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Doc#: 1009141108 Fee: \$138.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 04/01/2010 03:27 PM Pg: 1 of 52

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Property of Cook County Clerk's Office

(Above space for recording information)

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THIS INSTRUMENT PREPARED BY: )

RETURN TO:

Wanda Roberts )  
Chicago Title )  
830 E Main St - FL 16 )  
Richmond, VA 23219 )

Aaron J. Dixon, Esq.  
Ice Miller LLP  
One American Square, Suite 2900  
Indianapolis, Indiana 47292-0200

\*\*\*\*\*

**FIRST AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

BY AND BETWEEN

FEDEX CUSTOMER INFORMATION SERVICES, INC., A DELAWARE CORPORATION  
("TENANT"),

FX CHICAGO FUNDING COMPANY, INC., A DELAWARE CORPORATION ("OWNER"),

ING REAL ESTATE FINANCE (USA) LLC, A DELAWARE LIMITED LIABILITY  
COMPANY, AS ADMINISTRATIVE AGENT ON BEHALF OF CERTAIN LENDERS  
("SENIOR MORTGAGEE"),

ING REAL ESTATE FINANCE (USA) LLC, A DELAWARE LIMITED LIABILITY  
COMPANY, AS LENDER ("FIRST SUBORDINATED MORTGAGEE"), AND

THE BANK OF BERMUDA LIMITED, A BERMUDA LIMITED LIABILITY COMPANY,  
AS LENDER ("SECOND SUBORDINATED MORTGAGEE")

DATED: March 23 2010

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FedEx Lease No.: 08-0811-S02

**FIRST AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

This **FIRST AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "**Agreement**") is made and entered into as of this 22nd day of March, 2010, by and between FedEx Customer Information Services, Inc., a Delaware corporation ("**Tenant**"), FX Chicago Funding Company, Inc., a Delaware corporation, together with its successors and assigns ("**Owner**"), **ING REAL ESTATE FINANCE (USA) LLC**, a Delaware limited liability company ("**ING**"), as administrative agent on behalf of the lenders party to the "Loan Agreement" described in the Senior Mortgage referenced below (together with its successors and assigns, "**Senior Mortgagee**"), **ING REAL ESTATE FINANCE (USA) LLC**, a Delaware limited liability company, as lender under the "Amended and Restated Mezzanine Loan and Security Agreement" described in the First Subordinated Mortgage referenced below (together with its successors and assigns, "**First Subordinated Mortgagee**"), and The Bank of Bermuda Limited, a Bermuda limited liability company, as lender under the "Loan Agreement" described in the Second Subordinated Mortgage referenced below (together with its successors and assigns, "**Second Subordinated Mortgagee**"; and together with Senior Mortgagee and First Subordinated Mortgagee, "**Mortgagees**").

**RECITALS:**

A. Senior Mortgagee is the holder of a certain senior mortgage (or deed of trust) given by Owner to or for the benefit of Senior Mortgagee (as amended, modified or supplemented from time to time, the "**Senior Mortgage**") encumbering the Real Estate (hereinafter defined).

B. First Subordinated Mortgagee is the holder of a certain first subordinated mortgage (or deed of trust) given by Owner to or for the benefit of First Subordinated Mortgagee (as amended, modified or supplemented from time to time, the "**First Subordinated Mortgage**").

C. Second Subordinated Mortgagee is the holder of a certain second subordinated mortgage (or deed of trust) given by Owner to or for the benefit of Second Subordinated Mortgagee (as amended, modified or supplemented from time to time, the "**Second Subordinated Mortgage**"; and together with the Senior Mortgage and the First Subordinated Mortgage, the "**Mortgages**").

D. FX Chicago Project Company, LLC, a Delaware limited liability company ("**Landlord**") and Owner have entered into certain master leasehold and collateral security documents in connection with the master leasehold interest in the Real Estate granted by Owner to Landlord (such master leasehold and collateral security documents, together with all amendments, modifications or supplements thereto, collectively, the "**Project Company Documents**").

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E. Landlord and Tenant have entered into a certain lease described on Exhibit A attached hereto (such lease, as heretofore amended and together with all future amendments and modifications thereof, hereinafter being referred to as the "**Lease**"), pursuant to which Tenant leased certain premises (the "**Premises**") consisting of approximately 31,531 square feet of space in the building (the "**Building**") on the approximately 8.306 acre parcel of land (the "**Land**") legally described in Exhibit C attached hereto (the Land and the Building herein being collectively referred to as the "**Real Estate**").

F. Owner, Tenant and ING are parties to that certain Subordination, Non-Disturbance and Attornment Agreement dated as of December 1, 2008 described on Exhibit B attached hereto (the "**Existing SNDA**").

G. As one of the conditions to Mortgagees making their respective loans to Owner, Mortgagees are requiring that the parties hereto execute and deliver this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, the parties hereby amend and restated the Existing SNDA in its entirety and covenant and agree as follows:

1. Tenant represents and warrants to Mortgagees that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Premises.

2. While pursuing any remedy available to Tenant under the Lease, at law or equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "**Landlord's Default**") but subject to the terms of Section 19 of this Agreement, Tenant shall: (i) provide (a) each of Senior Mortgagee, First Subordinated Mortgagee and Second Subordinated Mortgagee and (b) Owner with a copy of any notice of Landlord's Default sent by Tenant pursuant to the Lease and (ii) allow each of Senior Mortgagee, First Subordinated Mortgagee, Second Subordinated Mortgagee and Owner the applicable cure period as defined in the Lease to cure the same, plus an additional concurrent thirty (30) days; provided, however, that if such Landlord's Default is not readily curable within such time period, Tenant shall give Owner and one of Senior Mortgagee, First Subordinated Mortgagee, Second Subordinated Mortgagee such additional time as Owner and one of Senior Mortgagee, First Subordinated Mortgagee, Second Subordinated Mortgagee may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Owner or such Senior Mortgagee, First Subordinated Mortgagee, Second Subordinated Mortgagee, as applicable (x) shall have notified Tenant that the party is pursuing the cure, (y) shall have taken action to cure within 30 days following the cure period provided by the Lease, and (z) is diligently pursuing a cure. Tenant agrees that notwithstanding any provision of the Lease, no permitted cancellation thereof shall be effective unless Tenant shall have sent Mortgagees and Owner a notice in the manner herein provided and Mortgagees or Owner have failed to cure the Landlord's Default giving rise to such right to cancellation in the time period herein provided. No cure of a Landlord's Default by any Mortgagee or Owner shall be deemed an assumption of Landlord's

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other obligations under the Lease and no right of Mortgagees or Owner hereunder to receive any notice or to cure any Landlord's Default shall be deemed to impose any obligation on any Mortgagee or Owner to cure (or attempt to cure) any such Landlord's Default.

3. Tenant covenants with Mortgagees that the Lease shall be subject and subordinate to any liens granted by the Mortgages and any liens granted by all respective modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgages had been executed and delivered prior to the execution and delivery of the Lease. Except as may be allowed in the Lease, without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Mortgagees' right, title and interest in and to such proceeds and awards.

4. Tenant acknowledges that (i) Landlord has entered into that certain Assignment of Leases and Rents: End User Lease (as heretofore amended and as the same may be further amended, modified or supplemented from time to time) between Landlord and Owner that collaterally assigns to Owner Landlord's interest in all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases and (ii) Owner has entered into those certain Assignments of Assignment of Leases and Rents: End User Lease (as heretofore amended and as the same may be further amended, modified or supplemented from time to time) between Owner and Mortgagees, that collaterally assign to Mortgagees all of Owner's interest in such leases, rents and other amounts. Following written notice from Senior Mortgagee, Tenant shall pay all rent and other payments under the Lease directly to an account in accordance with the provisions of the foregoing documents and any other agreement of assignment of rents and leases executed by Owner, Landlord, Senior Mortgagee, First Subordinated Mortgagee and/or Second Subordinated Mortgagee. In addition, after notice is given to Tenant by any Mortgagee that an Event of Default has occurred under any of the Mortgages, all rentals due under the Lease shall be paid to Senior Mortgagee or as otherwise directed by Senior Mortgagee; provided, however, such receipt of rents and other sums, moneys and other amounts shall not relieve Landlord of its obligations under the Lease, and Tenant shall continue to look to Landlord only for performance thereof; and further provided that Tenant shall retain all of its rights to the extent Landlord shall fail to pay or perform such obligations. Landlord and Owner and all of the Mortgagees hereby irrevocably direct and authorize Tenant to comply with any direction so received by Tenant from Senior Mortgagee, without any duty of Tenant to investigate whether an Event of Default shall have occurred under any Mortgage. All parties acknowledge, however, that Tenant will be making payments of rent to Landlord by means of computer generated checks or electronic funds transfers and that Tenant will require a period of time within which to re-program its accounts payable computer system to reflect Tenant's receipt of Senior Mortgagee's direction. Consequently, Tenant will have no liability to any Mortgagee for any regularly scheduled installment of rent remitted to Landlord or any prior transferee of title to the Premises during the period that begins on the date of Tenant's receipt of Senior Mortgagee's direction and that ends 30 days after that date. By executing and delivering this Agreement, Tenant confirms that any notice requirements to be given by Mortgagees to Tenant under the Lease for purposes of

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granting rights to Mortgagees under the Lease shall be deemed satisfied with respect to the Mortgages.

5. Subject to the other terms of this Agreement, Mortgagees and Owner agree that so long as Tenant shall be in possession of the Premises and there is no Event of Default (as defined in the Lease) or a default by Tenant under this Agreement:

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of any Mortgage or the enforcement of any rights under any Mortgage (unless Tenant is a necessary party under applicable law); and

(b) The possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated by (i) any suit, action or proceeding for the foreclosure of any Mortgage, (ii) the enforcement of any rights under any Mortgage, or (iii) any judicial sale or execution or other sale of the Premises or any deed given in lieu of foreclosure.

6. If any Mortgagee or any of their respective successors and assigns shall become the owner of the Real Estate by reason of foreclosure of their respective Mortgage or otherwise, if the Real Estate shall be sold as a result of any action or proceeding to foreclose any Mortgage, or if ownership of the Real Estate shall be transferred by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time any Mortgagee exercises its remedies, then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law),

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) or the failure or default of any prior landlord (including Landlord);

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(ii) bound by, or liable for, any agreement of any prior landlord under the Lease (including Landlord) with respect to the completion of any improvements at the Premises or for the payment or reimbursement to Tenant of any contribution to the cost of the completion of any such improvements;

(iii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagees with (A) notice of the default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 2 above;

(iv) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(v) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord);

(vi) bound by any action listed in Paragraph 10 below made without the prior written consent of any Mortgagee;

(vii) liable for any brokerage commissions, costs, expenses or liabilities in connection with the Lease; or

(viii) liable for any monies on deposit with Landlord to the credit of Tenant except to the extent turned over to the party that shall become the new owner of the Real Estate.

7. Without limiting Paragraph 6 above, if the Landlord's leasehold interest in and to the Real Estate is terminated or expired by its terms or if the Owner shall exercise its rights and remedies under the Project Company Documents and terminate Landlord's leasehold interest in and to the Real Estate, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the Owner, as "landlord," upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to Owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease), and Tenant hereby agrees to attorn to Owner and to recognize Owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Owner exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law); and

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(b) Owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease); provided, however, that Owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) or the failure or default of any prior landlord (including Landlord);

(ii) bound by, or liable for, any agreement of any prior landlord (including Landlord) under the Lease with respect to the completion of any improvements at the Premises or for the payment or reimbursement to Tenant of any contribution to the cost of the completion of any such improvements;

(iii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Owner with (A) notice of the default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 7 above;

(iv) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(v) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord);

(vi) bound by any action listed in Paragraph 10 below made without the prior written consent of Owner;

(vii) liable for any brokerage commissions, costs, expenses or liabilities in connection with the Lease; or

(viii) liable for any monies on deposit with Landlord to the credit of Tenant except to the extent turned over to Owner.

8. Regardless of anything in the Lease or this Agreement apparently to the contrary, Tenant may not seek to satisfy any judgment that Tenant obtains by reason of the negligence of any new owner of the Real Estate or any of its directors, officers, agents, employees or contractors or by reason of such new owner's failure to perform any of the obligations incumbent upon the landlord under the terms of the Lease from any source other than such new owner's interest in the Real Estate and the revenue generated by the operation of the Real Estate, except as provided below. Tenant may, however, satisfy any such judgment by offsetting the amount of the judgment against rent becoming due under the terms of the Lease. The foregoing limitation on the sources of Tenant's recovery will not apply in those instances (i) where proceeds of any

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insurance are available to satisfy the judgment, (ii) where Tenant obtains the judgment because of such new owner's misapplication of funds that an insurer or a condemning authority pays to such new owner and that such new owner must use for restoration of the Building in accordance with the terms of the Lease, (iii) where Tenant obtains the judgment because of such new owner's misapplication of funds that Tenant pays to such new owner for remittance to a third party, such as a taxing authority, or (iv) where Tenant obtains the judgment because of such new owner's fraud. After application of the proceeds of any insurance that are available to satisfy a judgment that Tenant obtains by reason of the negligence of such new owner or any of its directors, officers, agents, employees or contractors or by reason of that new owner's failure to perform any of the obligations incumbent upon the landlord under the terms of the Lease, Tenant may not seek to satisfy the balance of such judgment remaining after such application from any source other than such new owner's interest in the Real Estate and the revenue generated by the operation of the Real Estate, except as expressly provided above. Nothing contained in this Section impairs, affects, lessens, abrogates or otherwise modifies the obligations of Landlord to Tenant under the terms of the Lease.

9. Casualty and condemnation proceeds shall be used for restoration of the Building and Premises as otherwise provided in the Lease, subject, however, to satisfaction of the conditions and requirements contained in the Project Company Documents (the "Conditions"). A copy of the Conditions is attached hereto as **Exhibit D** and hereby made a part hereof.

10. In the event that Tenant shall, without obtaining the prior written consent of Mortgagees and Owner, (i) enter into any agreements modifying, amending, extending, terminating or surrendering the Lease, which are not specifically referenced in the Lease (e.g., re-measurement of space, confirmation of expansion, or renewal options, etc.), (ii) prepay base rent, percentage rent, additional rent or any other amounts payable under the Lease for more than the current month, (iii) voluntarily surrender the Premises, terminate the Lease or shorten the term thereof without cause, except to the extent provided for in the Lease, (iv) assign the Lease or sublet the Premises or any part thereof other than pursuant to the provisions of the Lease or (v) subordinate or permit the subordination of the Lease to any lien other than the Mortgages, except to the extent provided or permitted by the Lease; then any such prohibited amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting without the prior written consent of Mortgagees and Owner, shall not be binding on Owner or any Mortgagee.

11. Any notices, communications and waivers under this Agreement shall be in writing and shall be: (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) delivered by overnight express carrier, addressed in each case as follows:



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To Senior Mortgagee:      ING Real Estate Finance (USA) LLC  
 230 Park Avenue, 9th Floor  
 New York, NY 10169  
 Attn: Michael E. Shields, Senior Director  
 Attn: Craig R. Bender, Vice President

With a copy to:            Morrison & Foerster LLP  
 1290 Avenue of the Americas  
 New York, New York 10104  
 United States of America  
 Attention: Chris Delson

To First Subordinated  
 Mortgagee:                ING Real Estate Finance (USA) LLC  
 230 Park Avenue, 9th Floor  
 New York, NY 10169  
 Attn: Bill Knickerbocker

With a copy to:            Dechert LLP  
 1095 Avenue of the Americas  
 New York, New York 10036  
 Attn: Tim Stafford

To Second Subordinated  
 Mortgagee:                The Bank of Bermuda Limited  
 6 Front Street  
 Hamilton HM 11 Bermuda  
 Attn: Anthony Riker

With a copy to:            Gibson, Dunn & Crutcher LLP  
 200 Park Avenue  
 New York, New York 10166  
 Attn: David J. Furman

To Owner:                    FX Chicago Funding Company, Inc.  
 c/o Global Securitization Services, LLC  
 68 South Service Road, Suite 120  
 Melville, New York 11747  
 Attn: Jill A. Russo

To Landlord:                FX Chicago Project Company, LLC  
 c/o HDG Mansur Investment Services, Inc.  
 10 West Market Street, Suite 1200  
 Indianapolis, Indiana 46204  
 Attn: Harold D. Garrison

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To Tenant: FedEx Customer Information Services, Inc.  
3680 Hacks Cross Road  
Building H, 2nd Floor  
Memphis, TN 38125  
Attn: Managing Director (#08-0811)

With a copy to: Federal Express Corporation  
Legal Department (#08-0811)  
3680 Hacks Cross Road  
Building B, 3rd Floor  
Memphis, TN 38125  
Attn: Managing Director, Business Transactions

With a copy to: FedEx Corporation  
Legal Department (#08-0811)  
942 S. Shady Grove Road  
Memphis, TN 38120

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

12. Tenant acknowledges and agrees that Mortgagees, together with each of their respective successors and assigns, shall be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagees, at their option, to exercise any and all of their rights and remedies at law and in equity against Tenant.

13. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of any Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

14. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors.

15. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

16. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

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17. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

18. It is the intent of the parties hereto that the foregoing covenants and agreements shall control, notwithstanding any general provision of law to the contrary.

19. Where any notices to or from Senior Mortgagee is required under this Agreement or any action is to be taken by Senior Mortgagee or for the benefit of Senior Mortgagee under this Agreement, such notice or action shall be given or done by First Subordinated Mortgagee in the event the loan secured by the Senior Mortgage has been paid in full and the Senior Mortgage terminated and by Second Subordinated Mortgagee in the event the loans evidenced by the Senior Mortgage and the First Subordinated Mortgage have been paid in full and the Senior Mortgage and the First Subordinated Mortgage have been terminated. Tenant may rely on the assertion of a superior interest that any Mortgagee makes in writing to Tenant without any duty to investigate the accuracy of such assertion, and Landlord, Owner and all Mortgagees irrevocably direct and authorize Tenant to accept such assertion.

[Remainder of page intentionally blank. Signature pages follow.]

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IN WITNESS WHEREOF, the parties hereto have executed this FIRST AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT the day and year first above written.

**Tenant:**

**FEDEX CUSTOMER INFORMATION SERVICES, INC.**

By: Sheila Harrell  
Name: Sheila J. Harrell  
Title: VP Customer Service

**Owner:**

**FX CHICAGO FUNDING COMPANY, INC.**

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

Approved  
Legal Department  
3-11-10  
MLP B 11/10  
JTB 3-12-10

Proprietor of Cook County Clerk's Office

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STATE OF TENNESSEE )  
 )  
COUNTY OF SHELBY )

I, DIONA MCCREIGHT, an officer duly authorized by the State and in the County aforesaid to take acknowledgements, certify that SHELLA HARRELL personally came before me this day and acknowledged that he/she is the VICE PRESIDENT of **FedEx Customer Information Services, Inc.**, a Delaware corporation, and that he/she as such is being authorized to do so, executed the foregoing on behalf of such company.

Witness my hand and official seal, this the 16<sup>th</sup> day of March, 2010.

Diona McCreight



Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have executed this FIRST AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT the day and year first above written.

**Tenant:**

**FEDEX CUSTOMER INFORMATION SERVICES, INC.**

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

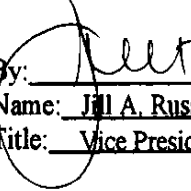
**Guarantor:**

**FEDEX CORPORATION**

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

**Owner:**

**FX CHICAGO FUNDING COMPANY, INC.**

By:  \_\_\_\_\_  
Name: Jill A. Russo  
Title: Vice President

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STATE OF NEW YORK §  
  §  
COUNTY OF NEW YORK §

On the 15th day of March in the year 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared Jill A. Russo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within instrument and acknowledged to me that he/she executed the same in his/her capacity as Vice President of FX Chicago Funding Company, Inc., a Delaware corporation, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, being authorized to do so, executed the instrument.

Marie McAdory  
Notary Public, State of New York  
No. 01MC6212564  
Qualified in Kings County  
Commission Expires October 13, 2013

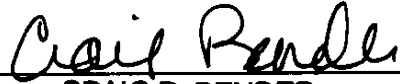
  
\_\_\_\_\_  
Notary Public


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**Senior Mortgagee:**

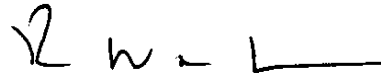
**ING REAL ESTATE FINANCE (USA) LLC,**  
as administrative agent on behalf of the lenders

By:   
Name: CRAIG R. BENDER  
Title: VICE PRESIDENT

By:   
Name: MICHAEL E. SHIELDS  
Title: SENIOR DIRECTOR

**First Subordinated Mortgagee:**

**ING REAL ESTATE FINANCE (USA) LLC,**  
as lender

By:   
Name: R. WILLIAM KNICKERBOCKER  
Title: VICE PRESIDENT

By:   
Name: MARIA D. KASTANIS  
Title: SENIOR DIRECTOR

**Second Subordinated Mortgagee:**

**THE BANK OF BERMUDA LIMITED,**  
as lender

By: \_\_\_\_\_  
Name: JohnDavid Massa  
Title: Senior Legal Counsel

By: \_\_\_\_\_  
Name: Roland A. Burrows  
Title: Head of Commercial Banking

Property of Cook County Clerk's Office



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COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_

**Senior Mortgage:**

**ING REAL ESTATE FINANCE (USA) LLC,**  
as administrative agent on behalf of the lenders

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

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

**First Subordinated Mortgage:**

**ING REAL ESTATE FINANCE (USA) LLC,**  
as lender

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

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

**Second Subordinated Mortgage:**

**THE BANK OF BERMUDA LIMITED**  
as lender

By: \_\_\_\_\_  
Name: John David Massa  
Title: Senior Legal Counsel

By: \_\_\_\_\_  
Name: Roland A. Burrows  
Title: Head of Commercial Banking

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STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

I, Daniel Quevedo, an officer duly authorized by the State and in the County aforesaid to take acknowledgements, certify that Craig R. Borden personally came before me this day and acknowledged that ~~he~~ she is the vice president of ING Real Estate Finance (USA) LLC, a Delaware limited liability company, and that ~~he~~ she, as such Vice President being authorized to do so, executed the foregoing on behalf of such company.

Witness my hand and official seal, this the 4th day of March, 2010.

Daniel Quevedo

DANIEL QUEVEDO  
Notary Public, State of New York  
No. 01QU6209469  
Qualified in New York County  
Commission Expires July 27, 2013

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

I, Daniel Quevedo, an officer duly authorized by the State and in the County aforesaid to take acknowledgements, certify that Michael E. Shields personally came before me this day and acknowledged that he/she is the Senior Director of ING Real Estate Finance (USA) LLC, a Delaware limited liability company, and that he/she, as such Senior Director being authorized to do so, executed the foregoing on behalf of such company.

Witness my hand and official seal, this the 4th day of March, 2010.

Daniel Quevedo

DANIEL QUEVEDO  
Notary Public, State of New York  
No. 01QU6209469  
Qualified in New York County  
Commission Expires July 27, 2013

Property of Cook County Clerk's Office

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STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

I, Daniel Quevedo, an officer duly authorized by the State and in the County aforesaid to take acknowledgements, certify that R. William Krickenbocker personally came before me this day and acknowledged that ~~he~~/she is the Vice President of ING Real Estate Finance (USA) LLC, a Delaware limited liability company, and that he/she, as such Vice President being authorized to do so, executed the foregoing on behalf of such company.

Witness my hand and official seal, this the 14 day of March, 2010.

Daniel Quevedo

DANIEL QUEVEDO  
Notary Public, State of New York  
No. 01QU6209469  
Qualified in New York County  
Commission Expires July 27, 2013

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF NEW YORK )  
  )  
COUNTY OF NEW YORK )

I, Daniel Quevedo, an officer duly authorized by the State and in the County aforesaid to take acknowledgements, certify that MARIA D. KATZAKIS personally came before me this day and acknowledged that he/she is the Senior Director of ING Real Estate Finance (USA) LLC, a Delaware limited liability company, and that he/she, as such Senior Director being authorized to do so, executed the foregoing on behalf of such company.

Witness my hand and official seal, this the 4th day of March, 2010.

Daniel Quevedo  
DANIEL QUEVEDO  
Notary Public, State of New York  
No. 01QU6209469  
Qualified in New York County  
Commission Expires July 27, 2013

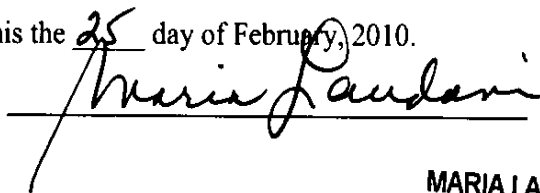
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

I, Maria Laudani, an officer duly authorized by the State and in the County aforesaid to take acknowledgements, certify that JohnDavid Massa personally came before me this day and acknowledged that he is the Senior Legal Counsel of **The Bank of Bermuda Limited**, a local company incorporated under the laws of Bermuda with registration #2109, and that he, as such Senior Legal Counsel being authorized to do so, executed the foregoing on behalf of such company.

Witness my hand and official seal, this the 25 day of February, 2010.



MARIA LAUDANI  
Notary Public - State of New York  
No. 01LA6093015  
Qualified in Nassau County  
My Commission Expires May 27, 2011

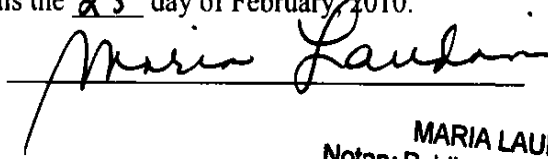
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

I, Maria Laudani, an officer duly authorized by the State and in the County aforesaid to take acknowledgements, certify that Roland A. Burrows personally came before me this day and acknowledged that he is the Head of Commercial Banking of **The Bank of Bermuda Limited**, a local company incorporated under the laws of Bermuda with registration #2109, and that he, as such Head of Commercial Banking being authorized to do so, executed the foregoing on behalf of such company.

Witness my hand and official seal, this the 25 day of February 2010.



MARIA LAUDANI  
Notary Public - State of New York  
No. 01LA6093015  
Qualified in Nassau County  
My Commission Expires May 27, 2011

Property of Cook County Clerk's Office

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## EXHIBIT A

### LEASE

That certain Office Lease dated as of December 1, 2008 by and between FX Chicago Project Company, LLC and FedEx Customer Information Services, Inc.

Property of  
COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_  
County Clerk's Office



**UNOFFICIAL COPY****EXHIBIT B****EXISTING SNDA**

08-0811-501

**SNDA**

RETURN TO:  
 Sidley Austin LLP  
 1501 K Street, NW  
 Washington, DC 20005  
 Attn: William E. Sudow

**SUBORDINATION NON-DISTURBANCE AND ATTORNMEN T AGREEMENT**

This SUBORDINATION NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (this "Agreement") is made and entered into as of this 1st day of December, 2008, by and between FedEx Customer Information Services, Inc., a Delaware corporation ("Tenant"), FX Chicago Funding Company, Inc., a Delaware corporation, together with its successors and assigns ("Owner"), and ING REAL ESTATE FINANCE (USA) LLC, a Delaware limited liability company, as administrative agent on behalf of the lenders party to the "Loan Agreement" described in the Mortgage referenced below (together with its successors and assigns, "Mortgagee").

**RECITALS:**

A. Mortgagee is the holder of a certain mortgage (or deed of trust) given by Owner to or for the benefit of Mortgagee (as amended, modified or supplemented from time to time, the "Mortgage") encumbering the Real Estate (hereinafter defined).

B. FX CHICAGO PROJECT COMPANY, LLC, a Delaware limited liability company ("Landlord") and the Owner have entered into certain master leasehold and collateral security documents and related documents in connection with the master leasehold interest in the Real Estate granted by Owner to Landlord (such master leasehold and collateral security and related documents, together with all amendments, modifications, restatements or supplements thereto, collectively, the "Project Company Documents").

C. The Landlord and Tenant have entered into a certain lease (such lease, together with all amendments and modifications thereof, hereinafter being referred to as the "Lease"), dated as of December 1, 2008, pursuant to which Tenant leased certain premises (the "Premises") consisting of approximately 31,531 square feet of space in the building (the "Building") on the parcel of land (the "Land") legally described in Exhibit A attached hereto (the Land and Building herein being collectively referred to as the "Real Estate").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, the parties hereby covenant and agree as follows:

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1. Tenant represents and warrants to Mortgagee that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Premises.

2. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall (a) provide Mortgagee and Owner with a notice of Landlord's Default specifying the nature thereof, the Section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) grant each of Mortgagee and Owner the following cure periods (with the understanding that neither Mortgagee nor Owner has any obligation to cure any such Landlord's Default): If Landlord's Default (i) can be cured by the payment of money or is otherwise curable within thirty (30) days, each of Mortgagee and Owner shall have thirty (30) days to cure the default; and (ii) cannot be cured by the payment of money and cannot otherwise reasonably be cured within thirty (30) days, the Mortgagee and Owner shall have such period of time as is necessary to cure the Landlord's Default (including, without limitation, such additional time as Mortgagee or Owner may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default) provided that (x) the Mortgagee or Owner notifies Tenant of its intention to cure the Landlord's Default, (y) the Mortgagee or Owner commences action to cure the Landlord's Default within thirty (30) days and (z) the Mortgagee thereafter proceeds diligently at all times to cure the default. Notwithstanding the foregoing, in no event shall Mortgagee or Owner have a lesser period of time to cure a default than is granted to Landlord under the Lease. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee or Owner, as applicable, fails to cure same within the time period specified above. For purposes of this Paragraph 2, Mortgagee's and Owner's cure period specified above shall not commence until Mortgagee and Owner have each received written notice of the applicable Landlord's Default. Nothing herein shall be read in derogation of Tenant's rights under the Lease.

3. Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) or any of the Real Estate, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards.

<sup>End Use of Lease</sup>  
4. Tenant acknowledges that (i) pursuant to that certain Assignment of Leases and Rents, (Project Company), dated as of September 3, 2007, between Landlord and Owner, Landlord has collatorally assigned to Owner its interest in all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases and (ii) pursuant to that certain

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Assignment of Assignment of Leases and Rents, dated as of ~~December 31, 2007~~<sup>4</sup>, 2007, between Owner and Mortgagee (the "Assignment of Assignment of Leases and Rents"), Owner has collaterally assigned to Mortgagee all of Owner's interest in such leases, rents and other amounts. Under the terms of the Assignment of Assignment of Leases and Rents and that certain direction letter from Landlord to Tenant, dated as of ~~December 31, 2007~~<sup>4</sup>, all rent and other payments under the Lease shall be paid directly to an account in accordance with the provisions contained therein. In addition, after notice is given to Tenant by Mortgagee that an Event of Default under the Mortgage has occurred and that the rentals due under the Lease shall be paid to Mortgagee pursuant to the terms of the Assignment of Assignment of Leases and Rents, Tenant will honor such demand and make all subsequent payments directly to Mortgagee. Tenant further agrees that upon such demand by Mortgagee, any Lease termination fees payable under the Lease shall be paid to or at the direction of Mortgagee. By executing and delivering this Agreement, Tenant confirms that any notice requirements to be given by Mortgagee to Tenant under the Lease for purposes of granting rights to mortgagees under the Lease shall be deemed satisfied.

5. Mortgagee and Owner agree that so long as Tenant shall be in possession of the premises demised under the Lease, and Tenant shall not be in default under any of the terms, covenants or conditions of the Lease and of this Agreement:

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

(a) The possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

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(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Paragraph 2 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Mortgagee's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement or other term in the Lease or otherwise made by any prior landlord (including Landlord);

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

7. Without limiting Paragraph 6 above, if the Owner shall exercise its rights and remedies under the Project Company Documents and terminate Landlord's leasehold interest in and to the Real Estate, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the Owner, as "landlord," upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (c) below), and in such event:

(a) Tenant shall be bound to Owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease), and Tenant hereby agrees to attorn to Owner and to recognize Owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Owner exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

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(b) Owner acknowledges that Tenant will be making payments of rent to Landlord by means of computer-generated checks or electronic funds transfer and that Tenant will require a period of time within which to re-program its accounts payable computer system to reflect Tenant's receipt of Owner's direction. Consequently, Tenant will have no liability to Owner for any regularly scheduled installment of rent remitted to Landlord during the period that begins on the date of Tenant's receipt of Owner's direction and that ends 30 days after that date.

(c) Owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including any extension periods, if Tenant elects or has elected to exercise any option to extend the term of the Lease); provided, however, that Owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Owner with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Paragraph 3 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Owner's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord);

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

8. Casualty and condemnation proceeds shall be used for restoration of the Building and Premises as otherwise provided in the Lease, subject however to satisfaction of the conditions and requirements contained in the Project Company Documents (the "Conditions"). A copy of the Conditions is attached hereto as Exhibit B and hereby made a part hereof.

9. Tenant represents and warrants to Owner that (a) the Lease constitutes the entire agreement between Tenant and Landlord thereunder with respect to the Real Estate and there are

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no other agreements, written or verbal, between Tenant and Landlord governing the tenancy of Tenant with respect to the Real Estate, (b) the Lease is in full force and effect and constitutes the binding and enforceable obligation of the Tenant, and (c) to Tenant's actual knowledge, no default or event of default whatsoever exists with respect to the Lease and no event has occurred or has failed to occur which, with the passage of time or the giving of notice or both would constitute a default or event of default under the Lease and all rent and other charges and obligations due under the Lease have been paid to and including the date hereof. Owner represents and warrants to Tenant that (a) the Project Company Documents constitute the entire agreement between Owner and Landlord (there are no other agreements, written or verbal) governing the tenancy of Landlord with respect to the Real Estate, (b) the Project Company Documents are in full force and effect and constitute the binding and enforceable obligation of the Owner, and (c) to the Owner's actual knowledge, no default or event of default whatsoever exists under the Project Company Documents and no event has occurred or has failed to occur which, with the passage of time or the giving of notice or both would constitute a default or event of default under the Project Company Documents and all rent and all other charges and obligations due under the Project Company Documents have been paid to and including the date hereof. Tenant and Owner acknowledge and agree that each of them, together with their successors and assigns, will be relying on the representations, warranties, covenants and agreements of the other contained herein and upon any default by Tenant or Owner hereunder shall permit the other, at its option, to exercise any and all of its rights and remedies at law and in equity against the defaulting party.

10. Any notices, communications and waivers under this Agreement shall be in writing and shall be: (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

<b>To Mortgagee:</b>	ING Real Estate Finance (USA) LLC 230 Park Avenue, 15 <sup>th</sup> Floor New York, NY 10169 Attn: Michael E. Shields
<b>With a copy to:</b>	Sidley Austin LLP 1501 K Street, NW Washington, DC 20005 Attn: William E. Sudow, Esq.
<b>To Owner:</b>	IFX Chicago Funding Company, Inc. c/o Global Securitization Services, LLC 68 South Service Road Suite 120 Melville, NY 11747

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COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY

With a copy to: FX Chicago Funding Company, Inc.  
c/o HDG Mansur Investment Services, Inc.  
10 West Market Street, Suite 1200  
Indianapolis, Indiana 46204

To Landlord: FX Chicago Project Company, LLC  
c/o HDG Mansur Investment Services, Inc.  
10 West Market Street, Suite 1200  
Indianapolis, Indiana 46204  
Attention: Fund Asset Manager

With a copy to: FX Chicago Project Company, LLC  
c/o HDG Mansur Investment Services, Inc.  
780 Third Avenue  
27<sup>th</sup> Floor  
New York, New York 10017  
Attention: Gail Buxant

To Tenant: FedEx Customer Information Services, Inc.  
5680 Hacks Cross Road  
Building H, 2nd Floor  
Memphis, TN 38125  
Attn: Managing Director

With a copy to: Federal Express Corporation  
Legal Department  
3620 Hacks Cross Road  
Building B, 3rd Floor  
Memphis, TN 38125  
Attn: Managing Director, Business Transactions

With a copy to: FedEx Corporation  
Legal Department  
942 S. Shady Grove Road  
Memphis, TN 38120

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

11. Tenant acknowledges and agrees that Mortgagee, together with its successors and assigns, will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and upon any default by Tenant hereunder shall permit Mortgagee, at its option,

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to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Premises.

12. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

13. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

14. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

15. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

16. It is the intent of the parties hereto that the foregoing covenants and agreements shall control, notwithstanding any general provision of law to the contrary.

17. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. This Agreement constitutes the entire agreement between the parties hereto regarding the subordination of the Lease to the Mortgage and the rights and obligations of parties hereto as to the subject matter of this Agreement, all prior agreements as to the subject matter of this Agreement being merged hereto.

[SIGNATURES APPEAR ON NEXT PAGE]



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

ALL OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON MARCH 3, 1988 AS DOCUMENT 88115532, IN COOK COUNTY, ILLINOIS, AND RERECORDED ON SEPTEMBER 30, 1988 AS DOCUMENT 88450205, IN COOK COUNTY, ILLINOIS, AND PART OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 3, 1988, AS DOCUMENT 2661881, IN LAKE COUNTY, ILLINOIS.

#### PARCEL 2:

NON EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING FOR THE BENEFIT OF PARCEL 1, OVER, ACROSS AND THROUGH THAT PART OF LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND IN THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON SEPTEMBER 10, 1986, AS DOCUMENT 2481053 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1; 368.28 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE SOUTH 44 DEGREES 48 MINUTES 35 SECONDS WEST ALONG A NORTHWESTERLY LINE OF SAID LOT 1 AND ALONG SAID NORTHWESTERLY LINE EXTENDED SOUTHWESTERLY, 125.87 FEET TO A CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST ALONG AN EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO A CORNER OF SAID LOT 1, BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST 45.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST, 117.00 FEET TO THE WEST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK UNIT 7; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID WEST LINE, 45 FEET TO A SOUTH LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION; THENCE NORTH 89 DEGREES 48 MINUTES 35

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SECONDS EAST ALONG SAID SOUTH LINE, 117.00 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS; AND ALSO THAT PART OF SAID LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 12 DEGREES 44 MINUTES 01 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT 1; 20.71 FEET TO A POINT OF CURVATURE IN SAID EASTERLY LINE; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 1, BEING A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 219.19 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 48.49 FEET TO AN INTERSECTION WITH A LINE 66.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1 (THE CHORD OF SAID ARC BEARS SOUTH 19 DEGREES 04 MINUTES 16 SECONDS EAST, 48.39 FEET); THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 398.03 FEET; THENCE SOUTH 14 DEGREES 08 MINUTES 35 SECONDS WEST 70.00 FEET; THENCE SOUTH 23 DEGREES 33 MINUTES 44 SECONDS WEST 15.71 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST, 70.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 20.00 FEET TO AN INTERSECTION WITH A LINE 117.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 45.00 FEET TO A SOUTHEAST CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS, ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG THE EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 44 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE SOUTHEASTERLY LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 125.87 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 89 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 368.28 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS, AS CREATED BY PARKING AND ACCESS CROSS EASEMENT AGREEMENT RECORDED DECEMBER 4, 1989, AS DOCUMENT 89576281, IN COOK COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS DOCUMENT 2856801, IN LAKE COUNTY ILLINOIS.

## PARCEL 3:

EASEMENTS FOR INGRESS, EGRESS, ACCESS AND OTHER PURPOSES AS CREATED BY AND MORE FULLY SET FORTH IN THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK RECORDED NOVEMBER 17, 1983, AS DOCUMENT 2251413, IN LAKE COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS PART OF DOCUMENT NUMBER 89576282, IN COOK COUNTY, ILLINOIS, AS AMENDED BY FIRST AMENDMENT TO

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DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 12, 1983 AND RECORDED ON FEBRUARY 24, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2268766 AND AS FURTHER AMENDED BY SECOND AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 15, 1983 AND RECORDED ON MAY 30, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2286521 AND AS FURTHER AMENDED BY THIRD AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED NOVEMBER 17, 1989 AND RECORDED ON DECEMBER 4, 1989 AS DOCUMENT 2856803 IN LAKE COUNTY, ILLINOIS.

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RECORDER OF DEEDS  
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Cook County Clerk's Office

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## EXHIBIT B

### CONDITIONS TO USE OF PROCEEDS

same are customarily required by institutional lenders for similar properties in the general vicinity of such Property, or which are otherwise required by the Loan Documents.

Each carrier providing any insurance, or portion thereof, required by this Section shall be licensed to do business in the jurisdiction in which the applicable Property is located, and shall have a claims paying ability rating by S&P of not less than "AA," by Moody's of not less than "Aa2" and by Fitch of not less than "AA," and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than XII. Except as otherwise expressly set forth in this Loan Agreement, each Borrower shall cause all insurance relating to its Related Property (except general public liability and excess liability, as to which Administrative Agent, on behalf of Lender (as their interests may appear), shall be named as additional insured, and workers' compensation insurance) carried in accordance with this Section to be payable to Lender as mortgagee and loss payee and not as a coinsured, and, in the case of all policies of insurance carried by each Lessee, for the benefit of such Borrower, if any, to cause all such policies to be payable to Administrative Agent, on behalf of Lender (as their interests may appear).

All insurance policies and renewals thereof (i) shall be in a form reasonably acceptable to Lender, (ii) shall provide for a term of not less than one year, (iii) shall provide by way of endorsement, rider or otherwise that such insurance policy shall not be canceled, endorsed, altered, or reinsured to effect a change in coverage unless such insurer shall have first given Lender thirty (30) days prior written notice thereof, (iv) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Lender, (v) shall provide for claims to be made on an occurrence basis, (vi) shall contain an agreed value clause updated annually (if the amount of coverage under such policy is based upon the replacement cost of the applicable Property) and (vii) shall designate Administrative Agent, on behalf of Lender (as their interests may appear), as "mortgagee and loss payee" (except general public liability and excess liability, as to which Lender shall be named as additional insured). All property damage insurance policies (except for flood and earthquake policies) must automatically reinsure after each loss.

Any insurance required to be maintained by a Borrower pursuant to the terms of this Loan Agreement may, at the option of such Borrower, be effected by blanket and/or umbrella policies issued to such Borrower, covering such Borrower's Related Property; provided that, in each case, the blanket and/or umbrella policies otherwise comply with the provisions of this Loan Agreement and all cases to such Related Property, from time to time, the damage required under this Loan Agreement, without possibility of reduction or coinsurance by reason of, or damage in, any other property (real or personal) named therein. If the insurance required by this Loan Agreement to be maintained by such Borrower shall be effected by any such blanket or umbrella policies, such Borrower shall furnish to Administrative Agent certificates of insurance evidencing same, with schedules attached thereto showing the amount of the insurance provided under each policy which is applicable to its Related Property.

#### Section 5.5 Maintenance of the Property; Alterations; Casualty or Taking.

(A) Maintenance of the Property; Alterations. Such Borrower will maintain its Related Property or cause its Related Property to be maintained in good repair, working order

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set forth in the last sentence of this Section 5.5(B), such Borrower shall deposit, or cause its Related Project Company to deposit any insurance proceeds, awards or Condemnation Proceeds received by or on behalf of such Borrower or its Related Project Company into the Deposit Account and shall cause all such insurance proceeds, awards or Condemnation Proceeds to be deposited into the Casualty and Condemnation Proceeds Account on or before the next succeeding Payment Date, which insurance proceeds, awards or Condemnation Proceeds shall be held in the Casualty and Condemnation Proceeds Account and disbursed or utilized as set forth in this Section 5.5, subject to Section 7.2(B) of this Loan Agreement. Without limiting the foregoing, such Borrower hereby authorizes and empowers Administrative Agent (a) to make proof of loss, to adjust and compromise or settle any claim under insurance policies, including without limitation business interruption or rent loss insurance, or in connection with a Taking, (b) to appear in and prosecute any action arising from any insurance policies or Taking, (c) to collect and receive all insurance proceeds and Condemnation Proceeds, and (d) to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this Section shall require Lender to incur any expense or take any action hereunder. Such Borrower further authorizes Lender, at Lender's option in its sole but reasonable discretion, (i) to hold the balance of such proceeds in such Borrower's Casualty and Condemnation Proceeds Account to be used to pay for the cost of Restoration of such Related Property, (ii) subject to Section 5.5(C), to apply such proceeds to payment of the Obligations whether or not then due, in any order, and, provided that no Event of Default has occurred and is continuing, upon any such application of insurance proceeds or Condemnation Proceeds to the Obligations pursuant to the foregoing, no Prepayment Consideration shall be due and payable. Notwithstanding the foregoing, in the event of a casualty or Taking where the loss does not exceed the Restoration Threshold for the Property and the casualty, loss or Taking, in Administrative Agent's reasonable judgment, has no Material Adverse Effect, such Borrower may settle and adjust such claim and such insurance proceeds or Condemnation Proceeds shall be promptly returned to Borrower's Operating Account; provided that (a) no Event of Default has occurred and is continuing and (b) such adjustment and the Restoration are carried out in a commercially reasonable and timely manner. So long as no Event of Default then exists, Lender agrees that it shall deposit any insurance proceeds, awards or Condemnation Proceeds received by it in connection with such Related Property into such Borrower's Casualty and Condemnation Proceeds Account for application as provided in this Section 5.5. Notwithstanding anything in this Loan Agreement or any other Loan Document to the contrary, during the existence of an Event of Default, Lender shall have the right, in its sole discretion, to apply any and all insurance proceeds and Condemnation Proceeds to payment of the Obligations whether or not then due, in any order or priority as Lender shall determine.

(C) Proceeds Application to Restoration. Notwithstanding any other provision of any Loan Document, Administrative Agent shall not exercise Lender's option to apply insurance proceeds or Condemnation Proceeds to payment of the Obligations and Administrative Agent shall make the proceeds available for Restoration if all of the following conditions are met: (i) no Event of Default or Cash Trap Condition shall have occurred and be continuing; (ii) Lender reasonably determines that there will be sufficient funds available to complete the Restoration of such Related Property to at least the Pre-Existing Condition and to timely make all payments due under the Loan Documents during the Restoration of the Property; (iii) Lender reasonably determines that the Minimum DSCR Threshold shall be maintained during and after the Restoration thereof to the Pre-Existing Condition; (iv) Lender reasonably determines that

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Restoration of such Related Property to the Pre-Existing Condition will be completed within eighteen (18) months of the date of loss or casualty to such Related Property or the Taking but in no event later than six (6) months prior to the Maturity Date; (v) one or more Major Leases requiring payment of annual rent equal to at least fifty percent (50%) of the gross revenues from such Related Property during the twelve (12) month period immediately preceding the date of such casualty or Taking are in full force and effect and remain valid and enforceable during and after Restoration of the Property (which Major Leases may be subject to the rent abatement provisions thereof applicable as a result of the casualty, so long as such abatement will end, and full rental payments shall resume, upon completion of the Restoration) and (vi) Lender is reasonably satisfied that such Related Property can be restored and repaired as nearly as possible to the condition it was in immediately prior to such casualty and in compliance with all applicable zoning, building and other laws and applicable Legal Requirements (the "Pre-Existing Condition"); and, in the case of a Taking, Lender is reasonably satisfied that the Taking will have no Material Adverse Effect. Notwithstanding anything to the contrary set forth in this Section 5.5, to the extent the insurance proceeds paid or payable with respect to any casualty to such Related Property (either singly or when aggregated with all other then unapplied proceeds with respect to such Related Property) do not exceed the Restoration Threshold and the estimated cost of completing the applicable Restoration shall not be greater than the Restoration Threshold, and provided that no Event of Default shall have occurred and be continuing, such proceeds (other than business interruption and rent loss insurance proceeds) are to be paid to such Borrower's Operating Account to be applied to Restoration of such Related Property in accordance with the terms hereof. Lender may retain business interruption or rent loss insurance proceeds as a reserve for deposit into the Central Account of such Borrower, for application on a monthly basis to debit service on the Loan until such time as Restoration is complete.

(D) Disbursement for Restoration If such insurance proceeds or Condemnation Proceeds deposited into such Borrower's Casualty and Condemnation Proceeds Account are to be made available to such Borrower in respect of such Restoration, whether pursuant to the terms hereof or as a result of the consent of Administrative Agent, such proceeds and Condemnation Proceeds shall be disbursed by Administrative Agent to, or as directed by, Borrower from time to time during the course of the Restoration, but not more frequently than once a month and in requested amounts of not less than \$100,000 for such lesser amount as shall be required to make monthly payments in respect of such Restoration, upon receipt of evidence satisfactory to Administrative Agent that (i) all materials furnished and work and labor performed in connection with the Restoration have been paid for in full, and (ii) there exist no notices of pendency, mechanic's or subcontractor's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property (other than Permitted Encumbrances). Such Borrower agrees that, if at any time during the Restoration the cost of completing such Restoration, as reasonably determined by Lender, exceeds the undistributed insurance proceeds, such Borrower shall, promptly upon demand by Administrative Agent, through or cause to be deposited the amount of such excess with Administrative Agent, and Administrative Agent shall first disburse such deposit to pay for the costs of such Restoration on the same terms and conditions as the insurance proceeds or Condemnation Proceeds are disbursed. If such Borrower deposits or causes the deposit of such excess with Administrative Agent and, after full completion of the Restoration, any funds remain from the combination of insurance proceeds or Condemnation Proceeds and the funds so deposited with Administrative Agent by such

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Borrower, and if no Event of Default shall have occurred and be continuing, then such remaining funds (together with any interest earned thereon) shall be refunded to such Borrower.

(E) Disbursement Conditions. Administrative Agent may, at Lender's option, condition disbursement of any insurance proceeds or Condemnation Proceeds on Lender's approval of plans and specifications of an independent architect licensed in the state in which such Related Property is located, having at least five (5) years of experience as an architect and reasonably satisfactory to Lender (an "Approved Architect"), any and all material contractors, subcontractors and materialmen engaged in the Restoration and the contracts and subcontracts under which they have been engaged, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of fees as Lender may reasonably require. Administrative Agent shall not be obligated to disburse insurance proceeds or Condemnation Proceeds more frequently than once every calendar month. If insurance proceeds or Condemnation Proceeds are applied to the payment of the Obligations, any such application of proceeds to principal shall not extend or postpone the due date of the monthly payments due under the Note or otherwise under the Loan Documents, or change the amount of such payments. Any amount of insurance proceeds remaining in Administrative Agent's possession after full and final payment and discharge of all Obligations shall be refunded to such Borrower. If such Related Property is sold at foreclosure or if Lender acquires title to such Related Property, Lender shall have all of the right, title and interest of such Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to such Related Property prior to such sale or acquisition, and to any Condemnation Proceeds.

(F) Retainage. In no event shall Administrative Agent be obligated to make disbursements of insurance proceeds or Condemnation Proceeds in excess of an amount equal to the costs actually incurred from time to time for the work in place as part of the Restoration, as certified by the Approved Architect, less a retainage equal to ten percent (10%) of such costs incurred until the Restoration has been completed. The retainage shall in no event be less than the amount actually held back by such Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The retainage shall not be released until the Approved Architect certifies to Lender that the Restoration has been completed substantially in accordance with the provisions of this Section 5.5 and that all material approvals necessary for the re-occupancy and use of such Related Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the retainage.

Section 5.6 Inspection. Such Borrower shall permit any authorized representatives designated by Lender to visit and inspect during normal business hours its Related Property and its business, including its financial and accounting records, and to make copies and take extracts therefrom, and to discuss its affairs, finances and business with its officers and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably requested. In making such visit and inspection, Lender agrees that any such inspection and activities shall be subject to reasonable safety requirements in respect of such Related Property and Lender further agrees to use reasonable efforts to minimize the amount to such Borrower and any tenants of its Related Property. Unless an Event of Default has occurred

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## EXHIBIT C

### LEGAL DESCRIPTION

Property of Cook County Clerk's Office

COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_

COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_



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## EXHIBIT C

### FX CHICAGO LEGAL DESCRIPTION

#### PARCEL 1:

ALL OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON MARCH 3, 1988 AS DOCUMENT 88115532, IN COOK COUNTY, ILLINOIS, AND RE-RECORDED ON SEPTEMBER 30, 1988 AS DOCUMENT 88450205, IN COOK COUNTY, ILLINOIS, AND PART OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 3, 1988, AS DOCUMENT 2661881, IN LAKE COUNTY, ILLINOIS.

#### PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING FOR THE BENEFIT OF PARCEL 1, OVER, ACROSS AND THROUGH THAT PART OF LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND IN THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON SEPTEMBER 10, 1986, AS DOCUMENT 2481053 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES, 48 MINUTES 35 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1, 368.28 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE SOUTH 44 DEGREES 48 MINUTES 35 SECONDS WEST ALONG A NORTHWESTERLY LINE OF SAID LOT 1 AND ALONG SAID NORTHWESTERLY LINE EXTENDED SOUTHWESTERLY, 125.87 FEET TO A CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST ALONG AN EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO A CORNER OF SAID LOT 1, BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST 45.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST, 117.00 FEET TO THE WEST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK UNIT 7; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID WEST LINE, 45 FEET TO A SOUTH LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION; THENCE NORTH 89 DEGREES 48 MINUTES 35 SECONDS EAST ALONG SAID SOUTH LINE, 117.00 FEET TO THE POINT OF

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BEGINNING, IN LAKE COUNTY, ILLINOIS; AND ALSO THAT PART OF SAID LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 12 DEGREES 44 MINUTES 01 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT 1, 20.71 FEET TO A POINT OF CURVATURE IN SAID EASTERLY LINE; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 1, BEING A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 219.19 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 48.49 FEET TO AN INTERSECTION WITH A LINE 66.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1 (THE CHORD OF SAID ARC BEARS SOUTH 19 DEGREES 04 MINUTES 16 SECONDS EAST, 48.39 FEET); THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 398.03 FEET; THENCE SOUTH 49 DEGREES 08 MINUTES 35 SECONDS WEST 70.00 FEET; THENCE SOUTH 23 DEGREES 30 MINUTES 44 SECONDS WEST 15.71 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST, 70.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 20.00 FEET TO AN INTERSECTION WITH A LINE 117.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 45.00 FEET TO A SOUTHEAST CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS, ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG THE EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 44 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE SOUTHEASTERLY LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 125.87 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 89 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 368.28 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS, AS CREATED BY PARKING AND ACCESS CROSS-EASEMENT AGREEMENT RECORDED DECEMBER 4, 1989, AS DOCUMENT 89576281, IN COOK COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS DOCUMENT 2856801, IN LAKE COUNTY, ILLINOIS.

### PARCEL 3:

EASEMENTS FOR INGRESS, EGRESS, ACCESS AND OTHER PURPOSES AS CREATED BY AND MORE FULLY SET FORTH IN THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK RECORDED NOVEMBER 17, 1983, AS DOCUMENT 2251413, IN LAKE COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS PART OF DOCUMENT NUMBER 89576282, IN COOK COUNTY, ILLINOIS, AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 12, 1983 AND RECORDED ON FEBRUARY 24, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2268766 AND AS

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FURTHER AMENDED BY SECOND AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 15, 1983 AND RECORDED ON MAY 30, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2286521 AND AS FURTHER AMENDED BY THIRD AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED NOVEMBER 17, 1989 AND RECORDED ON DECEMBER 4, 1989 AS DOCUMENT 2856803 IN LAKE COUNTY, ILLINOIS.

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## EXHIBIT D

### CONDITIONS

#### Section 5.5 Maintenance of the Property; Alterations; Casualty or Taking.

(A) Maintenance of the Property; Alterations. Such Borrower will maintain its Related Property or cause its Related Property to be maintained in good repair, working order and condition, and will make or cause to be made all appropriate repairs, renewals and replacements thereof. Without limitation of the foregoing, such Borrower and its Related Project Company will operate and maintain its Related Property substantially in accordance with the Operating Budget and the Capital Expenditures in the CapEx/TILC Annual Budget then in effect for such Related Property. In addition, unless Administrative Agent agrees otherwise, such Borrower shall cause all Capital Expenditure items in its CapEx/TILC Annual Budget then in effect to be performed and completed substantially in accordance with such budget. All work required or permitted under this Loan Agreement shall be performed in a good and workmanlike manner and in compliance with all applicable laws. So long as no Event of Default or Cash Trap Condition has occurred and is continuing, such Borrower may, without Administrative Agent's consent (but with prior written notice to Administrative Agent, if possible), perform, or cause to be performed, alterations to its Related Property which (i) are required by applicable law or any Legal Requirement, (ii) are required pursuant to any Tenant Lease, (iii) are required, in the reasonable judgment of such Borrower, in connection with any emergency, (iv) do not constitute a Material Alteration or (v) are in the ordinary course of such Borrower's or the Related Project Company's business; provided, however, that with respect to clause (iv), no such alteration shall result in a default under any Tenant Lease or otherwise adversely affect such Borrower's or its Related Project Company's financial condition or the value or net operating income of its Related Property. Except as set forth in the next preceding sentence, such Borrower shall not perform any Material Alteration, or permit such Material Alteration to be performed, without Administrative Agent's prior written consent, which shall not be unreasonably withheld or delayed; provided, however, that Administrative Agent may, in its sole and absolute discretion, withhold consent to any Material Alteration (other than a Material Alteration pursuant to the next preceding sentence) which Administrative Agent determines is reasonably likely to have a Material Adverse Effect. Upon substantial completion of the Material Alteration, such Borrower shall provide evidence reasonably satisfactory to Administrative Agent that (i) such Material Alteration was constructed in accordance with all applicable laws and substantially in accordance with plans and specifications approved by Administrative Agent (which approval shall not be unreasonably withheld or delayed), (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the Material Alteration have been paid in full and have delivered unconditional releases of lien, and (iii) all material licenses necessary for the use, operation and occupancy of such Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued. Such Borrower shall reimburse Administrative Agent upon demand for all reasonable out-of-pocket costs and expenses (including the reasonable fees of any architect, engineer or other professional engaged by Administrative Agent) incurred by Administrative Agent in reviewing plans and specifications or in making any determinations necessary to implement the provisions of this Section 5.5(A).

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(B) **Casualty or Taking.** In the event of any material casualty or loss or a Taking of such Borrower's Related Property, such Borrower shall give immediate written notice of the same to the insurance carrier and to Administrative Agent and shall promptly commence and diligently prosecute, or cause to be commenced and diligently prosecuted, to completion, in accordance with the terms hereof and all Legal Requirements, the repair and restoration of its Related Property as nearly as possible to the Pre-Existing Condition (a "Restoration"). Such Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance or Condemnation Proceeds, but utilizing any proceeds, awards or Condemnation Proceeds to the extent permitted by Administrative Agent under Section 5.5(C) below. Except as set forth in the last sentence of this Section 5.5(B), such Borrower shall deposit, or cause its Related Project Company to deposit any insurance proceeds, awards or Condemnation Proceeds received by or on behalf of such Borrower or its Related Project Company into the Deposit Account and shall cause all such insurance proceeds, awards or Condemnation Proceeds to be deposited into the Casualty and Condemnation Proceeds Account on or before the next succeeding Payment Date, which insurance proceeds, awards or Condemnation Proceeds shall be held in the Casualty and Condemnation Proceeds Account and disbursed or utilized as set forth in this Section 5.5, subject to Section 7.2(E) of this Loan Agreement. Without limiting the foregoing, such Borrower hereby authorizes and empowers Administrative Agent (a) to make proof of loss, to adjust and compromise or settle any claim under insurance policies, including without limitation business interruption or rent loss insurance, or in connection with a Taking, (b) to appear in and prosecute any action arising from any insurance policies or Taking, (c) to collect and receive all insurance proceeds and Condemnation Proceeds, and (d) to deduct therefrom Administrative Agent's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this Section shall require Administrative Agent to incur any expense or take any action hereunder. Such Borrower further authorizes Administrative Agent, at Administrative Agent's option in its sole but reasonable discretion, (i) to hold the balance of such proceeds in such Borrower's Casualty and Condemnation Proceeds Account to be used to pay for the cost of Restoration of such Related Property or (ii) subject to Section 5.5(C), to apply such proceeds to payment of the Obligations whether or not then due, in any order. Notwithstanding the foregoing, in the event of a casualty or Taking where the loss does not exceed the Restoration Threshold for the Property and the casualty, loss or Taking in Administrative Agent's reasonable judgment, has no Portfolio Material Adverse Effect, such Borrower may settle and adjust such claim and such insurance proceeds or Condemnation Proceeds shall be promptly released to Borrower's Operating Account; provided that (a) no Event of Default has occurred and is continuing and (b) such adjustment and the Restoration are carried out in a commercially reasonable and timely manner. So long as no Event of Default then exists, Administrative Agent agrees that it shall deposit any insurance proceeds, awards or Condemnation Proceeds received by it in connection with such Related Property into such Borrower's Casualty and Condemnation Proceeds Account for application as provided in this Section 5.5. Notwithstanding anything in this Loan Agreement or any other Loan Document to the contrary, during the existence of an Event of Default, Administrative Agent shall have the right, in its sole discretion, to apply any and all insurance proceeds and Condemnation Proceeds to payment of the Obligations whether or not then due, in any order or priority as Administrative Agent chooses.

(C) **Proceeds Application to Restoration.** Notwithstanding any other provision of any Loan Document, Administrative Agent shall not exercise Administrative Agent's option to apply insurance proceeds or Condemnation Proceeds to payment of the Obligations and

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Administrative Agent shall make the proceeds available for Restoration if all of the following conditions are met: (i) no Event of Default or Cash Trap Condition shall have occurred and be continuing; (ii) Administrative Agent reasonably determines that there will be sufficient funds available to complete the Restoration of such Related Property to at least the Pre-Existing Condition and to timely make all payments due under the Loan Documents during the Restoration of the Property; (iii) Administrative Agent reasonably determines that the Minimum DSCR Threshold shall be maintained during and after the Restoration thereof to the Pre-Existing Condition; (iv) Administrative Agent reasonably determines that the Restoration of such Related Property to the Pre-Existing Condition will be completed within eighteen (18) months of the date of loss or casualty to such Related Property or the Taking but in no event later than six (6) months prior to the Maturity Date; (v) one or more Major Leases requiring payment of annual rent equal to at least fifty percent (50%) of the gross revenues from such Related Property during the twelve (12) month period immediately preceding the date of such casualty or Taking are in full force and effect and remain valid and enforceable during and after Restoration of the Property (which Major Leases may be subject to the rent abatement provisions thereof applicable as a result of the casualty, so long as such abatement will end, and full rental payments shall resume, upon completion of the Restoration) and (vi) Administrative Agent is reasonably satisfied that such Related Property can be restored and repaired as nearly as possible to the condition it was in immediately prior to such casualty and in compliance with all applicable zoning, building and other laws and applicable Legal Requirements (the "Pre-Existing Condition"), and, in the case of a Taking, Administrative Agent is reasonably satisfied that the Taking will have no Material Adverse Effect. Notwithstanding anything to the contrary set forth in this Section 5.5, to the extent the insurance proceeds paid or payable with respect to any casualty to such Related Property (either singly or when aggregated with all other then unapplied proceeds with respect to such Related Property) do not exceed the Restoration Threshold and the estimated cost of completing the applicable Restoration shall not be greater than the Restoration Threshold, and provided that no Event of Default shall have occurred and be continuing, such proceeds (other than business interruption and rent loss insurance proceeds) are to be paid to such Borrower's Operating Account to be applied to Restoration of such Related Property in accordance with the terms hereof. Administrative Agent (on behalf of the Lenders) may retain business interruption or rent loss insurance proceeds as a reserve to deposit into the Central Account of such Borrower, for application on a monthly basis to debt service on the Loan until such time as Restoration is complete.

(D) **Disbursement for Restoration.** If such insurance proceeds or Condemnation Proceeds deposited into such Borrower's Casualty and Condemnation Proceeds Account are to be made available to such Borrower in respect of such Restoration, whether pursuant to the terms hereof or as a result of the consent of Administrative Agent, such proceeds and Condemnation Proceeds shall be disbursed by Administrative Agent to, or as directed by, such Borrower from time to time during the course of the Restoration, but not more frequently than once a month and in requested amounts of not less than \$100,000 (or such lesser amount as shall be required to make monthly payments in respect of such Restoration), upon receipt of evidence satisfactory to Administrative Agent that (i) all materials installed and work and labor performed in connection with the Restoration have been paid for in full, and (ii) there exist no notices of pendency, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property (other than Permitted Encumbrances). Such Borrower agrees that, if at any time during the Restoration, the cost of completing such

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Restoration, as reasonably determined by Administrative Agent, exceeds the undisbursed insurance proceeds, such Borrower shall, promptly upon demand by Administrative Agent, deposit or cause to be deposited the amount of such excess with Administrative Agent, and Administrative Agent shall first disburse such deposit to pay for the costs of such Restoration on the same terms and conditions as the insurance proceeds or Condemnation Proceeds are disbursed. If such Borrower deposits or causes the deposit of such excess with Administrative Agent and if, after full completion of the Restoration, any funds remain from the combination of insurance proceeds or Condemnation Proceeds and the funds so deposited with Administrative Agent by such Borrower, and if no Event of Default shall have occurred and be continuing, then such remaining funds (together with any interest earned thereon) shall be refunded to such Borrower.

(E) **Disbursement Conditions.** Administrative Agent may, at Majority Lenders' option, condition disbursement of any insurance proceeds or Condemnation Proceeds on Lenders' approval of plans and specifications of an independent architect licensed in the state in which such Related Property is located, having at least five (5) years of experience as an architect and reasonably satisfactory to Administrative Agent (an "Approved Architect"), and all material contractors, subcontractors and materialmen engaged in the Restoration and the contracts and subcontracts under which they have been engaged, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Administrative Agent may reasonably require. Administrative Agent shall not be obligated to disburse insurance proceeds or Condemnation Proceeds more frequently than once every calendar month. If insurance proceeds or Condemnation Proceeds are applied to the payment of the Obligations, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly payments due under the Note or otherwise under the Loan Documents, or change the amounts of such payments. Any amount of insurance proceeds remaining in Administrative Agent's possession after full and final payment and discharge of all Obligations shall be refunded to such Borrower. If such Related Property is sold at foreclosure or if Administrative Agent (on behalf of the Lenders) acquires title to such Related Property, Administrative Agent shall have all of the right, title and interest of such Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to such Related Property prior to such sale or acquisition, and to any Condemnation Proceeds.

(F) **Retainage.** In no event shall Administrative Agent be obligated to make disbursements of insurance proceeds or Condemnation Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Approved Architect, less a retainage equal to ten percent (10%) of such costs incurred until the Restoration has been completed. The retainage shall in no event be less than the amount actually held back by such Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The retainage shall not be released until the Approved Architect certifies to Administrative Agent that the Restoration has been completed substantially in accordance with the provisions of this Section 5.5 and that all material approvals necessary for the re-occupancy and use of such Related Property have been obtained from all appropriate Governmental Authorities, and Administrative Agent receives evidence reasonably satisfactory

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to Administrative Agent that the costs of the Restoration have been paid in full or will be paid in full out of the retainage.

COOK COUNTY  
 RECORDER OF DEEDS  
 SCANNED BY \_\_\_\_\_

COOK COUNTY  
 RECORDER OF DEEDS  
 SCANNED BY \_\_\_\_\_

Property Cook County Clerk's Office

ny-893763

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## Legal Description

### PARCEL 1:

ALL OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON MARCH 3, 1988 AS DOCUMENT 88115532, IN COOK COUNTY, ILLINOIS, AND RE RECORDED ON SEPTEMBER 30, 1988 AS DOCUMENT 88450205, IN COOK COUNTY, ILLINOIS, AND PART OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 3, 1988, AS DOCUMENT 2661881, IN LAKE COUNTY, ILLINOIS.

### PARCEL 2:

NON EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING FOR THE BENEFIT OF PARCEL 1, OVER, ACROSS AND THROUGH THAT PART OF LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND IN THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON SEPTEMBER 10, 1986, AS DOCUMENT 2481053 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES, 48 MINUTES 35 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1; 368.28 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE SOUTH 44 DEGREES 48 MINUTES 35 SECONDS WEST ALONG A NORTHWESTERLY LINE OF SAID LOT 1 AND ALONG SAID NORTHWESTERLY LINE EXTENDED SOUTHWESTERLY, 125.87 FEET TO A CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST ALONG AN EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO A CORNER OF SAID LOT 1, BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST 45.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST, 117.00 FEET TO THE WEST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK UNIT 7; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID WEST LINE, 45 FEET TO A SOUTH LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION; THENCE NORTH 89 DEGREES 48 MINUTES 35 SECONDS EAST ALONG SAID SOUTH LINE, 117.00 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS; AND ALSO THAT PART OF SAID LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7, DESCRIBED AS FOLLOWS: BEGINNING

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AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 12 DEGREES 44 MINUTES 01 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT 1; 20.71 FEET TO A POINT OF CURVATURE IN SAID EASTERLY LINE; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 1, BEING A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 219.19 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 48.49 FEET TO AN INTERSECTION WITH A LINE 66.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1 (THE CHORD OF SAID ARC BEARS SOUTH 19 DEGREES 04 MINUTES 16 SECONDS EAST, 48.39 FEET); THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 398.03 FEET; THENCE SOUTH 49 DEGREES 08 MINUTES 35 SECONDS WEST 70.00 FEET; THENCE SOUTH 23 DEGREES 30 MINUTES 44 SECONDS WEST 15.71 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST, 70.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 20.00 FEET TO AN INTERSECTION WITH A LINE 117.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 45.00 FEET TO A SOUTHEAST CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS, ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG THE EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 44 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE SOUTHEASTERLY LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 125.87 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 89 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 368.28 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS, AS CREATED BY PARKING AND ACCESS CROSS EASEMENT AGREEMENT RECORDED DECEMBER 4, 1989, AS DOCUMENT 89576281, IN COOK COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS DOCUMENT 2856801, IN LAKE COUNTY, ILLINOIS.

### PARCEL 3:

EASEMENTS FOR INGRESS, EGRESS, ACCESS AND OTHER PURPOSES AS CREATED BY AND MORE FULLY SET FORTH IN THE DECLARATION OF EASEMENTS COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK RECORDED NOVEMBER 17, 1983, AS DOCUMENT 2251413, IN LAKE COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS PART OF DOCUMENT NUMBER 89576282, IN COOK COUNTY, ILLINOIS, AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 12, 1983 AND RECORDED ON FEBRUARY 24, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2268766 AND AS FURTHER AMENDED BY SECOND AMENDMENT TO DECLARATION OF

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EASEMENTS COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 15, 1983 AND RECORDED ON MAY 30, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2286521 AND AS FURTHER AMENDED BY THIRD AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED NOVEMBER 17, 1989 AND RECORDED ON DECEMBER 4, 1989 AS DOCUMENT 2856803 IN LAKE COUNTY, ILLINOIS.

1100 West Lake Cook Road, Buffalo Grove, Illinois, United States of America.

PIN:

03-05-100-020- Affects Cook County land

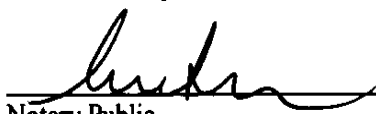
15-32-308-013- Affects Lake County Land

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STATE OF NEW YORK §  
§  
COUNTY OF NEW YORK §

On the 15th day of March in the year 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared Jill A. Russo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within instrument and acknowledged to me that he/she executed the same in his/her capacity as Vice President of FX Chicago Funding Company, Inc., a Delaware corporation, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, being authorized to do so, executed the instrument.

Marie McAdory  
Notary Public, State of New York  
No. 01MC6212564  
Qualified in Kings County  
Commission Expires October 13, 2013

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

Property of Cook County Clerk's Office