

UNOFFICIAL COPY

This document was prepared by,
and after recording, return to:

Allen C. Balk
Meltzer, Purtil & Stelle LLC
300 South Wacker Drive
Suite 3500
Chicago, Illinois 60606

Permanent Tax Index Numbers:
See **Exhibit A**

Property Addresses:
See **Exhibit A**

Doc#: 0920934053 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/28/2009 02:12 PM Pg: 1 of 12



Doc#: 0921618098 Fee: \$60.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 08/04/2009 04:17 PM Pg: 1 of 13

This space reserved for Recorders use only.

ORNTIC 0911139 / 1061 *being rerecorded to attach correct legal description
FIRST AMENDMENT TO MORTGAGE AND ASSIGNMENT OF RENTS

This FIRST AMENDMENT TO MORTGAGE AND ASSIGNMENT OF RENTS dated July 17, 2009 (this "Mortgage Amendment"), is executed by and among **ASTORIA TOWER LLC**, an Illinois limited liability company ("Mortgagor"), **WILLIAM E. WARMAN** ("Guarantor"), **THOMAS DIPIAZZA** and **RICHARD FERRO** (collectively, the "Additional Guarantors") and **GENEVA LEASING ASSOCIATES, INC.**, an Illinois corporation ("Mortgagee").

RECITALS:

A. Mortgagee has heretofore made a revolving loan ("Loan") to Mortgagor in the principal amount of not more than Fifty Five Million No/100 Dollars (\$55,000,000.00) outstanding at any one time, pursuant to the terms and conditions of that certain Construction Loan Agreement dated as of July 31, 2006 among Mortgagor, Guarantor and Mortgagee (the "Original Loan Agreement"), as amended by that certain First Modification of Loan Documents dated November 26, 2007 (the "First Modification"), that certain Forbearance Agreement dated November 11, 2008 (the "First Forbearance"), and that certain Second Forbearance Agreement dated as of even date herewith (the "Second Forbearance") (the Original Loan Agreement as amended by the First Modification, First Forbearance and Second Forbearance is hereinafter referred to as the "Loan Agreement"; all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement).

B. The Loan is evidenced by that certain Promissory Note (Revolver) dated July 31, 2006 in the principal amount of not more than \$55,000,000.00 outstanding at any one time made payable by Mortgagor to the order of Mortgagee (the "Original Note"). The Original Note was amended and restated by that certain Amended and Restated Promissory Note in the principal amount of Seventy-Nine Million Four Hundred Thirty-Six Thousand Six Hundred Ninety-Nine and 68/100 Dollars (\$79,436,699.68) dated as of even date herewith, made payable by Mortgagor

Old Republic National Title Insurance Company
20 South Clark Street
Suite 2000
Chicago, IL 60603

UNOFFICIAL COPY

to the order of Mortgagee (the "Amended and Restated Note"; the Original Note and the Amended and Restated Note are hereinafter referred to as the "Note").

C. The Note is secured by, among other things, (i) that certain Mortgage and Security Agreement dated July 31, 2006 from Mortgagor to Mortgagee recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on August 29, 2006, as Document No. 0624118067 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A** hereto, (ii) that certain Assignment of Rents and Leases from Mortgagor to Mortgagee recorded with the Recorder's Office on August 29, 2006, as Document No. 0624118068 (the "Assignment of Rents"), (iii) that certain Guaranty dated July 31, 2006 from Guarantor to Mortgagee (the "Guaranty"), (iv) that certain Guaranty (the "Additional Guaranty") dated November 26, 2007 from Additional Guarantors to Mortgagee, and (v) certain other loan documents (the Loan Agreement, the Note, the Mortgage, the Assignment of Rents, the Guaranty, the Additional Guaranty and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

D. Pursuant to the First Modification, the Loan was modified, among other things, to (i) add the Additional Guaranty from the Additional Guarantors to secure certain performance obligations of Mortgagor under the Loan Documents and (ii) provide for certain Letters of Credit (as defined in the First Modification) as additional collateral for the Loan, and granting Mortgagee the right to draw upon such Letters of Credit.

E. Pursuant to the terms of the First Forbearance, Mortgagor, Mortgagee, Guarantor and Additional Guarantors agreed, among other things, to extend the Maturity Date.

F. Pursuant to the terms of the Second Forbearance that is entered into as of the date hereof, the Loan is being modified to, among other things: (i) convert the Loan to a non-revolving facility, (ii) increase the amount of the Loan, and (iii) extend the Maturity Date

G. Mortgagor and Mortgagee desire to amend the Mortgage and Assignment of Rents to reflect the terms of the Second Forbearance.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee hereby agree to amend the Mortgage and Assignment of Rents, as follows:

UNOFFICIAL COPY

A G R E E M E N T S:

1. The Mortgage is hereby amended to reflect (i) that the loan shall no longer be a revolving loan, (ii) the increase in the Loan amount, and (ii) the extension of the Maturity Date, as follows:

(a) The first Recital of the Mortgage shall be amended to read in its entirety as follows:

“Mortgagor is justly indebted to Mortgagee in the principal sum of Seventy-Nine Million Four Hundred Thirty-Six Thousand Six Hundred Ninety-Nine and 68/100 Dollars (\$79,436,699.68), as evidenced by that certain Amended and Restated Promissory Note (as amended or restated from time to time, the “Note”) dated as of July 17, 2009, made by Mortgagor and payable to the order of and delivered to Mortgagee, which Note amends and restates that certain Promissory Note dated as of July 31, 2006, made by Mortgagor and payable to the order of and delivered to Mortgagee, in and by which said Note the Mortgagor promises to pay the said principal sum and interest in the manner and at the rates as provided therein.”

(b) The second Recital of the Mortgage shall be amended to read in its entirety as follows:

“The unpaid principal amount and all accrued and unpaid interest due under the loan (“Loan”) as described in that certain Construction Loan Agreement of July 31, 2006 by and among Mortgagor, Guarantor (as defined therein) and Mortgagee (“Original Loan Agreement”) as amended by that certain First Modification of Loan Documents dated November 26, 2007 (the “First Modification”), that certain Forbearance Agreement dated November 11, 2008 (the “First Forbearance”), and by that certain Second Forbearance Agreement dated as of even date herewith (the “Second Forbearance”)(the Original Loan Agreement as amended by the First Modification, First Forbearance and Second Forbearance is hereinafter referred to as the “Loan Agreement”), as evidenced by the Note, if not sooner paid, shall be due on January 31, 2010. All such payments on account of the indebtedness evidenced by the Note shall be applied as provided in the Note with all principal and interest payments being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated above or at such other address as Mortgagee may from time to time designate in writing.”

UNOFFICIAL COPY

2. Notwithstanding any references in the Mortgage, Assignment of Rents or any of the Loan Documents to the contrary, the Mortgagor shall not be permitted to seek revolving advances under the Loan and the Loan shall no longer be deemed to be a revolving line of credit. Any references in the Mortgage, including, without limitation, Section 41 of the Mortgage, the Assignment of Rents or any of the Loan Documents to the revolving nature of the Loan are hereby deleted and of no further force or effect. Notwithstanding the foregoing, each advance under the Loan, including any advance made after the date hereof, shall have the same priority as the initial advance of the Original Note.

3. Paragraph 42 and 43 are hereby deleted and replaced with a new paragraph 42 as follows:

“42. VENUE/JURY WAIVER. TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR, GUARANTOR AND ADDITIONAL GUARANTORS, IRREVOCABLY AGREE THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER, OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS MORTGAGE OR ANY OF THE DOCUMENTS SHALL BE LITIGATED IN COURTS WITHIN COOK COUNTY, STATE OF ILLINOIS, AND EACH OF THEM HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. MORTGAGOR, GUARANTOR AND ADDITIONAL GUARANTORS EACH HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT OR HIM OR ANY OF THEM BY MORTGAGEE IN ACCORDANCE WITH THIS PARAGRAPH OR UNDER THE NOTE AND/OR MORTGAGE, AND EACH IRREVOCABLY WAIVES, TO THE EXTENT APPLICABLE, ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR WITH THE NOTE OR LOAN DOCUMENTS, AND/OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR ANY INSTRUMENT, DOCUMENT, OR AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY, TO THE EXTENT SUCH MATTER IS TRIED AT ALL AND NOT THE SUBJECT OF A CONFESSION AS GRANTED ABOVE. MORTGAGOR, GUARANTOR AND ADDITIONAL GUARANTORS HEREBY WAIVE PERSONAL SERVICE OF PROCESS, AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO EACH SUCH PARTY AT THE ADDRESS STATED IN THE MORTGAGE OR TO ITS REGISTERED AGENT, AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT. MORTGAGOR, GUARANTOR AND ADDITIONAL GUARANTORS ACKNOWLEDGE THAT THEY HAVE THOROUGHLY READ AND REVIEWED THE TERMS AND PROVISIONS TO THIS AGREEMENT AND THE EXHIBITS ATTACHED HERETO, AND ARE FAMILIAR WITH THE TERMS HEREOF; THAT THE TERMS AND PROVISIONS CONTAINED HEREIN

UNOFFICIAL COPY

HAVE BEEN THOROUGHLY READ BY THE MORTGAGOR, GUARANTOR AND ADDITIONAL GUARANTORS, AND ARE CLEARLY UNDERSTOOD AND FULLY AND UNCONDITIONALLY CONSENTED TO BY THEM; THAT THEY HAVE HAD FULL BENEFIT AND ADVICE OF COUNSEL OF THEIR OWN SELECTION OR THE OPPORTUNITY TO OBTAIN THE BENEFIT AND ADVICE OF COUNSEL OF THEIR OWN SELECTION IN REGARD TO UNDERSTANDING THE TERMS, MEANING AND EFFECT OF THIS AGREEMENT; THAT THEIR EXECUTION OF THIS AGREEMENT IS DONE FREELY, VOLUNTARILY, WITH FULL KNOWLEDGE, WITHOUT DURESS, AND THAT IN EXECUTING THIS AGREEMENT, MORTGAGOR, GUARANTOR AND ADDITIONAL GUARANTORS HAVE RELIED ON NO OTHER REPRESENTATIONS, EITHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, MADE TO THEM BY MORTGAGEE OR ANY OTHER PARTY; AND THAT THE CONSIDERATION RECEIVED BY THEM HEREUNDER HAS BEEN ACTUAL AND ADEQUATE.

3. Any references in the Mortgage and Assignment of Rents to the Loan shall be deemed to mean and refer to the Loan as amended by the First Modification, the First Forbearance, the Second Forbearance and any subsequent modifications. Mortgagor agrees that Mortgagee shall have the right to record this Mortgage Amendment in Cook County, Illinois to reflect the subject matter hereof.

4. As modified hereby, the Mortgage and the Assignment of Rents shall continue in full force and effect.

5. This Mortgage Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

(the balance of this page is intentionally left blank)

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor, Guarantor, Additional Guarantors and Mortgagee have each executed and delivered this Mortgage Amendment the day and year first above written.

MORTGAGOR:

MORTGAGEE:

ASTORIA TOWER LLC, an Illinois limited liability company


GENEVA LEASING ASSOCIATES, INC.

By: WEV Astoria LLC, an Illinois limited liability company, Managing Member


By: _____

Name: _____

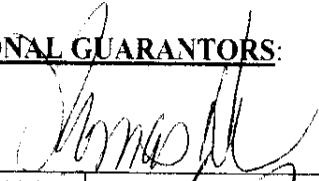
Its: _____


By: 
William E. Warman
Its: Manager and Sole Member

GUARANTOR:

By: 
WILLIAM E. WARMAN, Individually

ADDITIONAL GUARANTORS:

By: 
THOMAS DIPIAZZA, Individually

By: 
RICHARD FERRO, Individually

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor, Guarantor, Additional Guarantors and Mortgagee have each executed and delivered this Mortgage Amendment the day and year first above written.

MORTGAGOR:

MORTGAGEE:

ASTORIA TOWER LLC, an Illinois limited liability company

GENEVA LEASING ASSOCIATES, INC.

By: WEW Astoria LLC, an Illinois limited liability company, Managing Member

By: *C. Wayne Massey*
Name: A. Wayne Massey
Its: Chairman

By: _____
William E. Warman
Its: Manager and Sole Member

GUARANTOR:

By: _____
WILLIAM E. WARMAN, Individually

ADDITIONAL GUARANTORS:

By: _____
THOMAS DIPIAZZA, Individually

By: _____
RICHARD FERRO, Individually

UNOFFICIAL COPY

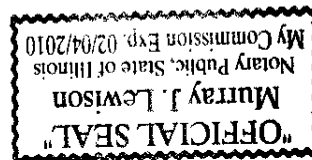
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William E. Warman, the Manager and Sole Member of WEW Astoria LLC, an Illinois limited liability company, the Managing Member of ASTORIA TOWER LLC, an Illinois limited liability company, and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17th day of July, 2009.

Murray J. Lewison
NOTARY PUBLIC (SEAL)

My Commission expires: _____



UNOFFICIAL COPY

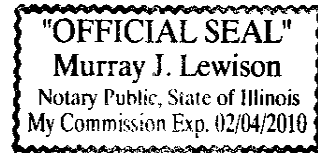
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that THOMAS DIPIAZZA, Individually, and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17th day of July, 2009.

Murray J. Lewison
NOTARY PUBLIC (SEAL)

My Commission expires: _____



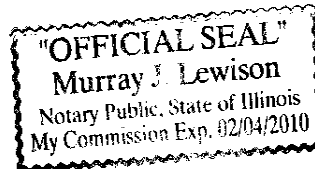
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that RICHARD FERRO, Individually, and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17th day of July, 2009.

Murray J. Lewison
NOTARY PUBLIC (SEAL)

My Commission expires: _____

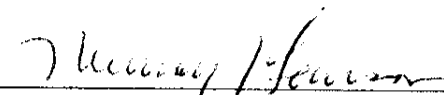


UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that WILLIAM E. WARMAN, Individually ("Guarantor"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Guarantor, appeared before me this day in person, and acknowledged the execution of the above instrument as his free and voluntary act and as the free and voluntary act of Guarantor, for the uses and purposes therein set forth.

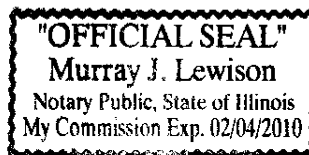
GIVEN under my hand and notarial seal, this 17th day of July, 2009.



NOTARY PUBLIC

(SEAL)

My commission expires: _____

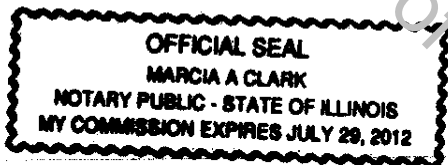


UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that A. Wayne Massey, the Chairman, of GENEVA LEASING ASSOCIATES, INC., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such he, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17th day of July, 2009.



Marcia A. Clark
Notary Public

My Commission Expires:

July 29, 2012

UNOFFICIAL COPY

PARCEL 1: CONDOMINIUM UNITS:

UNITS 401, 402, 403, 404, 405, 501, 503, 504, 505, 601, 602, 603, 604, 605, 701, 702, 703, 704, 705, 801, 802, 803, 804, AND 805 AND PARKING UNITS P-601, P-612, P-710, P-711, P-717, P-801, P-805, P-807, P-812, P-815, P-816, P-818, P-821, P-822, P-823, P-901, P-911, P-914, P-916 AND P-929, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN ASTORIA TOWER CONDOMINIUM, AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NUMBER 0913918053, IN THE FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COUNTY, ILLINOIS.

PARCEL 2: NON-CONDOMINIUM PROPERTY:

THE FOLLOWING TRACTS OF LAND:

(TRACT A) LOTS 1 TO 6 IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 IN BLOCK 18 IN ADDITION TO CHICAGO (EXCEPT THE WEST 27 FEET THEREOF CONDEMNED BY THE CITY OF CHICAGO FOR WIDENING STATE STREET) IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS;

ALSO

(TRACT B) LOTS 7 AND 8 IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 IN BLOCK 18 IN ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

ALSO

(TRACT C) TOGETHER WITH ALL THE VACATED ALLEY IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 ALL IN BLOCK 18 IN ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

EXCEPT THAT PART OF THE ABOVE TRACTS A, B AND C OF LAND WHICH LIES BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +119.00 FEET CHICAGO CITY DATUM AND LYING NORTH OF A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF SAID TRACT THROUGH A POINT THEREIN 140.48 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT;

ALSO

(TRACT D) (AIR RIGHTS PARCEL): ALL THE PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE LOCATED 119 FEET ABOVE THE CITY OF CHICAGO DATUM, CONTAINED WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF SUBLOTS 1 AND 2 OF LOT 2 SUBLOTS 1 AND 2 OF LOT 3 SUBLOTS 1 AND 2 OF LOT 6 AND SUBLOT 1 OF THE NORTH 1/4 OF LOT 7 (EXCEPTING FROM SAID LOTS THE WEST 27 FEET THEREOF CONDEMNED BY THE CITY OF CHICAGO FOR THE WIDENING OF STATE STREET) IN BLOCK 18 IN CANAL TRUSTEES ADDITION TO CHICAGO IN FRACTIONAL SECTION 15 TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THOSE PARTS OF TRACTS A, B, C AND D DESCRIBED AS FOLLOWS:

EXCEPTING FROM TRACTS A, B, C AND D: THE FOLLOWING UNITS :

UNITS 401, 402, 403, 404, 405, 501, 502, 503, 504, 505, 601, 602, 603, 604, 605, 701, 702, 703, 704, 705, 801, 802, 803, 804, AND 805 AND PARKING UNITS P-601, P-612, P-710, P-711, P-717, P-801, P-805, P-807, P-812, P-815, P-816, P-818, P-821, P-822, P-823, P-901, P-911, P-914, P-916 AND P-929 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN ASTORIA TOWER CONDOMINIUM, AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NUMBER 0913918053, IN THE FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COUNTY, ILLINOIS.

UNOFFICIAL COPY

PARCEL 3: EASEMENT

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2 IN AND TO ALL STRUCTURAL MEMBERS, FOOTINGS, CAISSONS, FOUNDATIONS, COLUMNS AND BEAMS WHICH ARE PART OF THE BUILDING AS DESCRIBED IN SECTION 2.04(D)(III) OF THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR ASTORIA TOWER CONDOMINIUM AND PROVISIONS RELATING TO CERTAIN NON- CONDOMINIUM PROPERTY RECORDED AS DOCUMENT NO. 0913918053.

PIN: 17-15-304-057
17-15-304-055
17-15-304-053

STREET ADDRESS: NORTHEAST CORNER OF 9TH AND STATE, CHICAGO, ILLINOIS

Property of Cook County Clerk's Office