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Doc#: 0906531077 Fee: \$98.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/06/2009 11:59 AM Pg: 1 of 32

Prepared by and after recording,  
return to:

Todd Stennes  
Sonnenschein Nath & Rosenthal  
LLP  
7800 Sears Tower  
Chicago, IL 60606-6404

## LENDER'S SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (CAPRI)

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of March 6, 2009 by and among 151 W. Adams Master Tenant LLC, an Illinois limited liability company (the "Master Lessee"); UST Prime III Hotel Subtenant, LP, an Illinois limited partnership (the "Master Subtenant"); UST Prime III Hotel Owner, L.P., an Illinois limited partnership ("Owner"); CAPRI URBAN INVESTORS REIT, a Maryland real estate investment trust (the "Lender"); and Chevron U.S.A. Inc., a Pennsylvania corporation (the "Investor").

### RECITALS

WHEREAS, Owner is developing a 610 room 5-star JW Marriot Hotel (the "Hotel") located on the lower levels, a portion of the lobby level and floors 2-12 of the building at 208 South LaSalle Street, Chicago, Illinois (the "Building"). The remaining portion of the building will be developed for retail/office purposes. The portion of the building being developed as The Hotel, together with its interest in the land underlying the building, is legally described in Exhibit A and is referred to as the "Property". The address of the Hotel will be 151 West Adams, Chicago, Illinois; and

WHEREAS, Owner intends to rehabilitate the Building in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Historic Tax Credit") pursuant to the Section 47 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code"); and

WHEREAS, the Master Lessee has been formed to lease the Property including the rehabilitated Building from Owner pursuant to the terms of that certain Amended and Restated 151 W. Adams Master Lease Agreement (Hotel) dated as of the date hereof between Owner.. as

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landlord, and the Master Lessee, as lessee, (as amended from time to time, the "Master Lease"); and

WHEREAS, the Master Subtenant has been formed to sublease the Property including the rehabilitated Building from Master Tenant pursuant to the terms of that certain Amended and Restated 151 W. Adams Master Sublease Agreement (Hotel) dated as of the date hereof between the Master Lessee, as landlord, and the Master Subtenant as lessee, (as amended from time to time, the "Master Sublease"); and

WHEREAS, pursuant to that certain First Amended and Restated Operating Agreement of the Master Lessee dated the date hereof, (the "Operating Agreement"), Investor acquired a membership interest in the Master Lessee and will make an investment therein; and

WHEREAS, Owner and the Master Lessee have executed or will execute that certain Amended and Restated, FTC Pass-Through Agreement (the "Pass-Through Agreement") of even date herewith pursuant to which Owner will elect under Section 50 of the Code to pass-through to the Master Lessee the Historic Tax Credit to which Owner is otherwise entitled as a result of the rehabilitation of the Building, and

WHEREAS, the Investor and Reschke Chicago Partners, LLC have entered into a Purchase Agreement dated as of the date hereof (the "Purchase Agreement") relating to Investor's interest in Master Lessee; and

WHEREAS, the Lender is the lender in connection with the Loan (the "Mortgage Loan") made pursuant to that certain Loan Agreement dated as of March 4, 2008, as amended, by and between Lender and Owner (the "Loan Agreement"), which is evidenced by a Note dated as of March 4, 2008, as amended (the "Note"), and which Mortgage Loan is secured by means of a second lien mortgage, assignment of leases and rents, (the "Mortgage") and other related security documents and financing statements given by Owner in favor of the Lender, as amended (collectively, the "Mortgage Loan Documents"); and

WHEREAS, the Mortgage Loan requires that Lender consent to any lease of the Property.

NOW, THEREFORE, in consideration of the forgoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Master Lease. In addition to the defined terms set forth in the Recitals to this Agreement, the following defined terms used herein shall have the meanings specified below:

"Cash Management Agreement" means the Project Cash Management Agreement dated as of March 4, 2008 among Owner, Senior Lender, Master Lessee, Master Sublessee, and the general and limited partners of Master Sublessee.

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“Recapture Period” means the five year period commencing on the date the rehabilitated Building is placed in service.

“Senior Lender” means Union Labor Life Insurance Company, on behalf of Separate Account J.

“Transfer” means (a) the institution of any foreclosure, trustee’s sale or other like proceeding, (b) the appointment of a receiver for Owner or the Property, (c) the exercise of rights to collect rents under the Mortgage Loan Documents or an assignment of rents, (d) the recording by Lender or its successor or assignee of a deed in lieu of foreclosure for the property, or (e) any transfer or abandonment of possession of the Property to the Lender or its successor or assigns in connection with any proceedings affecting Owner under the Bankruptcy Code, 11 U.S.C. §101 et seq.

“Transferee” means the Lender or any other party taking title to the Property in connection with a Transfer.

2. Consents. The Lender hereby consents to the Master Lease and Master Sublease and agrees that the execution and delivery thereof by Owner and/or the Master Lessee or the Master Subtenant, as the case may be, shall not constitute a default under the Mortgage Loan. The Lender also hereby consents to the conversion of the general partner of the Owner from a corporation to a limited liability company, and to transfers of ownership interests in the Master Lessee pursuant to the Purchase Agreement.

3. Subordination. Notwithstanding anything to the contrary contained in the Master Lease, the Master Lease and the leasehold estate created thereby are hereby declared to be, and hereafter shall continue at all times to be, junior, subject and subordinate, in each and every respect, to the Mortgage, including, without limitation, (i) any and all increases, renewals, modifications, extensions, substitutions, replacements and or consolidations of the Note or the Mortgage and (ii) any future mortgage or encumbrance affecting the Premises held by or made for the benefit of Lender and/or its successors and assigns. The foregoing subordination is effective and self-operative without the necessity for execution of any further instruments. Master Lessee hereby covenants with Lender that Master Lessee will not cause the Master Lease to be subordinated to any interests other than those held by or made for the benefit of Lender or Senior Lender and/or their respective successors and assigns without prior written notice to and prior written consent of Lender.

4. Lender’s Exercise of Remedies: Non-Disturbance.

(a) Subject to Section 4(c) hereof, provided (a) the Master Lessee complies with this Agreement, (b) the Master Lessee is not in default under the terms of the Master Lease or the Pass-Through Agreement, and no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default by Master Lessee under the Master Lease, except as provided below with respect to the payment of rent under the Master Lease, (c) the Master Lease is in full force and effect, both as of the date the Lender files a lis pendens, or otherwise

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commences a Transfer, and at all times thereafter, and (d) the Master Lessee shall be in possession of the Property, no default under the Mortgage Loan Documents and no Transfer will disturb the Master Lessee's possession under the Master Lease and the Master Lease will not be affected or terminated thereby, and notwithstanding any such foreclosure or other Transfer of the Property to a Transferee, the Master Lease will be recognized as a direct lease from Transferee to the Master Lessee upon the Transfer for the balance of the term thereof. Notwithstanding the foregoing if Master Lessee is in compliance with its obligations under the Master Lease except with respect to the payment of rent and such failure to pay rent is the result of insufficient cash flow from the Property after application of funds in accordance with the Cash Management Agreement, then prior to the end of the Recapture Period the amount of the shortfall in rent paid under the Master Lease shall accrue and shall not be grounds for a termination of the Master Lease by Lender or Owner if the conditions set forth above in this Section 4(a) have been satisfied and Master Lessee and the Investor are in compliance with Section 8 hereof. It is further agreed that if the Master Subtenant is in compliance with its obligations under the Master Sublease except with respect to the payment of rent and such failure to pay rent is the result of insufficient cash flow from the Property after application of funds in accordance with the Cash Management Agreement, then the Master Tenant agrees not to terminate the Master Sublease and the amount of the shortfall in rent paid under the Master Sublease prior to the end of the Recapture Period as a result of insufficient cash flow from the Property shall also accrue. Upon the expiration of the Recapture Period, all such accrued and unpaid rent under both the Master Lease and the Master Sublease, plus all late penalties, interest, fees, and costs due under the terms of the Master Lease and Master Sublease shall become immediately due and payable and if such amounts are not paid, Owner or Lender or its respective Transferee, if applicable, shall have the right to terminate the Master Lease if the amounts due thereunder are not paid, and Master Tenant or Lender, or its respective Transferee, if applicable, shall have the right to terminate the Master Sublease if the amounts due thereunder are not paid. In addition, regardless of whether there is any accrued and unpaid rent under the Master Lease, Lender's agreement to not disturb the Master Lease shall expire on June 30, 2015 (the "Non-Disturbance Period Expiration Date") provided that if the Recapture Period has not ended prior to such date, the Non-Disturbance Period Expiration Date shall be postponed to the date that is the earlier of (i) the end of the Recapture Period and (ii) January 31, 2016. Any termination of the Master Lease shall automatically constitute a termination of the Master Sublease.

- (b) Neither Lender nor any Transferee shall be (a) liable for any act or omission of Owner or any prior Owner (including the loss or misappropriation of any rental payments or security deposits); (b) subject to any credits, claims, setoffs, offsets or defenses which Master Lessee may have against Owner or any prior Owner; (c) bound by (or responsible for) any advance payment of rent or any other monetary obligations under the Master Lease to Owner in excess of one month's

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prepayment thereof in the case of rent, or in excess of one periodic payment in advance in the case of any other monetary obligations under the Master Lease; (d) responsible for any security deposit not actually received by Lender or any Transferee; (e) bound by any amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Master Lease to which Lender or Transferee has not consented in writing, and any attempted amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Master Lease without said consent shall be null and void and of no force and effect; (f) liable for latent and/or patent defects in the construction of the Property or for any obligation to complete the "Lessor's Work" (as defined in the Master Lease); (g) liable for any breach of any warranty in the Master Lease by Owner or a prior Owner; (h) bound by any obligation to repair, replace, rebuild or restore the Property, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as may be required of the Owner under the Master Lease and as can reasonably be accomplished with the use of the net insurance proceeds or the net condemnation award actually received by or made available to Lender (as successor in interest to Owner) or Transferee; (i) required to remove any person occupying the Property or any part thereof; or (j) bound by any right of first refusal or right of first offer set forth in the Master Lease, if any, or the Purchase Agreement; (k) bound by any notices given by the Master Lessee to Owner of which it did not also receive notice; or (l) obligated or liable (financially or otherwise) on account of any representation, warranty, or indemnification obligation of Owner with respect to hazardous materials, asbestos, or other environmental laws, claims or liabilities, whether expressly stated as such or subsumed within general obligations to comply with laws or preserve the benefits of Master Lessee's use and enjoyment of the Property. Neither Lender nor any Transferee shall be liable for any reason for amounts in excess of the value of its interest in the Property, or for consequential or punitive damages of any kind.

- (c) Notwithstanding anything herein to the contrary, the Lender agrees that it will take no action to effect a termination of the Master Lease without first giving to the Investor reasonable time, not to exceed sixty (60) days from the date of the Master Lessee's receipt of notice of the intention by the Lender (the "Investor Cure Period") to take any action that would effect a termination, to replace the Master Lessee's managing member and cause the successor managing member to cause Master Lessee to cure any defect in the Master Lessee's compliance with the terms of Section 4(a) hereof, such that upon such cure within the Investor Cure Period the Master Lessee would be entitled to the non-disturbance benefits of Section 4(a); provided, however, that the foregoing shall apply unless and until there is a likelihood of material loss, liability or prejudice to the Lender from any such delay or forbearance or the Non-Disturbance Period Expiration Date occurs, and provided further that (i) as a condition of such delay or forbearance, the Investor shall comply with the provisions of Section 6(c) hereof with respect to any substitute managing member, and (ii) Master Lessee, following any such

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substitution of the managing member, shall thereupon proceed with due diligence to cure such defect in Master Lessee's compliance with the terms of Section 4(a).

5. Attornment. The Master Lessee shall attorn to any Transferee, including the Lender if the Lender becomes a Transferee, as the landlord under the Master Lease. Said attornment is subject to the limitation of Transferee's obligations set forth in Section 4 above and shall be effective and self-operative without the execution of any further instruments upon Transferee succeeding to the interest of the landlord under the Master Lease. Within ten (10) days after receipt of a written request therefor from a Transferee, the Master Lessee agrees to provide such Transferee with a written confirmation of its attornment and any other matter set forth in this Agreement. Failure to provide such written confirmation shall, at the Transferee's sole option, constitute a default under the Master Lease, but failure to receive such a written confirmation from the Master Lessee shall not derogate from the Master Lessee's obligations to the Transferee hereunder.

6. Notice and Cure Rights.

- (a) The Master Lessee and Owner each agrees, simultaneously with the giving of any notice under the Master Lease, to give a duplicate copy thereof to Lender. Should either Owner or the Master Lessee default in respect of any of the provisions of the Master Lease, the Lender shall have the right, but not the obligation, to cure such default, and either the Master Lessee or Owner, as the case may be, shall accept performance by or on behalf of the Lender as though, and with the same effect as if, it had been done or performed by the defaulting party. The Lender will have a period of time after the service of such notice (given after the expiration of the Owner's or Master Lessee's right to cure such default) upon it within which to cure the default specified in such notice, or cause it to be cured, which is the corresponding period for cure, if any, as is given under the Master Lease in respect of the specified default after the giving of any required notice thereunder (or if no cure period is specified, 30 days).
- (b) The Lender and Owner each agree, simultaneously with the giving of any notice of the occurrence of an Event of Default with respect to the Mortgage Loan, to give a duplicate copy thereof to the Investor. Should Owner default in respect of any of the provisions of the Mortgage Loan, the Investor shall have the right, but not the obligation, to cure such default, and the Lender thereof shall accept performance by or on behalf of the Investor as though, and with the same effect as if, it had been done or performed by Owner. The Investor will have a period of time after the service of such notice upon it within which to cure the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given under the Mortgage Loan Documents in respect of the specified default after the giving of any required notice thereunder.
- (c) The Lender agrees that the removal of the managing member of the Master Lessee by the Investor pursuant to the Operating Agreement shall not in and of itself accelerate the Mortgage Loan or constitute a default under the Mortgage

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Loan Documents, provided that (i) any substitute managing member is an Affiliate of the Investor and acquires such managing membership interest subject to the pledge in favor of Lender, and (ii) the Lender receives notice of such substitution within ten (10) days thereof.

- (d) The Master Lessee and Investor acknowledge and agree that a transfer of any direct or indirect membership interest in the Master Lessee, that is in violation of Section 17.2 of the Loan Agreement shall be a default by Master Lessee under this Agreement.

## 7. Miscellaneous.

- (a) This Agreement shall inure to the benefit of the parties hereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of a Transferee, all obligations and liabilities of such Transferee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Transferee's interest is assigned or transferred; and provided further that the interest of the Master Lessee under this Agreement may not be assigned or transferred except to the extent the assignment of the Master Lessee's interest in the Master Lease is permitted under the Master Lease and Mortgage Loan Documents.
- (b) Anything herein or in the Master Lease to the contrary notwithstanding, a Transferee shall have no obligation, nor incur any liability, beyond such Transferee's then interest in the Property, and the Master Lessee shall look exclusively to such interest of the Transferee in the Property for the payment and discharge of any obligations imposed upon the Transferee hereunder or under the Master Lease, or otherwise, subject to the limitation of the Transferee's obligations provided for in Section 4 above.
- (c) This Agreement is intended to set forth the principal agreement between the parties hereto with regard to the subordination of the Master Lease to the lien or charge of the Mortgage Loan Documents, and the provisions of this Agreement shall control over any conflicting or inconsistent provisions contained in the Master Lease which provide for the subjection or subordination of said Master Lease to a deed of trust or to a mortgage or mortgages. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto, provided however, that it shall terminate without further action upon payment in full of the Mortgage Loan or upon expiration of all surviving rights under the Purchase Agreement.
- (d) This Agreement shall be deemed to have been made in the state where the Property is located and the validity, interpretation and enforcement of this Agreement shall be determined in accordance with the laws of such state.

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- (e) In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.
- (f) The Master Lease may not be modified or amended without the prior written consent of Lender.
- (g) Any notices required hereunder will be in writing and will be deemed to have been given when delivered by hand or dispatched by telegraph, telex or other means of electronic facsimile transmission, or one business day after being deposited into the custody of Federal Express Corporation (or other similar overnight delivery service) to be sent by Federal Express Overnight Delivery (or other similar next day business day delivery service), or three business days after being deposited in the United States mail (registered or certified), postage prepaid, addressed in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the other parties:

If to Owner or Master Lessee:

UST Prime III Hotel Owner, L.P.  
4705 South Apopka - Vineland Road  
Suite 201  
Orlando, Florida 32819  
Attention: Lothar Estein  
Facsimile: (407) 909-2222

With a copy to:

c/o The Prime Group Inc.  
321 N. Clark Street, Suite 2500  
Chicago, Illinois 60654  
Attention: Michael W. Reschke  
Facsimile: (312) 917-1511

And to

PEDERSEN & HOUP, P.C.  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60601  
Attention: Herbert J. Linn, Esq.  
Telephone: (312) 261-2104  
Facsimile: (312) 261-1104



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And to

Casey Ciklin Lubitz Martens & O'Connell  
515 North Flagler Drive - 18<sup>th</sup> Floor  
West Palm Beach, Florida 33401  
Attention: Dean Vegosen  
Telephone: (561) 832-5900 (x3306)  
Facsimile: (561) 820-0389

And to

The Prime Group, Inc.  
321 North Clark Street  
Suite 2500  
Chicago, Illinois 60654  
Attention: Robert J. Rudnik,  
Executive Vice President and General Counsel  
Facsimile: (312) 917-8442

With copies to:

Chevron U.S.A. Inc.  
c/o Chevron TCI, Inc.  
345 California Street  
San Francisco, CA 94104  
Attention: Charles Hall  
Facsimile: (415) 733-4591

and

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attention: William F. Machen, Esq.  
Facsimile: (617) 523-6850

If to Investor:

Chevron U.S.A. Inc.  
c/o Chevron TCI, Inc.  
345 California Street  
San Francisco, CA 94104  
Attention: Charles Hall  
Facsimile: (415) 733-4591

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With a copy to:

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attention: William F. Machen, Esq.  
Facsimile: (617) 523-6850

If to Lender:

Capri Urban Investors REIT  
875 N. Michigan Avenue, Suite 3430  
Chicago, Illinois 60611  
Attention: Lisa Hillier  
Facsimile: (312) 573-5269

With a copy to:

Sonnenschein Nath & Rosenthal LLP  
8000 Sears Tower  
Chicago, Illinois 60606  
Attention: Steven R. Davidson

Any party may designate another addressee (and/or change its address or telecopy number) for notices hereunder by a notice given pursuant to this Section 7(g). Notices delivered personally or by facsimile will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the return receipt requested.

8. Fee. Investor recognizes that there is a potential cost and burden to Lender resulting from the restrictions contained herein as to when the Master Lease can be terminated, and the provision herein allowing for the potential accrual of unpaid rent under the Master Lease. Accordingly, the parties agree that from and after the time of an Event of Default under the Mortgage Loan Documents, any Rent Differential (as defined in the Cash Management Agreement) that would have been payable to Master Lessee under the Cash Management Agreement that is not paid to Senior Lender shall instead be paid to Lender. Also, as a condition of Lender's agreement to enter into this Agreement, Investor agrees that following a Transfer pursuant to clause (a), clause (b), clause (d) or clause (e) of the definition of Transfer, Investor will pay to Transferee the sum of \$100,000 per month on the first day of each month as a fee in consideration of Transferee's agreement not to terminate the Master Lease on the terms and conditions set forth herein. If Investor does not make this payment in any month, and such failure continues for five (5) business days, Transferee can terminate this Agreement, terminate the Master Lease and take any and all other enforcement actions; provided, however that for not more than one late payment in any twelve month period, Transferee agrees not to take such action until Transferee has given notice to Investor that the payment was not made on the date due, and Investor fails to make such payment before the later of (i) five days after the due date

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for such payment, and (ii) two business days following the date of such notice. Notwithstanding anything to the contrary contained herein, no fee shall be payable under this Section at any time when any fee is payable under Section 8 of that certain Subordination, Nondisturbance and Attornment Agreement dated on or about the date hereof by and between, inter alia, the Investor and Union Labor Life Insurance Company.

9. Agreed Sale Procedure. In the event of a Transfer, Investor and Transferee may, but shall have no obligation to, agree on a sale procedure in the event Transferee elects to sell the Property. Transferee, in its sole discretion, may elect not to agree upon such a procedure, in which case the procedure set forth in Exhibit B shall be applicable (the mutually agreed upon procedure or the procedure set forth in Exhibit B, as applicable, is referred to as the "Agreed Sale Procedure"). So long as Master Lessee and Investor are in compliance with their obligations hereunder, any sale of the Property shall be conducted in a manner consistent with the Agreed Sale Procedure.

10. Acknowledgement and Agreement by Landlord. Owner, as landlord under the Master Lease and grantor under the Mortgage Loan Documents, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Lender of any of its rights under the Mortgage Loan Documents or in any way release Owner from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage Loan Documents; (b) the provisions of the Mortgage Loan Documents remain in full force and effect and must be complied with by Owner.

11. Lease Status. Owner and Master Lessee certify to Lender that neither Owner nor Master Lessee has knowledge of any default on the part of the other under the Master Lease, that the Master Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Property and that all of the agreements and provisions therein contained are in full force and effect.

12. Master Lessee Covenants.

- (a) Master Lessee acknowledges that Master Lessee's right to enter into any sublease, or to amend, modify, extend, or terminate any sublease, or to assign, pledge, encumber, or otherwise transfer (in whole or in part) any of its interests under the Master Lease, shall be subject to the limitations, conditions, and requirements applicable thereto as are set forth in the Mortgage Loan Documents and/or shall bear all costs and expenses associated with seeking any required consent(s) or approval(s) from the holder(s) of the Mortgage Loan Documents.
- (b) Master Lessee shall at all times perform its obligations under the Master Lease in a timely manner, and shall occupy, use, maintain, repair, sublease, and operate the Premises and conduct and operate its business in a manner that complies with the Mortgage Loan Documents. If Master Lessee shall fail to do so and such failure causes or results in a default under the Mortgage Loan Documents, the same shall constitute a default by Master Lessee under the Master Lease; provided, that Master Lessee shall have received such notice and shall have had at least the same

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period in which to cure the default under the Mortgage Loan Documents as afforded to Owner under the Mortgage Loan Documents; and provided further, that nothing contained herein shall be deemed to obligate Master Lessee to pay any principal, interest, prepayment premiums or other amounts in connection with the loans evidenced by the Mortgage Loan Documents or any other loans of Owner relating to the Property.

- (c) Master Lessee acknowledges that in connection with the Mortgage Loan Documents, Owner assigned and pledged the liens and security interests granted by Master Lessee to Owner pursuant to Section 11.1 of the Master Lease to the Lender as additional security for the Mortgage Loan. Master Lessee hereby consents to such pledges and assignments.

13. Representation by Lender. Lender is a "Disqualified Owner" as defined in Exhibit B attached hereto. Lender agrees that in connection with any foreclosure of the Mortgage or transfer of title to the Property by deed in lieu of foreclosure, Lender shall not take title in its own name but shall take title in an entity that is not a Disqualified Owner.

14. Waiver and Amendment; Captions; Severability. No provisions of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. Captions are used throughout this Agreement for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof. The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held unenforceable, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

15. Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST ANY OTHER PARTY HERETO OR ITS RESPECTIVE SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHERS OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OF THE OTHERS OR ANY OF

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THEIR AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY EACH PARTY HERETO OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

16. Authority; Successors. All parties hereto covenant and agree that the persons signing on their behalf have full power, authority and authorization to execute this Agreement, without the necessity of any consents, authorizations or approvals, or if such consents, authorizations or approvals are required they have been obtained prior to the execution hereof. All provisions, covenants and agreements contained in this Agreement shall bind, inure to the benefit of, and equally relate to, each party hereto, and its successors and assigns, jointly and severally, including an endorsee, assignee or pledgee of the Note receiving title thereto by or through Lender, or its successors or assigns.

17. No Other Agreements; Counterparts. This Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Subordination, Non-Disturbance and Attornment Agreement as of the date first above written.

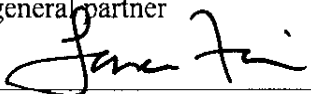
OWNER:

**UST PRIME III HOTEL OWNER, L.P.**, an Illinois limited partnership

By: **UST Prime III Hotel GP LLC**, an Illinois limited liability company, its general partner

By: **UST Prime Joint Venture III, L.P.**, an Illinois limited partnership, its sole member

By: **UST XIX Corporation**, a Florida corporation, its general partner

By:   
Name: Lance Fair **FAIR**  
Title: Vice President

MASTER LESSEE:

**151 W. ADAMS MASTER TENANT LLC**, an Illinois limited liability company

By: **Reschke Chicago Partners, LLC**, an Illinois limited liability company, its managing member

By: \_\_\_\_\_  
Michael W. Reschke, its manager

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Subordination, Non-Disturbance and Attornment Agreement as of the date first above written.

OWNER:

**UST PRIME III HOTEL OWNER, L.P.**, an Illinois limited partnership

By: **UST Prime III Hotel GP LLC**, an Illinois limited liability company, its general partner

By: **UST Prime Joint Venture III, L.P.**, an Illinois limited partnership, its sole member

By: **UST XIX Corporation**, a Florida corporation, its general partner

By: \_\_\_\_\_  
Name: Lance Fain  
Title: Vice President

MASTER LESSEE:

**151 W. ADAMS MASTER TENANT LLC**, an Illinois limited liability company

By: **Reschke Chicago Partners, LLC**, an Illinois limited liability company, its managing member

By:   
\_\_\_\_\_  
Michael W. Reschke, its manager

# UNOFFICIAL COPY

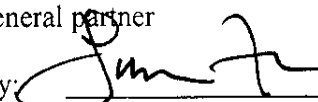
MASTER SUBTENANT:

**UST PRIME III HOTEL SUBTENANT, L.P.**, an Illinois limited partnership

By: UST Prime III Hotel GP, LLC, an Illinois limited liability company, its general partner

By: UST Prime Joint Venture III, L.P., an Illinois limited partnership, its sole member

By: UST XIX Corporation, a Florida corporation, its general partner

By:   
Name: Lance Fair  
It's: Vice-President

LENDER:

**CAPRI URBAN INVESTORS REIT**, a Maryland real estate investment trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

INVESTOR:

**CHEVRON U.S.A., INC.**, a Pennsylvania corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

MASTER SUBTENANT:

**UST PRIME III HOTEL SUBTENANT, L.P.**, an Illinois limited partnership

By: UST Prime III Hotel GP, LLC, an Illinois limited liability company, its general partner

By: UST Prime Joint Venture III, L.P., an Illinois limited partnership, its sole member

By: UST XIX Corporation, a Florida corporation, its general partner

By: \_\_\_\_\_  
Name: Lance Fair  
It's: Vice-President

LENDER:

**CAPRI URBAN INVESTORS REIT**, a Maryland real estate investment trust

By: Bryan Fargo  
Name: Bryan Fargo  
Title: vice chairman

INVESTOR:

**CHEVRON U.S.A., INC.**, a Pennsylvania corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# UNOFFICIAL COPY

MASTER SUBTENANT:

**UST PRIME III HOTEL SUBTENANT, L.P.**, an Illinois limited partnership

By: **UST Prime III Hotel GP, LLC**, an Illinois limited liability company, its general partner

By: **UST Prime Joint Venture III, L.P.**, an Illinois limited partnership, its sole member

By: **UST XIX Corporation**, a Florida corporation, its general partner

By: \_\_\_\_\_  
Name: **Lance Fair**  
It's: **Vice-President**


LENDER:

**CAPRI URBAN INVESTORS REIT**, a Maryland real estate investment trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

INVESTOR:

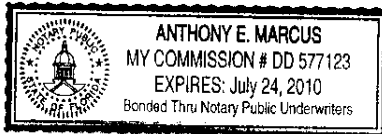
**CHEVRON U.S.A., INC.**, a Pennsylvania corporation

By:   
Name: **Richard J. Sheehy**  
Title: **Attorney In Fact**

# UNOFFICIAL COPY

FLORIDA  
STATE OF ILLINOIS §  
COUNTY OF COOK §  
ORANGE

This instrument was acknowledged before me on the 30<sup>th</sup> day of January, 2009, by Lance Fair, the Vice President of UST XIX Corporation, a Florida corporation, the general partner of UST Prime Joint Venture III, L.P., an Illinois limited partnership, the sole member of UST Prime III Hotel GP LLC., an Illinois limited liability company, which is the general partner of UST Prime III Hotel Owner, L.P., an Illinois limited partnership, on behalf of said company.



Anthony E. Marcus  
Notary Public for State of Illinois Florida

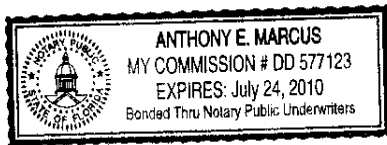
STATE OF ILLINOIS §  
COUNTY OF COOK §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2009, by Michael W. Reschke, the Manager of Reschke Chicago Partners, LLC, which is the managing member of 151 W. Adams Master Tenant LLC.

\_\_\_\_\_  
Notary Public for State of Illinois

FLORIDA  
STATE OF ILLINOIS §  
COUNTY OF COOK §  
ORANGE

This instrument was acknowledged before me on the 30<sup>th</sup> day of January, 2009, by Lance Fair, the Vice-President of UST XIX Corporation, a Florida corporation, the general partner of UST Prime Joint Venture III, L.P., an Illinois limited partnership, the sole member of UST Prime III Hotel GP LLC., an Illinois limited liability company, which is the general partner of UST Prime III Hotel Subtenant, L.P., an Illinois limited partnership, on behalf of said company.



Anthony E. Marcus  
Notary Public for State of Illinois Florida

# UNOFFICIAL COPY

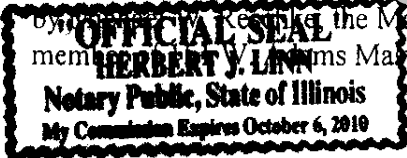
STATE OF ILLINOIS §  
COUNTY OF COOK §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2009, by Lance Fair, the Vice President of UST XIX Corporation, a Florida corporation, the general partner of UST Prime Joint Venture III, L.P., an Illinois limited partnership, the sole member of UST Prime III Hotel GP LLC., an Illinois limited liability company, which is the general partner of UST Prime III Hotel Owner, L.P., an Illinois limited partnership, on behalf of said company.

\_\_\_\_\_  
Notary Public for State of Illinois

STATE OF ILLINOIS §  
COUNTY OF COOK §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2009, by ~~Lance Fair~~ **Herbert J. Linn**, the Manager of Reschke Chicago Partners, LLC, which is the managing member of Reschke Chicago Partners, LLC, an Illinois limited liability company, which is the general partner of Reschke Chicago Partners Master Tenant LLC.



*Herbert J. Linn*  
\_\_\_\_\_  
Notary Public for State of Illinois

STATE OF ILLINOIS §  
COUNTY OF COOK §

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2009, by Lance Fair, the Vice-President of UST XIX Corporation, a Florida corporation, the general partner of UST Prime Joint Venture III, L.P., an Illinois limited partnership, the sole member of UST Prime III Hotel GP LLC., an Illinois limited liability company, which is the general partner of UST Prime III Hotel Subtenant, L.P., an Illinois limited partnership, on behalf of said company.

\_\_\_\_\_  
Notary Public for State of Illinois

# UNOFFICIAL COPY

STATE OF ILLINOIS §  
COUNTY OF COOK §

This instrument was acknowledged before me on the 29 day of January, 2009, by Brian Fargo of CAPRI URBAN INVESTORS REIT, a Maryland real estate investment trust, on behalf of said entity.



Gretchen Haughey  
Notary Public for State of Illinois

STATE OF CALIFORNIA §  
COUNTY OF SAN FRANCISCO §

This instrument was acknowledged before me on the \_\_\_\_\_ day of January, 2009, by \_\_\_\_\_, the Vice President of Chevron U.S.A. Inc., a Pennsylvania corporation, on behalf of said company.

\_\_\_\_\_  
Notary Public

Property of Cook County Clerk's Office

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## Exhibit A

### Property Description

#### PARCEL 1:

##### HOTEL PARCEL A

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

##### HOTEL PARCEL B

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 165.84 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 45 MINUTES 44 SECONDS WEST, ALONG THE NORTH LINE THEREOF, 66.12 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 45 MINUTES 44 SECONDS WEST, ALONG THE NORTH LINE OF SAID TRACT, 222.37 FEET; THENCE SOUTH 00 DEGREES 13 MINUTES 53 SECONDS WEST; 34.46 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 19.17 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 21.76 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 18.05 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 17.93 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 14.41 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 MINUTES WEST, 0.74 FEET; THENCE NORTH 89 DEGREES 46 MINUTES 58 SECONDS WEST, 28.45 FEET; THENCE SOUTH 00 DEGREES 02 MINUTES 52 SECONDS EAST, 17.54 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 66.39 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 8.34 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 177.30 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 7.00 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 12.08 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 16.16 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 1.52 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 16.48 FEET;

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THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 1.09 FEET;  
 THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 26.66 FEET;  
 THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 1.11 FEET;  
 THENCE NORTH 00 DEGREES 14 MINUTES 16 SECONDS EAST, 34.37 FEET TO  
 THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL C

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF  
 BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16,  
 TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,  
 TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN  
 ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING  
 ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE  
 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY  
 PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT  
 THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 46  
 MINUTES 50 SECONDS WEST, ALONG THE SOUTH LINE THEREOF, 196.20 FEET  
 TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 09 MINUTES 32  
 SECONDS EAST, 54.31 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 59.59 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59  
 SECONDS EAST, 1.21 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 10.58 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59  
 SECONDS WEST, 7.82 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 14.53 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59  
 SECONDS EAST, 7.82 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 46  
 SECONDS WEST, 43.22 FEET TO A POINT ON THE WEST LINE OF SAID TRACT;  
 THENCE SOUTH 00 DEGREES 02 MINUTES 52 SECONDS EAST, ALONG SAID  
 WEST LINE, 55.32 FEET TO THE SOUTHWEST CORNER THEREOF; THENCE  
 SOUTH 89 DEGREES 46 MINUTES 50 SECONDS EAST, 127.71 FEET THE POINT OF  
 BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL D

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF  
 BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16,  
 TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,  
 TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN  
 ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING  
 ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE  
 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY  
 PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT  
 THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 46  
 MINUTES 50 SECONDS WEST, ALONG THE SOUTH LINE THEREOF 57.34 FEET;  
 THENCE NORTH 00 DEGREES 13 MINUTES 10 SECONDS EAST, 34.42 FEET TO  
 THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 09 MINUTES 32

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SECONDS EAST, 21.94 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 9.91 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 2.04 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 50.77 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 32 SECONDS WEST, 21.56 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 50.59 FEET; THENCE NORTH 00 DEGREES 09 MINUTES 32 SECONDS EAST, 1.66 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 10.09 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL E

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 46 MINUTES 50 SECONDS WEST, ALONG THE SOUTH LINE THEREOF, 33.03 FEET; THENCE NORTH 00 DEGREES 13 MINUTES 10 SECONDS EAST, 34.42 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 9.67 FEET; THENCE NORTH 00 DEGREES 09 MINUTES 32 SECONDS EAST, 21.94 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 9.67 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 32 SECONDS WEST, 21.94 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## HOTEL PARCEL F

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +176.68 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM (EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS:

## OFFICE PARCEL 2

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,



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TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +176.68 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 165.84 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 45 MINUTES 44 SECONDS WEST, ALONG THE NORTH LINE THEREOF, 56.20 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 16 SECONDS WEST, 34.37 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 8.82 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 22.52 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 8.82 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 22.52 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THAT PART THEREOF,

## OFFICE PARCEL 3

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +176.68 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 165.84 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 45 MINUTES 44 SECONDS WEST, ALONG THE NORTH LINE THEREOF, 32.08 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 16 SECONDS WEST, 34.32 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 10.11 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 27 SECONDS WEST, 22.52 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 10.11 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 27 SECONDS EAST, 22.52 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

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## PARCEL 2:

**EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, DATED AS OF MAY 6, 2003 AND RECORDED AUGUST 14, 2003 AS DOCUMENT 0322645090 MADE BY AND BETWEEN FEDERAL RESERVE BANK OF CHICAGO, A FEDERALLY CHARTERED CORPORATION AND LASALLE-ADAMS, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY FOR INGRESS, EGRESS, ACCESS AND CIRCULATION OVER AND UPON THE PREMISES AS DESCRIBED AS EXHIBIT "D" ATTACHED THERETO.**

## PARCEL 3:

**NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED AND DESCRIBED IN SECTIONS 3.2 AND 4.2 OF THAT CERTAIN RECIPROCAL EASEMENT AND OPERATING AGREEMENT DATED MARCH 5, 2008 AND RECORDED MARCH 6, 2008 AS DOCUMENT 0806641192 MADE BY AND BETWEEN UST PRIME III HOTEL OWNER, L.P. AND UST PRIME III OFFICE OWNER, L.P. OVER PORTIONS OF THE FOLLOWING DESCRIBED LAND:**

### RETAIL PARCEL 1

**THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 163.84 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 45 MINUTES 44 SECONDS WEST, ALONG THE NORTH LINE THEREOF, 288.50 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 13 MINUTES 53 SECONDS WEST, 34.46 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 10.17 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 21.76 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 18.05 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 17.93 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 14.41 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 0.74 FEET; THENCE NORTH 89 DEGREES 46 MINUTES 58 SECONDS WEST, 28.45 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH 00 DEGREES 02 MINUTES 52 SECONDS WEST, ALONG SAID WEST LINE,**

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74.90 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89 DEGREES 45 MINUTES 44 SECONDS EAST, 35.34 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 2

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 103.35 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 16.40 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 3.34 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 15.94 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 27 SECONDS EAST, 24.85 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 10.11 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 0.62 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 14.00 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 0.67 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 9.93 FEET; THENCE NORTH 00 DEGREES 14 MINUTES 16 SECONDS EAST, 34.37 FEET TO THE NORTH LINE OF SAID TRACT; THENCE SOUTH 89 DEGREES 45 MINUTES 44 SECONDS EAST ALONG SAID NORTH LINE, 66.12 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00 DEGREES 04 MINUTES 44 SECONDS EAST, 62.49 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 3

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS WEST, ALONG THE WEST LINE THEREOF, 62.57 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 16.41 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 3.34 FEET;

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THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 16.32 FEET;  
 THENCE SOUTH 00 DEGREES 09 MINUTES 32 SECONDS WEST, 24.82 FEET;  
 THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 9.67 FEET;  
 THENCE NORTH 00 DEGREES 09 MINUTES 32 SECONDS EAST, 21.94 FEET;  
 THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 14.63 FEET;  
 THENCE SOUTH 00 DEGREES 09 MINUTES 32 SECONDS WEST, 21.94 FEET;  
 THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 10.09 FEET;  
 THENCE SOUTH 00 DEGREES 09 MINUTES 32 SECONDS WEST, 1.66 FEET;  
 THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 50.59 FEET;  
 THENCE NORTH 00 DEGREES 09 MINUTES 32 SECONDS EAST, 21.56 FEET;  
 THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 78.23 FEET;  
 THENCE SOUTH 00 DEGREES 09 MINUTES 32 SECONDS WEST, 54.31 FEET TO  
 THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 89 DEGREES 46 MINUTES 50  
 SECONDS EAST, 196.20 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY,  
 ILLINOIS.

**OFFICE PARCEL 1**

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF  
 BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16,  
 TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,  
 TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN  
 ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING  
 ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +13.53 FEET ABOVE  
 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY  
 PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT  
 THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04  
 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 62.57 FEET TO  
 THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 16.41 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59  
 SECONDS WEST, 3.34 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 16.32 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59  
 SECONDS WEST, 2.88 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 34.21 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59  
 SECONDS WEST, 2.04 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 188.59 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59  
 SECONDS EAST, 1.21 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 10.58 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59  
 SECONDS WEST, 7.82 FEET; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 14.53 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59  
 SECONDS EAST, 7.82 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 46  
 SECONDS WEST, 43.22 FEET TO THE WEST LINE OF SAID TRACT; THENCE  
 NORTH 00 DEGREES 02 MINUTES 52 SECONDS WEST, ALONG SAID WEST LINE,  
 18.18 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 66.39  
 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 8.34 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 177.30 FEET;

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THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 7.00 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 12.08 FEET;  
 THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 16.16 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 1.52 FEET;  
 THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 16.48 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 1.09 FEET;  
 THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 26.66 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 8.82 FEET;  
 THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS EAST, 0.67 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 14.00 FEET;  
 THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 0.62 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 10.11 FEET;  
 THENCE SOUTH 00 DEGREES 01 MINUTES 27 SECONDS WEST, 24.85 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 15.94 FEET;  
 THENCE SOUTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, 3.34 FEET;  
 THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 16.40 FEET TO  
 THE EAST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 04 MINUTES 44  
 SECONDS EAST, 40.77 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY,  
 ILLINOIS.

## OFFICE PARCEL 2

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF  
 BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16,  
 TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,  
 TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN  
 ELEVATION OF +176.68 FEET ABOVE CHICAGO CITY DATUM AND LYING  
 ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE  
 CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY  
 PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT  
 THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04  
 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 165.84 FEET  
 TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES  
 45 MINUTES 44 SECONDS WEST, ALONG THE NORTH LINE THEREOF, 56.20  
 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 16 SECONDS WEST, 34.37 FEET  
 TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01  
 SECONDS WEST, 8.82 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 59  
 SECONDS WEST, 22.52 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01  
 SECONDS EAST, 8.82 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 59  
 SECONDS EAST, 22.52 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY,  
 ILLINOIS.

## OFFICE PARCEL 3

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF  
 BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16,

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TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +176.68 FEET ABOVE CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +27.48 FEET ABOVE CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE THEREOF, 165.84 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 45 MINUTES 44 SECONDS WEST, ALONG THE NORTH LINE THEREOF, 32.08 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 16 SECONDS WEST, 34.32 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS WEST, 10.11 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 27 SECONDS WEST, 22.52 FEET; THENCE SOUTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, 10.11 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 27 SECONDS EAST, 22.52 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## OFFICE PARCEL 4

THE WEST 10 FEET OF LOT 1 AND ALL OF LOTS 2 TO 8 IN SUBDIVISION OF BLOCK 97 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +176.68 FEET ABOVE CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

**PIN: 17-16-220-001-0000**

**ADDRESS: 151 W. ADAMS STREET, CHICAGO, ILLINOIS**

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## Exhibit B

### Agreed Sale Procedure

Subsequent Transfer of Property to a "Disqualified Owner". Following the Transfer of the Property, Transferee agrees to consult with Investor in any subsequent sale or transfer of the Property which is expected to close before the expiration of the Recapture Period. Transferee shall have no restrictions on sale or transfer; however, Transferee will act in good faith to consult and cooperate with Investor to reduce the risk that such sale or transfer would be to a "Disqualified Owner" as such term is defined below. Transferee shall have no obligation to cooperate with Investor if such cooperation would impose a cost or economic hardship upon Transferee unless Investor and Chevron Corporation agree to indemnify Transferee on terms and conditions acceptable to Transferee in its sole discretion.

A "Disqualified Owner" means:

- (1) a tax-exempt organization described in Section 50(b)(3) of the Internal Revenue Code unless the Property is used by such organization predominantly in an unrelated trade or business the income of which is subject to tax under Section 511 of the Internal Revenue Code;
- (2) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing;
- (3) a foreign person or entity (as defined in Section 168(h)(2)(C) of the Internal Revenue Code) unless more than 50 percent of the gross income derived by the foreign person or entity is subject to U.S. tax or included under Section 951 of the Internal Revenue Code in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived;
- (4) a mutual savings bank, cooperative bank, or domestic building and loan association to which Section 593 of the Internal Revenue Code applies;
- (5) a regulated investment company or real estate investment trust subject to taxation under subchapter M, Chapter 1 of the Internal Revenue Code (but not including a "taxable REIT subsidiary," as defined in Section 856(1) of the Internal Revenue Code; or
- (6) a cooperative organization described in Section 1381(a) of the Internal Revenue Code.

If Transferee desires to sell the Property to a "Disqualified Owner", then it shall notify Investor which shall have five (5) business days to request Transferee to sell the Property to a purchaser that is not a Disqualified Owner (referred to as an alternate buyer) and if no such notice is given Transferee is free to proceed to accept the offer it has chosen. Investor may only make the request referenced in the preceding sentence if (a) such alternate buyer is creditworthy and can reasonably demonstrate the sources of debt and/or equity in an amount sufficient to close the transaction in the same time frame as the scheduled closing to the Disqualified Owner, (b)

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the earnest money deposit is no less than 5.0% of the purchase price, (c) in the event of a default, the buyer agrees to grant seller the remedy of specific performance, and (d) Investor and Chevron Corporation jointly and severally agree to pay Transferee an amount equal to the difference between (i) the purchase price offered by the buyer Transferee wants to proceed, with less usual and customary prorations and closing costs, and (ii) the amount Transferee actually receives as a result of pursuing the sale with the alternate buyer, it being agreed that such amount received could be zero if the sale to the alternate buyer does not close. If the sale to the alternate buyer does not close, and Investor pays the full amount Investor is required to pay pursuant to clause (d), it shall be entitled to receive a conveyance of the Property on the terms set forth in the sale contract, and an assignment of the seller's interest under such contract so that it can pursue remedies against the defaulted alternate buyer.

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