of Mortgagors nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "**Blocked Persons Lists**") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Mortgagors covenant to Mortgagee that if they become aware that they or any affiliate is identified on any Blocked Persons List, Mortgagors shall promptly notify Mortgagee in writing of such information. Mortgagors further agree that in the event they or any affiliate is at any time identified on any Blocked Persons List, Mortgagee may immediately contact the Office of Foreign

UNOFFICIAL COPY

Assets Control and any other government agency Mortgagee deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Mortgagee will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Mortgagee determines, in its reasonable discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Mortgagee and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any of the Loan Documents.

11. This instrument is executed by Chicago Title Land Trust Company as Trustee, not individually or personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Trustee personally to pay any indebtedness arising or accruing under or pursuant to this instrument, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained in this instrument, all such personal liability of Trustee, if any, being expressly waived by each and every person now or hereafter claiming any right under this instrument.

SIGNATURE PAGE FOLLOWS

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification of Mortgage

on about March 22, 2012.


Chicago Title Land Trust Company, as Trustee under Trust No. 8002356812 dated June 1, 2011, and not individually

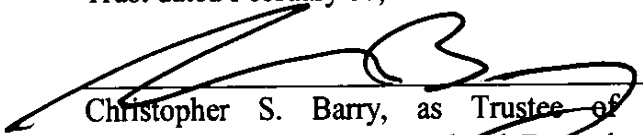
By: ~~SEE RIDER ATTACHED FOR SIGNATURE OF TRUSTEE AND NOTARY ACKNOWLEDGMENT~~

Attest: Attestation not required
Its pursuant to corporate by-laws

Metropolitan Capital Bank & Trust, formerly known as Metropolitan Capital Bank, an Illinois banking corporation

By: _____
Its _____


Jean L. Jodoin, as Trustee of the Jean L. Jodoin Trust dated February 10, 2000


Christopher S. Barry, as Trustee of the Christopher S. Barry Trust dated December 6, 1999

Life Storage Centers of River North, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: 
Christopher S. Barry, manager

By: 
Jean L. Jodoin, manager

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that _____ and _____, _____ President and _____ Secretary, respectively, of Chicago Title Land Trust Company, as Trustee as aforesaid and not individually, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

Notary Public

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification of Mortgage

on _____, 2012.

Chicago Title Land Trust Company, as Trustee
under Trust No. 8002356812 dated June 1, 2011,
and not individually

By: _____
Its _____

Attest: _____
Its _____

Metropolitan Capital Bank & Trust, formerly
known as Metropolitan Capital Bank, an Illinois
banking corporation

ABP By: James A. Trump
Its Manager of Bank Operations

Jean L. Jodoin, as Trustee of the Jean L. Jodoin
Trust dated February 10, 2000

Christopher S. Barry, as Trustee of the
Christopher S. Barry Trust dated December 6,
1999

Life Storage Centers of River North, LLC, an
Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois
limited liability company, its sole
member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that _____ and _____, _____ President and _____ Secretary, respectively, of Chicago Title Land Trust Company, as Trustee as aforesaid and not individually, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

Notary Public

UNOFFICIAL COPY

EXCULPATORY CLAUSE FOR CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 2011 AND KNOWN AS TRUST NUMBER 8002356812 AND NOT PERSONALLY

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

CHICAGO TITLE LAND TRUST COMPANY, NOT PERSONALLY BUT SOLELY AS TRUSTEE UNDER THAT CERTAIN TRUST AGREEMENT DATED JUNE 1, 2011, AND KNOWN AS TRUST NO. 8002356812.

By: Mary M. Bray
MARY M. BRAY - ASST. VICE PRESIDENT

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that MARY M. BRAY, an officer of CHICAGO TITLE LAND TRUST COMPANY, 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 said officer of said corporation signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 30th day of March, 2012.

Eva Higi
NOTARY PUBLIC



UNOFFICIAL COPY

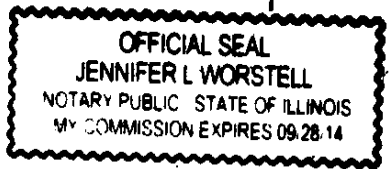
STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Jenny Krump and _____, _____ President and Manager of Bank Equatrim Secretary, respectively, of Metropolitan Capital Bank & Trust, formerly known as Metropolitan Capital Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 3/27, 2012.

Jennifer L. Worstell
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF _____)



The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Jean L. Jodoin, as Trustee of the Jean L. Jodoin Trust dated February 10, 2000, and as manager and member of Life Storage Centers, LLC, an Illinois limited liability company, the manager of Life Storage Centers of River North, LLC, an Illinois limited liability company, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said trust and limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that _____ and _____, _____ President and _____ Secretary, respectively, of Metropolitan Capital Bank & Trust, formerly known as Metropolitan Capital Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

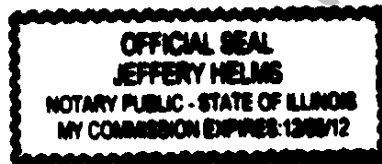
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Jean L. Jodoin, as Trustee of the Jean L. Jodoin Trust dated February 10, 2000, and as manager and member of Life Storage Centers, LLC, an Illinois limited liability company, the manager of Life Storage Centers of River North, LLC, an Illinois limited liability company, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said trust and limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal March 22, 2012.


Notary Public



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Christopher S. Barry, as Trustee of the Christopher S. Barry Trust dated December 6, 1999, and as manager and member of Life Storage Centers, LLC, an Illinois limited liability company, the manager of Life Storage Centers of River North, LLC, an Illinois limited liability company, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said trust and limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal March 22, 2012.

Jeffery Helms
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A **LEGAL DESCRIPTION**

THE WEST 1.14 FEET OF LOT 7 AND LOTS 8 THROUGH 13 INCLUSIVE IN BLOCK 8 IN BUTLER, WRIGHT AND WEBSTER'S ADDITION TO CHICAGO IN THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 325-333 W. OHIO STREET, CHICAGO, ILLINOIS
P.I.N.: 17-09-236-001-0000 and 17-09-236-028-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B
PROMISSORY NOTE EVIDENCING A REVOLVING LINE OF CREDIT
("Second Revised Note")

\$3,750,000.00

March _____, 2012

FOR VALUE RECEIVED the undersigned, **LIFE STORAGE CENTERS, LLC**, an Illinois limited liability company, **JEAN L. JODOIN, INDIVIDUALLY AND AS TRUSTEE OF THE JEAN L. JODOIN TRUST DATED FEBRUARY 10, 2000, CHRISTOPHER S. BARRY, INDIVIDUALLY AND AS TRUSTEE OF THE CHRISTOPHER S. BARRY TRUST DATED DECEMBER 6, 1999, LIFE STORAGE CENTERS OF ALGONQUIN, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF CARPENTERSVILLE, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF ELGIN, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF SOUTH CHICAGO HEIGHTS, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF MATTESON, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF ROGERS PARK, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF MOKENA, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF RIVER NORTH, LLC**, an Illinois limited liability company, **LIFE STORAGE CENTERS OF LIBERTYVILLE, LLC**, an Illinois limited liability company, **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002355917 dated November 1, 2010, **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002355916 dated November 1, 2010, **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002355915 dated November 1, 2010, **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002355914 dated November 1, 2010, **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002355913 dated November 1, 2010, **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002355912 dated November 1, 2010, **NORTH STAR TRUST COMPANY**, as successor trustee to **HARRIS N.A.**, as Trustee, and not individually, of Trust No. HTB 1855 dated April 1, 2007, **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002356811 dated March 1, 2011, and **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee, and not individually, of Trust No. 8002356812 dated June 1, 2011 (collectively, "**Borrowers**"), jointly and severally promise to pay to the order of **METROPOLITAN CAPITAL BANK & TRUST, FORMERLY KNOWN AS METROPOLITAN CAPITAL BANK**, an Illinois banking corporation (said Bank and each successive owner and holder of this Note being hereinafter called "**Holder**"), the principal sum of Three Million Seven Hundred Fifty Thousand Dollars and 00/100 (\$3,750,000.00), or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

The rate of interest payable on this Note will change from time to time as hereafter provided. Monthly payments on account of this Note shall be adjusted from time to time as the rate of interest changes. Payments on account of this Note shall be made as follows:

UNOFFICIAL COPY

(a) On April 15, 2011, and continuing on the fifteenth day of each succeeding month thereafter to and including November 15, 2012, there shall be paid on account of this Note interest only, in arrears for the prior calendar month, on the outstanding principal balance hereunder at the WSJ Prime Rate, floating daily, plus one and one-half percent (1.5%) per annum, based on a year having three hundred sixty (360) days. The term "**WSJ Prime Rate**" shall mean the "Wall Street Journal Prime Rate," which is a variable annual rate equal to the highest United States "prime" rate of interest set forth in The Wall Street Journal under the heading "Money Rates." The rate of interest accruing on the outstanding principal amount due from time to time under this Note shall change effective at each changing of the WSJ Prime Rate. Notwithstanding the foregoing, in no event will the interest rate applicable to this Note be less than seven percent (7.0%) per annum.

(b) On December 15, 2012, and continuing on the fifteenth day of each succeeding month thereafter to and including November 15, 2013, there shall be paid on account of this Note interest only, in arrears for the prior calendar month, on the outstanding principal balance hereunder at the WSJ Prime Rate, floating daily, plus two percent (2.0%) per annum, based on a year having three hundred sixty (360) days. Notwithstanding the foregoing, in no event will the interest rate applicable to this Note be less than seven percent (7.0%) per annum.

(c) On December 1, 2013 ("**Maturity Date**"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

Interest shall be calculated on the basis of a year having three hundred sixty (360) days and paid based on the actual days outstanding. Borrowers acknowledge that the calculation method results in a higher effective interest rate than the numeric rate stated in subparagraphs (a) and (b) above, and Borrowers agree to this calculation method.

This Note may be prepaid without premium or penalty, in whole or in part, and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

Payment upon this Note shall be made in lawful money of the United States at such place as the Holder of this Note may from time to time in writing appoint and in the absence of such appointment, shall be made at the offices of Metropolitan Capital Bank & Trust, Nine East Ontario, Chicago, Illinois 60611.

Without limiting the provisions of the succeeding paragraphs, in the event any payment of interest is not paid within ten (10) days after the date the same is due, the undersigned promise to pay a late charge ("**Late Charge**") of five (5.0%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

This Note is executed pursuant to a Second Loan Modification and Assumption Agreement ("**Second Modification**"), which modifies that certain Loan Agreement dated November 16, 2010 ("**Loan Agreement**") executed by Borrowers and as modified from time to time, and is secured by eight (8) Junior Real Estate Mortgages, Assignments of Rents, Security Agreements and UCC Financing Statements, as modified from time to time a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Financing Statement, as modified from time to time a Pledge

UNOFFICIAL COPY

Agreement, a Pledge and Control Agreement, eight (8) Junior Collateral Assignments of Beneficial Interest in Land Trust, as modified concurrently herewith, a Collateral Assignment of Beneficial Interest in Land Trust, and certain other documents of a security, collateral and evidentiary nature, all as described in the Second Modification and the Loan Agreement (collectively the "**Loan Documents**"). This Note replaces that certain Promissory Note Evidencing a Revolving Line of Credit in the amount of \$3,250,000.00 ("**Original Note**") made by certain of Borrowers on November 16, 2010, and that certain Promissory Note Evidencing a Revolving Line of Credit in the amount of \$3,250,000.00 ("**Revised Note**") made by certain of Borrowers on July 25, 2011. The Revised Note was executed pursuant to a Loan Modification Agreement ("**Modification**") executed by Borrowers and Bank, which modifies the Loan Agreement and the Loan Documents, along with other documents of even date therewith. Amounts outstanding pursuant to the Original Note and the Revised Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and the Revised Note and all payments made in the Original Note and the Revised Note are unchanged. Pursuant to the Second Modification, the Modification, the Loan Agreement and other Loan Documents executed prior to the date hereof are modified to secure this Note. This Note is subject to the terms of an Amended and Restated Subordination and Intercreditor Agreement dated on or about July 25, 2011 by and between Bank and Associated Bank, National Association, which modifies a certain Subordination and Intercreditor Agreement dated November 16, 2010 by and between Bank and Associated Bank, National Association.

Borrowers may obtain funds by requesting draws ("**Draws**") pursuant to the Loan Agreement. Borrowers agree that Holder will not be required to make Draws: (i) which would cause the outstanding loan balance to exceed \$3,750,000.00 ("**Credit Limit**"); (ii) if Borrowers are in default under this Note or the Loan Documents; (iii) in the event that parcels of the real estate described in the Loan Documents are sold or the debt secured thereby refinanced, until the terms of the loan evidenced by this Note are modified, in Lender's sole and exclusive discretion, to reflect such revised collateral structure; or (iv) at any time after the Maturity Date. Borrowers agree not to exceed the Credit Limit. This is a revolving line of credit in that repayments of principal will reduce the outstanding balance of the loan evidenced hereby, and amounts up to the Credit Limit will be available for Draw requests subject to the provisions of this Note and the Loan Agreement.

At the election of the Holder hereof, without notice, the principal sum remaining unpaid hereon, together with accrued interest, shall be and become at once due and payable in the case of any "**Event of Default**" or "**Default**" under this Note or the Loan Documents.

The funds representing the proceeds of the indebtedness evidenced herein shall be disbursed pursuant to the Loan Documents. Bank will apply all payments received to the Note as provided herein or in the Loan Documents.

Under the provisions of the Loan Documents, the unpaid balance hereunder may, at the option of Holder, be accelerated and become due and payable forthwith upon the occurrence of an Event of Default under the Loan Documents, subject to any required period of notice of default and the opportunity to cure as set forth herein or in the Loan Documents. The Loan Documents are, by this reference, incorporated herein in their entirety and notice is given of such possibility of acceleration.

UNOFFICIAL COPY

The principal hereof, including each installment of principal, shall bear interest after the occurrence of an Event of Default under the Loan Documents at the annual rate (herein called the "Default Rate") determined by adding five (5.0%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

No failure on the part of Holder or any other holder hereof to exercise any right or remedy hereunder, whether before or after the occurrence of an Event of Default, shall constitute a waiver thereof, and no waiver of any past Default shall constitute a waiver of any future Default or of any other Default. No failure to accelerate, nor acceptance of a past-due installment, nor indulgence granted shall be construed to be a waiver of the right to insist upon prompt payment and to impose the late payment penalty and the Default Rate, retroactively, or shall be deemed a waiver of any right of acceleration or any other right which Holder may have, whether by law or agreement or otherwise. None of the foregoing shall operate to release, change or effect the liability of Borrowers, or any other endorser or guarantor of this Note, and Borrowers and each such endorser and guarantor hereby expressly waive the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing.

Borrowers waive presentment, notice of dishonor, protest and notice of protest.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceeding, the undersigned promise to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expenses and attorneys' fees.

Subject to the terms of the Loan Documents, payments received on account of this Note shall be applied first to the payment of any amounts due pursuant to the preceding paragraph, second to interest and Late Charges and the balance to principal.

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrowers, escrowees or otherwise for the benefit of Borrowers shall, for all purposes, be deemed outstanding hereunder and received by Borrowers as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing, wire transfer or other delivery until repaid to Holder, notwithstanding the fact that such funds may not at any time have been remitted by such escrowees to Borrowers.

BORROWERS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OF THE DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR WITH THE LOAN DOCUMENTS OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH HOLDER AND BORROWERS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWERS, OR ANY OF THEM.

UNOFFICIAL COPY

BORROWERS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWERS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWERS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWERS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWERS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST BANK OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF BANK TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF BANK TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWERS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

Borrowers warrant to Holder that none of Borrowers or any affiliate thereof is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrowers covenant to Holder that if they become aware that they or any affiliate is identified on any Blocked Persons List, Borrowers shall immediately notify Holder in writing of such information. Borrowers further agree that in the event they or any affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Holder to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Holder may immediately contact the Office of Foreign Assets Control and any other government agency Holder deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Holder will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Holder determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Holder or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

UNOFFICIAL COPY

This Note may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Note.

This instrument is executed by Chicago Title Land Trust Company and North Star Trust Company as Trustees, not individually or personally, but solely as Trustees as aforesaid, in the exercise of the power and authority conferred upon and vested in them as such Trustees, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on Trustees personally to pay any indebtedness arising or accruing under or pursuant to this instrument, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained in this instrument, all such personal liability of Trustees, if any, being expressly waived by each and every person now or hereafter claiming any right under this instrument.

THIS SPACE INTENTIONALLY BLANK

UNOFFICIAL COPY

Time is of the essence of this Note and each provision hereof.

Jean L. Jodoin, individually and as Trustee
under the Declaration of Jean L. Jodoin Trust
dated February 10, 2000

Life Storage Centers, LLC, an Illinois limited
liability company

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

Christopher S. Barry, individually and as
Trustee under the Declaration of Christopher S.
Barry Trust dated December 6, 1999

Life Storage Centers of Algonquin, LLC, an
Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois
limited liability company, its sole
member and manager

Chicago Title Land Trust Company, not
individually but as Trustee under Trust No.
8002355917 dated November 1, 2010

By: _____
Its _____

By: _____
Christopher S. Barry, manager

Chicago Title Land Trust Company, not
individually but as Trustee under Trust No.
8002355916 dated November 1, 2010

By: _____
Jean L. Jodoin, manager

By: _____
Its _____

Life Storage Centers of Carpentersville, LLC,
an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois
limited liability company, its sole
member and manager

Chicago Title Land Trust Company, not
individually but as Trustee under Trust No.
8002355915 dated November 1, 2010

By: _____
Christopher S. Barry, manager

By: _____
Its _____

By: _____
Jean L. Jodoin, manager

UNOFFICIAL COPY

Chicago Title Land Trust Company, not individually but as Trustee under Trust No. 8002355914 dated November 1, 2010

By: _____
Its _____

Chicago Title Land Trust Company, not individually but as Trustee under Trust No. 8002355913 dated November 1, 2010

By: _____
Its _____

Chicago Title Land Trust Company, not individually but as Trustee under Trust No. 8002355912 dated November 1, 2010

By: _____
Its _____

North Star Trust Company, as successor trustee to Harris N.A., not individually but as Trustee under Trust No. HTB 1855 dated April 1, 2007

By: _____
Its _____

Chicago Title Land Trust Company, not individually but as Trustee under Trust No. 8002356811 dated March 1, 2011

By: _____
Its _____

Life Storage Centers of Elgin, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

Life Storage Centers of South Chicago Heights, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

Life Storage Centers of Matteson, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

UNOFFICIAL COPY

Chicago Title Land Trust Company, not individually but as Trustee under Trust No. 8002356812 dated June 1, 2011

By: _____
Its _____

Life Storage Centers of Libertyville, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

Life Storage Centers of Rogers Park, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

Life Storage Centers of Mokena, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

Life Storage Centers of River North, LLC, an Illinois limited liability company

By: Life Storage Centers, LLC, an Illinois limited liability company, its sole member and manager

By: _____
Christopher S. Barry, manager

By: _____
Jean L. Jodoin, manager

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Jean L. Jodoin, individually and as Trustee under the Declaration of Jean L. Jodoin Trust dated February 10, 2000, and as a member and manager of the limited liability companies described herein, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Christopher S. Barry, individually and as Trustee under the Declaration of Christopher S. Barry Trust dated December 6, 1999, and as a member and manager of the limited liability companies described herein, 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that _____, _____ of Chicago Title Land Trust Company and not individually, 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 s/he signed and delivered the said instrument as her/his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that _____, _____ of North Star Trust Company, as successor to Harris N.A. and not individually, 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 s/he signed and delivered the said instrument as her/his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal _____, 2012.

Notary Public