

# UNOFFICIAL COPY

846 P 304  
10-1  
J. Moore  
This document prepared by and  
after recording return to:  
Husch Blackwell Sanders LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112  
Attention: Gaylord G. Smith

2050 S. Mt. Prospect Rd.,  
Des Plaines, IL  
PIN 02-26-203-020-0000



Doc#: 0917031069 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/19/2009 12:18 PM Pg: 1 of 11

10121-C

## ABSOLUTE ASSIGNMENT OF LEASES, RENTS AND INCOME

THIS ABSOLUTE ASSIGNMENT OF LEASES, RENTS AND INCOME (this "Assignment"), is made and given as of the 18<sup>th</sup> day of June, 2009, by PLDAB LLC, a Delaware limited liability company ("Borrower"), as assignor, to ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation ("Lender"), as assignee.

### WITNESSETH:

WHEREAS, Borrower is the owner of certain real property with the buildings and improvements thereon situated in the County of Cook, State of Illinois, as more particularly described on Exhibit A, attached hereto and incorporated herein (the "Property"); and

WHEREAS, Borrower has executed and delivered to Lender (i) its Secured Installment Note of even date herewith (the "Note") in the amount of ONE HUNDRED TWENTY-TWO MILLION DOLLARS (\$122,000,000.00) (the "Loan"), and (ii) a Mortgage, Assignment of Rents, Security Agreement and Financing Statement of even date herewith encumbering the Property (the "Mortgage").

NOW THEREFORE, in consideration of the premises, Borrower hereby grants, transfers, bargains, sells, assigns, conveys, and sets over unto Lender, its successors and assigns, all right, title and lessor's interest of Borrower in and to all leases, subleases, licenses and other occupancy agreements which may now or hereafter affect the Property or any part or parts thereof and all guarantees, modifications, renewals and extensions thereof (herein collectively termed the "Leases"), all deposits made or hereafter made in respect of the Leases, all cancellation premiums payable by the tenants of the Leases for the privilege of cancellation, if any, together with all of the rents, income, revenues, issues and profits (herein collectively termed the "Rents") due and to become due or to which Borrower may now or hereafter become entitled, arising out of the Leases, the Property or any part thereof. All of said Leases and Rents are being hereby granted, transferred and assigned for the purpose of securing the following obligations of Borrower to Lender:

- (a) Payment of all indebtedness evidenced by the Note (including all extensions, modifications or renewals thereof);

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(b) Payment of all other sums, with interest thereon, becoming due and payable to the Lender pursuant to the covenants and agreements contained herein and in the Note, Mortgage, and any other agreements evidencing or securing the Loan (collectively, the "Loan Documents"); and

(c) Performance and discharge of each and every obligation, covenant and agreement of the Borrower contained herein and in the Note and the Mortgage.

The Note and all such other obligations described in clauses (a), (b) and (c) above are herein termed the "Obligations".

AND TO PROTECT THE SECURITY OF THIS ASSIGNMENT, BORROWER AGREES:

1. Performance of Leases. (a) Borrower (i) shall observe and perform in all material respects all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to materially impair the value of the Leases as security for the Loan; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not collect any of the Rents more than one (1) month in advance; (iv) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (v) shall promptly send copies to Lender of all notices of default which Borrower shall send under any Lease; and (vi) shall enforce all of the material terms, covenants and conditions contained in the Lease upon the part of the lessee thereunder to be observed or performed. Borrower shall furnish Lender with executed copies of all Leases and any amendments or other agreements pertaining thereto for the preceding quarter with the materials required to be delivered to Lender pursuant to Section 1.15 of the Mortgage (and during an "Event of Default," within ten (10) days of the execution thereof). Security deposits which do not exceed two (2) months' rent shall not be deemed Rents for purposes of this Paragraph 1.

(b) For purposes of this Assignment, the following terms shall have the following definitions: (i) "ordinary course of business" shall mean the ordinary course of management and operation as commonly practiced by prudent commercial landlords for similar properties in the same geographic area as the Property; and (ii) "Major Lease" shall mean any lease of the Property greater than Three Hundred Thousand (300,000) square feet of net rentable area.

(c) Borrower may without Lender's consent, in the ordinary course of business, enter into any non-Major Lease. Borrower shall not, without Lender's prior written consent, enter into any Major Lease on terms less favorable to Borrower than the Major Lease for such Major Lease premises in effect on the date of this Assignment (or as may be hereafter approved by Lender for such Major Lease premises).

(d) Borrower shall not, without Lender's prior written consent: (i) cancel or terminate a Major Lease, or consent to or acquiesce in any surrender or abandonment of a Major Lease, unless the tenant is in default, and then only in the ordinary course of business; (ii) commence any action of ejectment or any summary proceedings for dispossession of the tenant under a Major Lease, nor exercise any right of recovery of leased property provided in a Major Lease, unless the tenant is in default, and then only in the ordinary course of business; (iii) materially modify or in any way materially alter the covenants, agreements, terms, conditions or

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obligations of a Major Lease (any reduction in the rent or the term of a Major Lease shall be "material"); (iv) extend or renew a Major Lease on terms less favorable to Borrower than such Major Lease in effect on the date of this Mortgage (or as may be hereafter approved by Lender for such Major Lease); (v) consent to a Major Lease modification of the express purposes for which the Property has been leased; (vi) consent (to the extent consent of Borrower is required) to any subletting of a Major Lease or any part thereof, or to any assignment of a Major Lease by the tenant thereunder, or to any further or other assignment or subletting of any sublease if any such consent involves the release of the original tenant from its obligations as tenant under such Major Lease; (vii) relocate any tenant of the Property under a Major Lease to a building or facility not included as security for the Loan; or (viii) relocate any tenant of the Property under a non-Major Lease to a building or facility not included as security for the Loan, unless following such relocation, (i) the "Parcels" listed on Exhibit B, attached hereto and incorporated herein, will be not less than eighty-five percent (85%) leased, and (ii) Borrower shall enter into a master lease for the vacated space for the same rent and the same remaining term as the lease of the relocated tenant, such master lease to be in the same form as the master lease executed by Borrower of even date herewith. Whenever Lender's consent is required above, such consent shall not be unreasonably delayed. If Lender approves a lease proposal submitted by Borrower, Borrower may thereafter enter into a lease for the applicable premises on the same or materially similar terms.

(e) In the event that Borrower shall receive a payment of any kind in connection with the termination of a Lease prior to its scheduled expiration date, or in connection with a reduction in the space demised under a Lease, or a relocation of a tenant, whether characterized as a lease termination payment, exit fee, lease reduction payment, or a forfeited security deposit, and such sum exceeds TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), Borrower shall notify Lender, and Lender may, at its option, require that such sum be placed in escrow, to be disbursed for rent replacement or for the costs of obtaining a replacement tenant (including leasing commissions and tenant build out costs). In such event, the parties shall execute an Escrow Agreement in form satisfactory to the parties setting forth the conditions for disbursement of such sums to Borrower upon execution of a replacement lease and payment of related costs.

2. Protect Security. At Borrower's sole cost and expense, Borrower shall appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of the Borrower, the tenants or obligated party(ies) thereunder, and to pay all out-of-pocket costs and expenses of Lender, including attorneys' fees, in any such action or proceeding in which the Lender may appear. Borrower represents and warrants that it is now and will be the absolute owner of the Leases and Rents with full right and title to assign the same; that there is no outstanding assignment or pledge of the Leases or of the Rents; that no Rents have been waived, anticipated, discounted, compromised or released, except as may be permitted by the Leases; and, to Borrower's actual knowledge, that the tenants or obligated party(ies) have no defenses, setoffs or counterclaims against Borrower, except as disclosed to Lender in writing.

3. Present Assignment of Rents. This Assignment shall constitute an absolute, actual and present assignment for security purposes, provided that there is hereby granted to the Borrower a license and right to collect all of the Rents and to retain, use and enjoy the same,

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which license shall be revocable by Lender upon and during the continuance of an "Event of Default" under Article IV of the Mortgage (an "Event of Default"). If Lender revokes the license to collect the Rents after an Event of Default, and Borrower subsequently cures the Event of Default, the license to collect the Rents shall automatically be deemed reinstated.

4. Remedies. At any time an Event of Default is continuing, the Lender may at its option without notice:

(a) In the name, place and stead of the Borrower (i) enter upon, manage and operate the Property or retain the services of an independent contractor to manage and operate the same, (ii) make, enforce, modify and accept surrender of the Leases, (iii) obtain or evict tenants, collect, sue for, fix or modify rentals and enforce all rights of the Borrower under the Leases, and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment;

(b) Apply for the appointment of a receiver of the Property, whether or not proceedings for the foreclosure of the Mortgage have been commenced, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred;

(c) Deliver to any one or more of the tenants a written demand for turnover of Rents, a copy of which demand shall also be delivered to Borrower; and a copy of which shall be mailed to all other assignees of record of the Leases and Rents of the Property at the address for notices provided in subparagraph (d) below; or

(d) Deliver to Borrower a written demand for the Rents, a copy of which shall be mailed to all other assignees of record of the Leases and Rents of the Property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording.

The exercise of any of the foregoing rights or remedies shall be cumulative and shall not cure or waive any default under the Mortgage or the Note, or invalidate any act done by virtue of such default.

5. Application of Rents. All Rents collected by the Lender, or by a receiver, shall be held and applied in the following order, or in such order as Lender may determine:

(a) To payment of all fees of the receiver, if any, approved by the court;

(b) To payment of all delinquent or current real estate taxes and special assessments payable with respect to the Property, or if the Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;

(c) To payment of all premiums then due for the insurance required by the provisions of the Mortgage, or if the Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due;

(d) To payment of expenses incurred for normal operations and maintenance of the Property; and



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(e) To Lender in payment of the Obligations in such order of application as Lender may elect.

To the maximum extent permitted by law, Borrower waives the right to require Lender to utilize Rents for purposes other than as provided under this Assignment or the Mortgage. The rights and powers of the Lender under this Assignment, and the application of the Rents pursuant to this Paragraph 5, shall continue and remain in full force and effect both before and after commencement of any action or proceeding to foreclose the Mortgage, after the foreclosure sale of the Property in connection with the foreclosure of the Mortgage, and until expiration of the period of redemption from any such foreclosure sale, whether or not any deficiency from the unpaid balance of the Obligations exists after such foreclosure sale.

6. No Liability for Lender. Solely by reason of its acceptance of this Assignment, Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Lender nor for the carrying out of any of the terms and conditions of the Leases, except and to the extent that Lender acquires title to the Property, and this Assignment shall not operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other party, or for any dangerous or defective condition of the Property, or for any negligence or willful misconduct committed by Borrower or any third party in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

7. Borrower to Hold Lender Harmless. Except for liability, loss or damage caused by Lender's breach of this Assignment, gross negligence or willful misconduct, or failure to perform any obligations under the Leases after acquiring title to the Property, Borrower shall and does hereby agree to indemnify and to hold Lender harmless of and from any and all liability, loss or damage which Lender may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases prior to Lender acquiring title to the Property. Notwithstanding the foregoing, if Borrower is obligated to indemnify and defend Lender under the foregoing indemnity, Borrower shall be entitled to indemnify and defend with counsel selected by Borrower, but reasonably acceptable to Lender, and Borrower shall be entitled to control the litigation and any settlements thereof. Nothing contained in this indemnity shall prevent Lender from obtaining its own counsel in any proceedings, at Lender's sole expense, provided further, that Lender shall have the right to employ separate counsel at Borrower's expense if there are legal defenses available to Lender that are different from or additional to those available to Borrower and which, in the reasonable opinion of Lender's counsel, are sufficient to make it undesirable for the same counsel to represent both Lender and Borrower, or, in the reasonable opinion of Lender's counsel, a conflict of interest exists between Lender and Borrower that would make such separate representation advisable. Should the Lender incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby and the Borrower shall reimburse the Lender therefor within ten (10) business days after its receipt of notice of

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demand, and upon the failure of the Borrower to do so, the Lender may declare all Obligations immediately due and payable.

8. Remedies Not Exclusive. This Assignment shall in no way operate to prevent the Lender from pursuing any remedy which it now has or hereafter may have under the terms or conditions of the Mortgage or the Note or any other instrument securing the same, or by law.

9. Authorization to Tenants. The tenants under each of the Leases are hereby irrevocably authorized and directed to recognize the claims of the Lender, or its assigns, hereunder without investigating the reason for any action taken by the Lender, or the validity or the amount of indebtedness owing to the Lender, or the existence of any default in the Note, the Mortgage or under or by reason of this Assignment, or the application of the Rents to be made by the Lender. The Borrower hereby irrevocably directs and authorizes each tenant or obligated party to pay to the Lender all sums due under its Lease and consents and directs that said sums may be paid by the tenants to Lender without the necessity for a judicial determination that a default has occurred hereunder or under the Note or the Mortgage or that the Lender is entitled to exercise its rights hereunder. To the extent such sums are paid to the Lender, the Borrower agrees that the tenant or obligated party shall have no further liability to the Borrower for the same. The sole signature of the Lender (as between Lender and the tenants) shall be sufficient for the exercise of any rights under this Assignment, and the sole receipt of the Lender for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property or other obligated party. Nothing contained herein shall, however, be deemed an authorization by Borrower to Lender to give any notice to or collect any rents from any tenant, unless and until an Event of Default has occurred under the Mortgage.

10. Existing Leases. Borrower hereby represents and warrants the following to Lender: Except as disclosed to Lender in writing,

(a) to the best of Borrower's knowledge, the Leases which now affect the Property have been duly executed and unconditionally delivered by the parties thereto and are valid, subsisting and in full force and effect;

(b) Borrower has not executed or granted any modifications or amendments of the Leases, other than those disclosed to Lender, either orally or in writing;

(c) Borrower has not accepted advance rent under the Leases except for security deposits not in excess of two (2) month's rent; and

(d) Borrower has not executed a currently valid assignment of any of the Leases or of its right, title and interest therein or the rentals to accrue thereunder, except as provided herein and in the Mortgage.

11. Notices. All notices to be given by Lender to Borrower or by Borrower to Lender pursuant to the Note secured hereby or under this Assignment shall be in writing and shall be sufficient if mailed either (i) by postage prepaid, U.S. certified mail, return receipt requested, or (ii) by delivery to a nationally recognized overnight delivery service, to the following described addresses of the parties hereto, or to such other address as a party may request in writing:

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If to Borrower:

c/o ProLogis  
4545 Airport Way  
Denver, Colorado 80239  
Attn: Treasury Department

With a courtesy copy to:

c/o ProLogis  
4545 Airport Way  
Denver, Colorado 80239  
Attn: Legal Department

If to Lender:

Allianz Life Insurance Company of North America  
c/o Allianz of America, Inc.  
55 Greens Farms Road  
P.O. Box 5160  
Westport, Connecticut 06881-5160  
Attn: Real Estate Department

Any time period provided in the giving of any notice hereunder shall commence three (3) business days after the date such notice is deposited in the mail or upon the date following delivery to said overnight delivery service, as the case may be. Lender's failure to provide a courtesy copy of any notice shall not invalidate any notice otherwise properly given to Borrower.

12. Captions, Gender, and Number. Any section or paragraph, title or caption contained in this Assignment is for convenience only and shall not be deemed a part of this Assignment. Except as otherwise specifically indicated, all references in this Assignment to "Paragraphs" shall be references to the Paragraphs of this Assignment. As used in this Assignment, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

13. Amendments. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

14. Successors and Assigns; Joint and Several Liability. This Assignment and each and every covenant, agreement and other provision hereof shall be binding upon the Borrower and its successors and assigns, including without limitation each and every from time to time record owner of the Property or any other person having an interest therein, and shall inure to the benefit of the Lender, its successors and assigns. All liabilities and obligations of the parties executing this Assignment as "Borrower" hereunder shall be joint and several, with no limitations.

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15. Governing Law. This Assignment shall be governed by the laws of the State of Illinois.

16. Severability. The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

17. No Mortgagee in Possession. Nothing herein contained, and no action taken pursuant to this Assignment, shall be as constituting the Lender as a mortgagee in possession.

18. No Waiver. The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender and then, only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

19. Limited Liability. Notwithstanding anything to the contrary contained herein or in any other Security Document, but without in any manner affecting the lien of this Assignment or the validity of any other Security Document, this Assignment and all of Borrower's obligations hereunder are subject to the provisions of Paragraph 14 of the Note, which are incorporated herein by this reference.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]



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IN WITNESS WHEREOF, Borrower has caused this instrument to be signed the day and year first written above.

PLDAB LLC,  
a Delaware limited liability company

By: ProLogis, a Maryland real estate investment  
trust, Managing Member

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Phillip D. Joseph, Jr.  
Senior Vice President  
Treasurer

STATE OF Colorado  
 COUNTY OF Denver

On 6-12-09, before me, Kara Dizmang, personally appeared Phillip D. Joseph, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

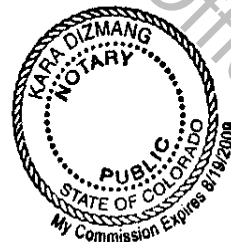


Exhibit A – Legal Description

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## EXHIBIT A

### Legal Description

**2050 S. Mt. Prospect Road, Des Plaines, IL**

#### SURVEYOR'S MEASURED LEGAL DESCRIPTION:

PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 25, TOWNSHIP 41 NORTH, RANGE 11 EAST, THIRD PRINCIPAL MERIDIAN, CITY OF DES PLAINES, COOK COUNTY, ILLINOIS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 25; THENCE N00 DEGREES 01'50"E, 332.50 FEET; THENCE S89 DEGREES 47'09"W, 50.00 FEET TO THE POINT OF BEGINNING; THENCE S89 DEGREES 47'09"W, 782.00 FEET; THENCE N00 DEGREES 01'46"E, 388.71 FEET; THENCE N89 DEGREES 58'08"E, 782.00 FEET; THENCE S00 DEGREES 01'50"W, 386.21 FEET TO THE POINT OF BEGINNING.

#### RECORD LEGAL DESCRIPTION:

THE EAST 832 FEET OF THE SOUTH EAST 1/4 OF THE NORTHEAST 1/4 IN SECTION 25, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE NORTH 600 FEET THEREOF AND EXCEPT THE SOUTH 332.5 FEET (AS MEASURED ALONG THE EAST LINE OF SAID NORTHEAST 1/4) (EXCEPT THEREFROM THAT PART TAKEN FOR STREET BY PLAT OF DEDICATION REGISTERED AS DOCUMENT NUMBER 3420403), IN COOK COUNTY, ILLINOIS.

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## EXHIBIT B

### Parcels

775 ProLogis Pkwy., Romeoville, IL (I-55 DC #1)  
 860 Crossroads Pkwy., Romeoville, IL (I-55 DC #2)  
 10350 Beaudin Blvd., Woodridge, IL (Woodbridge DC #15)  
 470 Crossroads Pkwy, Bolingbrook, IL (Bolingbrook DC #2)  
 2050 S. Mt. Prospect Rd., Des Plaines, IL (Des Plaines DC #3)  
 2701 Charter St., Columbus, OH (Charter Street DC #1)  
 2221-2303 John Glenn Ave., Columbus, OH (Foreign Trade Centre IV)  
 735 E. Trinity Blvd., Grand Prairie, TX (GSW DC #50)  
 9000 N. Royal Lane, Irving, TX (Freeport DC #1)  
 9010 N. Royal Lane, Irving, TX (Freeport DC #2)  
 11625 Columbia Center Dr., Dallas, TX (Dallas CC #2)  
 2250 LBJ Freeway, Dallas, TX (Dallas CC #3)  
 11620 Goodnight Lane, Dallas, TX (Dallas CC #4)  
 11639 Emerald, Dallas, TX (Dallas CC#1)  
 2200 Alberta, Dallas, TX (Dallas CC #8)  
 1228 Crowley, Carrollton, TX (Trinity Mills DC #1)  
 1232 Crowley, Carrollton, TX (Trinity Mills DC #2)  
 2425 Camp, Carrollton, TX (Trinity Mills DC #3)  
 1441 Patton Pl., Carrollton, TX (Trinity Mills DC #5)  
 1440 LeMay Dr., Carrollton, TX (Trinity Mills DC #7)  
 333 Northpark Central Dr., Houston, TX (Northpark Bldg #1)  
 713 Northpark Central Dr., Houston, TX (Northpark Bldg #8)  
 603 Northpark Central Dr., Houston, TX (Northpark Bldg #6)  
 8201-8243 Zionsville Rd., Indianapolis, IN (Park 100 IC #3)  
 5851 W. 80<sup>th</sup> St., Indianapolis, IN (Park 100 IC #26)  
 5427 W. 84<sup>th</sup> St., Indianapolis, IN (Park 100 IC #19)  
 5850 W. 80<sup>th</sup> St., Indianapolis, IN (Park 100 IC #35)  
 5645 W. 82<sup>nd</sup> Ave., Indianapolis, IN (Park 100 IC #22)  
 One Nixon Lane, Edison, NJ (Exit 10 DC #6)  
 50 Middlesex Ave., Carteret, NJ (Port Reading BP #7)  
 3325 NW 70<sup>th</sup> Ave., Miami, FL (Airport West DC #1) (2 parcels)  
 3101-3199 SW 42<sup>nd</sup> St., Ft. Lauderdale, FL (Port 95 DC #200)  
 3201-3249 SW 42<sup>nd</sup> St., Ft. Lauderdale, FL (Port 95 DC #300)