



Doc#: 1117231078 Fee: \$112.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/21/2011 12:15 PM Pg: 1 of 39

First American Title Order # NCS-488091 7 of 9 AP

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption

Report Mortgage Fraud  
800-532-8765

The property identified as: PIN: 17-10-318-061-0000

Address:

Street: 345 East Wacker Drive

Street line 2:

City: Chicago

State: IL

ZIP Code: 60601

Lender: The Northwestern Mutual Life Insurance Company

Borrower: Lakeshore Parcel A Realty Holding Company LLC

Loan / Mortgage Amount: \$99,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: E54C7846-E50C-4CA6-B7A3-D3739FA14DF5

Execution date: 06/15/2011

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**Illinois**

**Loan No. 338871**

**RECORDING REQUESTED BY**

\_\_\_\_\_  
WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Sheila Lawton

\_\_\_\_\_  
**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

This instrument was prepared by Judith L. Perkins, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

**MORTGAGE and SECURITY AGREEMENT**  
**CONSTRUCTION AND PERMANENT LOAN**

THIS MORTGAGE and SECURITY AGREEMENT is made as of the 15<sup>th</sup> day of June, 2011 between LAKESHORE PARCEL A REALTY HOLDING COMPANY LLC, a Delaware limited liability company, whose mailing address is Lakeshore A LLC, 225 North Columbus Drive, Suite 100, Chicago, Illinois 60601, herein (whether one or more in number) called "Mortgagor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Mortgagee":

WITNESSETH, That Mortgagor, in consideration of the indebtedness herein mentioned, does hereby grant, convey, mortgage and warrant unto Mortgagee forever, with power of sale and right of entry and possession, the following property (herein referred to as the "Property"):

- A. The land in the County of Cook, State of Illinois, described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges;

First American Title Order #



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- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description owned by Mortgagor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto;
- D. Mortgagor's interest in all articles of personal property of every kind and nature whatsoever, including, but not limited to all carpeting, draperies, ranges, microwave ovens, refrigerators, dishwashers, easily removable equipment and fixtures, all furniture, dehumidification equipment, etc., now or hereafter located upon the Land or in or on the buildings and improvements and now owned or leased or hereafter acquired or leased by Mortgagor; and
- E. All building and construction materials, fixtures, equipment and tangible personal property of every kind and nature whatsoever, delivered to and stored on the Property and intended to be incorporated into the buildings and improvements thereon and owned by Mortgagor.

Mortgagor agrees not to sell, transfer, assign or remove anything described in B, C, D and E above now or hereafter located on the Land without prior written consent from Mortgagee (which consent shall not be unreasonably withheld or delayed) unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value (unless obsolete, in which event no substitution or replacement shall be necessary).

Without limiting the foregoing grants, Mortgagor hereby pledges to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's present and hereafter acquired right, title and interest in and to the Property and any and all

- F. cash and other funds now or at any time hereafter deposited by or for Mortgagor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with

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Mortgagee or a third party, or otherwise deposited with, or in the possession of, Mortgagee pursuant to the Loan Documents; and

- G. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- H. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Mortgagor; and
- I. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Mortgagor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Mortgagor authorizes Mortgagee to file a financing statement describing such Property and, at Mortgagee's request, agrees to join with Mortgagee in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Mortgagee's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code, as further provided below.

TO HAVE AND TO HOLD the same unto Mortgagee for the purpose of securing:

- (a) Payment to the order of Mortgagee of the indebtedness evidenced by a promissory note of even date herewith (and any restatement, extension or renewal thereof and any amendment thereto) executed by Mortgagor for the principal sum of NINETY-NINE MILLION DOLLARS, with final maturity no later than July 1, 2018 (the "Maturity Date") and with interest as therein expressed (which promissory note, as such instrument may be amended, restated, renewed and extended, is hereinafter referred to as the "Note"), it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of the Funding Agreement of even date herewith or other written contract; and

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(b) Payment of all sums that may become due Mortgagee under the provisions of, and the performance of each agreement of Mortgagor contained in, the Loan Documents.

"Loan Documents" means this instrument, the Note, that certain Loan Application dated May 20, 2011 from Mortgagor to Mortgagee and that certain acceptance letter issued by Mortgagee dated May 26, 2011 (together, the "Commitment"), that certain Absolute Assignment of Leases and Rents of even date herewith between Mortgagor and Mortgagee (the "Absolute Assignment"), that certain Certification of Borrower of even date herewith, that certain Funding Agreement of even date herewith, that certain Limited Liability Company Supplement dated contemporaneously herewith, any other supplements and authorizations required by Mortgagee and any other agreement entered into or document executed by Mortgagor and delivered to Mortgagee in connection with the indebtedness evidenced by the Note, except for that certain Environmental Indemnity Agreement of even date herewith given by Mortgagor to Mortgagee (the "Environmental Indemnity Agreement"), as any of the foregoing may be amended from time to time.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS AND AGREES.

**Payment of Debt.** Mortgagor agrees to pay the indebtedness hereby secured (the "Indebtedness") promptly and in full compliance with the terms of the Loan Documents.

**Ownership.** Mortgagor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Mortgagee. Mortgagor does hereby forever warrant and shall forever defend the title and possession thereof against the claims of any and all persons whomsoever.

**Maintenance of Property and Compliance with Laws.** Mortgagor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any intentional waste; to comply in all material respects with all laws, rules and regulations affecting the Property; and to permit Mortgagee to enter at all reasonable times on not less than 48 hours notice (except for an emergency) for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Mortgagee determines to be necessary in order to monitor Mortgagor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property. Notwithstanding the language contained above, Mortgagee will make reasonable efforts to combine and limit the number of tests necessary to monitor Mortgagor's compliance with laws and regulations so as to minimize the number of interferences at the Property per year with tenants and the overall operation of the Property.

**Tenants Using Chlorinated Solvents.** Mortgagor agrees not to lease any of the Property, without the prior written consent of Mortgagee, to (i) dry cleaning operations that perform



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dry cleaning on site with chlorinated solvents or (ii) any other commercial tenants that use chlorinated solvents in the operation of their businesses.

**Business Restriction Representation and Warranty.** Mortgagor represents and warrants that (A) each of Mortgagor, all Persons owning (directly or indirectly), a 10% or greater ownership interest in Mortgagor, and all Persons executing any separate guaranty or indemnity agreement in favor of Mortgagee in connection with the Indebtedness; and (B) to Mortgagor's knowledge, each Person owning an indirect ownership interest in Mortgagor (provided, however, that the representation and warranty shall not apply to holders of common stock or other securities of a corporation or other entity that is traded on a US national security exchange or a US national over-the-counter securities market, or holders of units of participation in a commingled pension fund): (i) is not, and shall not become, a Person with whom Mortgagee is restricted from doing business with under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) is not and shall not become, a Person with whom Mortgagee is restricted from doing business with under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (iii) is not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction with such Persons described in (i) and (ii) above.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**Insurance.** Mortgagor agrees to keep the Property insured for the protection of Mortgagee and Mortgagee's wholly owned subsidiaries and agents in such manner, in such amounts and in such companies as Mortgagee may from time to time reasonably approve, and, further, Mortgagor agrees to use its commercially reasonable best efforts to keep the policies therefor, properly endorsed, on deposit with Mortgagee, or at Mortgagee's option, to keep certificates of insurance (Acord 28 or 27 for all property insurance and Acord 25 for all liability insurance) or other evidence of insurance evidencing all insurance coverages required hereunder on deposit with Mortgagee, with Mortgagor agreeing to use its commercially reasonable best efforts to assure that such evidence shall reflect at least thirty (30) days notice of cancellation to Mortgagee and shall list Mortgagee as the certificate holder or as a similar addition of interest; if Mortgagor requests Mortgagee to accept a different form of evidence of insurance, Mortgagee shall not unreasonably withhold its consent, provided, Mortgagor uses its commercially reasonable best efforts to obtain a copy of a standard mortgagee endorsement in favor of Mortgagee

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stating that the insurer shall provide at least thirty (30) days notice of cancellation to Mortgagee accompanies such evidence; that insurance loss proceeds from all property insurance policies, whether or not required by Mortgagee (less expenses of collection) shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Mortgagee elects to apply the insurance loss proceeds on the Indebtedness, no prepayment fee shall be due thereon.

Notwithstanding the foregoing provision, Mortgagee agrees that if the insurance loss proceeds are less than \$300,000.00 and there is then no Monetary Default and no Non-Monetary Default (other than a Non-Monetary Default resulting from the occurrence of the casualty), the insurance loss proceeds (less expenses of collection) shall be applied to the restoration of the Property to its condition prior to the casualty, and, if the insurance loss proceeds are at least \$300,000.00 but less than the unpaid principal balance of the Note, and Mortgagee shall be reasonably satisfied that the restoration will be completed such that all partial (or final) certificates of occupancy (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), necessary to permit occupancy of all Residential Units (as defined in the section entitled "**Notice of Default**") and the Retail Tenant Space (as defined in the section entitled "**Notice of Default**") portion of the Improvements, can be issued on or before the date which is six (6) months prior to the maturity date of the Indebtedness, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty (or its functional equivalent), subject to satisfaction of the following conditions:

- (a) No Event of Default shall have occurred and remain continuing at the time that the insurance proceeds are required for restoration.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds to Mortgagor as a result of any act, neglect, use or occupancy of the Property by Mortgagor or any tenant of the Property.
- (c) Mortgagee shall be satisfied in its reasonable judgment that all insurance loss proceeds so held, together with supplemental funds to be made available by Mortgagor, shall be sufficient to complete the restoration of the Property from the casualty. Any insurance loss proceeds remaining after the completion of the satisfactory restoration may, at the option of Mortgagee, be applied on the Indebtedness (without any prepayment fee applicable to such payment of the remaining insurance loss proceeds), whether or not due, or be released to Mortgagor.

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- (d) If required by Mortgagee, Mortgagee shall be furnished a satisfactory report addressed to Mortgagee from an environmental engineer or other qualified professional reasonably satisfactory to Mortgagee to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) (I) Mortgagee shall hold all insurance proceeds for the benefit of Mortgagor and release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall be no Monetary Default which shall remain continuing (as hereinafter defined) and no Non-Monetary Default with respect to which Mortgagee shall have given Mortgagor notice pursuant to the **Notice of Default** provision herein; provided, however, that in the event the amount of the casualty insurance proceeds is equal to or less than \$2,000,000.00 (and reasonably determined by Mortgagee to be in an amount sufficient to cover the restoration of the Property), then and in such event Mortgagee shall allow Mortgagor to retain and disburse the casualty insurance proceeds as the restoration of the Property progresses in a manner that will result in a lien-free completion of the restoration. If a Monetary Default shall occur or Mortgagee shall give Mortgagor notice of a Non-Monetary Default, Mortgagee shall have no further obligation to release insurance loss proceeds hereunder unless such default is cured within the cure period set forth in the **Notice of Default** provision contained herein; provided, however, that in the event Mortgagor is itself administering the funds, any and all remaining insurance loss funds (not property applied to the restoration of the Property) shall be delivered to Mortgagee for Mortgagee to hold and thereafter administer following the curing of any default. If the estimated cost of restoration exceeds \$2,000,000.00, (i) the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the restoration, and (ii) Mortgagee shall receive an administration fee equal to one-half of one percent (0.5%) of the cost of restoration.
- (II) Notwithstanding the language in (e)(I) above, if the casualty insurance proceeds are in excess of \$2,000,000.00 then and in such event Mortgagee shall hold all insurance proceeds for the benefit of Mortgagor and release casualty insurance proceeds as restoration of the Property progresses, in keeping with the language in (e)(I) above.
- (III) Notwithstanding the language in (e)(I) above, if the casualty insurance proceeds are equal to or less than \$2,000,000.00, and Mortgagee makes the initial determination to allow Mortgagor to administer the funds, Mortgagee may, in fact, demand the return of the funds to Mortgagee for



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Mortgagee to further administer if Mortgagee reasonably determines that the funds are not being properly handled, not being properly applied to the restoration of the Property or that materialmen's or other liens have been filed in connection with such restoration work (to the extent the same are not bonded over or insured over to the reasonable satisfaction of Mortgagee).

- (f) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring Mortgagee's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Mortgagee.
- (g) Mortgagor shall pay all costs and expenses reasonably incurred by Mortgagee, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed reasonably necessary by Mortgagee.
- (h) All reciprocal easement and operating agreements (whether now existing or hereinafter entered into) benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Mortgagee shall be reasonably satisfied that Projected Debt Service Coverage of at least 1.10x will be produced from the leasing of not more than 429 of apartment units to former tenants or new tenants with leases reasonably satisfactory to Mortgagee for terms of at least one (1) year to commence not later than six (6) months following completion of such restoration ("Approved Leases").

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over 30 years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases (including former leases not terminated as a result

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of the casualty) for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
  - (i) a replacement reserve for capital improvements, unit remodels and structural items and future tenant improvements, leasing commissions for the Retail Tenant Space, based on not less than \$360,550.00 per annum;
  - (ii) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 86.0% of the gross leasable area in the Property;
  - (iii) the amount, if any, by which the actual management fee is less than 2.50% of gross revenue during such fiscal period;
  - (iv) the amount, if any, by which the actual real estate taxes are less than \$1,716,600.00 per annum; and
  - (v) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$3,068,850.00 per annum.

All projections referenced above shall be calculated in a manner satisfactory to Mortgagee.

Notwithstanding the foregoing, if a casualty renders more than 50% of the rentable square footage in the Property untenable, and Mortgagee elects to apply the insurance loss proceeds to repayment of the Indebtedness, Mortgagor shall have the right to prepay the Indebtedness in full without a prepayment fee no later than 30 days following its receipt of the insurance proceeds payable with respect to the casualty.

Interest on insurance proceeds held by Mortgagee shall accrue to the benefit of Mortgagor. The average daily balance of the funds so held by Mortgagee during a month (the "Applicable Month") shall be credited with interest on the first day of the following month at a rate equal to the 30-Day United States Treasury Bill Yield. As used herein, the "30-Day United States Treasury Bill Yield" means the "Ask Yield" on the first business day of the Applicable Month for United States Treasury bills maturing the closest to thirty (30) days from the first day of the Applicable Month as reported in The Wall Street Journal or similar yield as reasonably determined by Mortgagee.

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**Blanket Insurance Policies.** Mortgagor's insurance requirements under this agreement may be satisfied by maintaining either individual policies covering only the Property, or blanket insurance policies. Any blanket property insurance policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate policy insuring only the Property in compliance with the provisions hereof.

**Condemnation.** Mortgagor hereby assigns to Mortgagee (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds are less than the unpaid principal balance of the Note and if Mortgagee shall be reasonably satisfied that the restoration will be completed on or before the date which is six (6) months prior to the Maturity Date of the term of the Note, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "**Insurance**" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional utility and economic utility (after taking into account any reduction in the principal amount of the Note resulting from the application of any Condemnation Proceeds to the repayment of the principal of the Note) prior to the Taking be reasonably possible.

Notwithstanding the foregoing, if a Taking renders more than 50% of the rentable square footage in the Property untenable, and Mortgagee elects to apply the Condemnation Proceeds to repayment of the Note, Mortgagor shall have the right to prepay the Note in full without a prepayment fee not later than 30 days following its receipt of the Condemnation Proceeds.

Any portion of such award and proceeds not applied to restoration shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents.

**Taxes and Special Assessments.** Mortgagor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Mortgagee in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Mortgagee within 30 days after Mortgagee shall have given a written request to Mortgagor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee.

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**Personal Property.** With respect to the Personal Property, Mortgagor hereby represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever (other than capital leases and financing arrangements entered into in the ordinary course of business). Mortgagor shall notify Mortgagee of, and shall indemnify and defend Mortgagee and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Mortgagor shall not sell, convey or in any manner transfer the Personal Property without the prior consent of Mortgagee (which consent shall not be unreasonably withheld or delayed), except as otherwise specifically provided herein.

(c) Mortgagor is a limited liability company organized under the laws of the State of Delaware. Until the Indebtedness is paid in full, Mortgagor (i) shall not change its legal name without providing Mortgagee with thirty (30) days prior written notice; and (ii) shall not change its state of organization and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.

(d) At the request of Mortgagee, Mortgagor shall join Mortgagee in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and Mortgagor shall pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable. Mortgagor shall also, at Mortgagor's expense, take any and all other action reasonably requested by Mortgagee to perfect Mortgagee's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Mortgagor's commercially reasonable efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Mortgagee's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

**Other Liens.** Mortgagor agrees to keep the Property and any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby, (ii) assignment or pledge by Mortgagor of its revocable license to collect, use and enjoy rents and profits from the Property, or (iii) granting or permitting of a security interest in or other encumbrance on the direct or indirect ownership interests in Mortgagor, shall constitute a default under the terms of this instrument; except that upon written notice to Mortgagee, Mortgagor may proceed to



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contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided (i) Mortgagor shall post such security as may be required in the proceeding in order to stay such enforcement, and (ii) if no security is required but the amount at issue exceeds \$2,000,000.00, Mortgagor shall post such security with Mortgagee as may be reasonably requested by Mortgagee.

**Indemnification, Duty to Defend and Costs, Fees and Expenses.** In addition to any other indemnities contained in the Loan Documents but expressly excluding the gross negligence of Mortgagee, Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, demands, damages, costs and expenses (including, but not limited to, costs of title evidence and endorsements to Mortgagee's title insurance policy with respect to the Property and reasonable attorney fees and other costs of defense) which may be imposed upon, incurred by or asserted against Mortgagee, whether or not any legal proceeding is commenced with regard thereto, in connection with: (i) the enforcement of any of Mortgagee's rights or powers under the Loan Documents; (ii) the protection of Mortgagee's interest in the Property; or (iii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or on any sidewalk, curb, parking area, space or street located adjacent thereto. If any claim or demand is made or asserted against Mortgagee by reason of any event as to which Mortgagor is obligated to indemnify or defend Mortgagee, then, upon demand by Mortgagee, Mortgagor, at Mortgagor's sole cost and expense, shall defend such claim, action or proceeding in Mortgagee's name, if necessary, by such attorneys as Mortgagee shall reasonably approve (it being agreed that attorneys designated by insurance companies shall not require approval). Notwithstanding the foregoing, Mortgagee may, in Mortgagee's sole discretion, engage its own attorneys to defend it or assist in its defense and Mortgagor shall pay the reasonable fees and disbursements of such attorneys.

**Failure of Mortgagor to Act.** If Mortgagor fails to make any payment or do any act as herein provided, Mortgagee may, without obligation to do so, after such failure becomes an Event of Default, without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof: (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended and all losses, liabilities, claims, damages, costs and expenses required to be reimbursed by Mortgagor to Mortgagee hereunder shall be payable by Mortgagor within ten (10) business days following demand with interest from date of expenditure or demand, as the case may be, at the Default Rate (as defined in the Note) if not paid within such ten (10) business day period. All sums so expended or demanded by Mortgagee and the interest



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thereon shall be included in the Indebtedness and secured by the lien of this instrument. In no event shall the maximum amount secured hereby exceed two hundred percent (200%) of the principal amount of the Note.

In furtherance and not in limitation of the preceding paragraph, unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this instrument, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this instrument. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The costs of the insurance may be more than the cost of the insurance Mortgagor may be able to obtain on its own.

**Event of Default.** Any default by Mortgagor in making any required payment of the Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Loan Documents shall, except as provided in the three immediately succeeding paragraphs, constitute an "Event of Default".

**Notice of Default.** A default in any provision, covenant, agreement or warranty contained in the Note or in any other Loan Document occurring prior to Breakeven shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such default to Mortgagor and Mortgagor shall not have cured such default within ten (10) days after the date on which Mortgagee shall have given such notice of default to Mortgagor; provided, however, in the event the default is non-monetary in nature and not capable of being cured within a ten (10) day period and, further, Mortgagor is diligently pursuing a remedy therefor, Mortgagee may, in its reasonable discretion, extend the ten (10) day period by up to an additional twenty (20) day extension of time (or for a longer extension of time if the Non-Monetary Default is not curable within the previously allowed time, for so long as: (i) Mortgagor continues to diligently undertake and pursue the curing of such Non-Monetary Default; and (ii) at the written request of Mortgagee, Mortgagor deposits an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Mortgagee); it being understood that during the continuation of such default, Mortgagee shall not be obligated to make any additional advances of principal of the Note. Upon the failure of Mortgagor to cure any such default within such ten (10) day period (subject to any extension granted by Mortgagee, in its reasonable discretion, pursuant to the terms hereof), Mortgagee, in addition to all other rights and remedies provided it, may enter upon and take possession of the Property

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for the purpose of completing the construction of the improvements being financed by the Indebtedness.

A default in any payment required in the Note or any other Loan Document occurring on or after Breakeven, whether or not payable to Mortgagee, (a "Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Monetary Default to Mortgagor and Mortgagor shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note, from the date of default to the date of cure on amounts owed to Mortgagee) within five (5) business days after the date on which Mortgagee shall have given such notice to Mortgagor.

Any other default under the Note or under any other Loan Document occurring on or after Breakeven (a "Non-Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given written notice of such Non-Monetary Default to Mortgagor and Mortgagor shall not have cured such Non-Monetary Default within 30 days after the date on which Mortgagee shall have given such notice of default to Mortgagor (or, if the Non-Monetary Default is not curable within such 30-day period, Mortgagor shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and if Mortgagee so requests in writing, deposited an amount sufficient to cure such Non-Monetary Default in an escrow reasonably account satisfactory to Mortgagee).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note).

"Breakeven" means the date following Project Final Completion Other Than Retail Tenant Space (plus any portion of the Retail Tenant Space which has achieved Project Final Completion) when, for each of 3 consecutive months, (i) the Property (other than any portion of the Retail Tenant Space that has not yet achieved Project Final Completion) shall have been 81.4% leased and (ii) Debt Service Coverage shall have equaled or exceeded 1.00 as demonstrated by evidence reasonably satisfactory to Mortgagee.

"Improvements" means all improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected, including but not limited to the Residential Units and the Retail Tenant Space.

"Residential Units" or "Residential Improvements" means the Improvements with the exception of the Retail Tenant Space.

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"Retail Tenant Space" means the approximately 18,800 square feet of gross leasable retail tenant space within the Improvements exclusively intended for occupancy by retail tenants.

"Project Final Completion Other Than Retail Tenant Space" means (i) the satisfactory lien-free completion (or, if there are liens, the same are bonded over or insured over to the reasonable satisfaction of Mortgagee) of all Improvements (with the exception of the Retail Tenant Space) in substantial accordance with the drawings and specifications (including change orders) approved by Mortgagee (including punchlist items), as evidenced by (a) affidavits of completion by the general contractor working on the Improvements (other than Retail Tenant Space), (b) final lien waivers by all parties working on, or supplying materials for, the Improvements other than Retail Tenant Space finishes (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), (c) certificates of completion by the architect of record (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), and (d) an endorsement to Mortgagee's policy of title insurance; and (ii) the receipt by Mortgagee of all partial (or final) certificates of occupancy necessary for occupancy of all of the Improvements other than the Retail Tenant Space (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), an as-built survey and a final set of drawings showing actual changes made during construction, and the consent of each surety which shall have issued a performance and payment bond for the general contractor (i.e., for the work to be performed by the general contractor) for the benefit of Mortgagee with respect to the Residential Improvements.

"Project Final Completion" means (i) the satisfactory lien-free completion (or, if there are liens, the same are bonded over or insured over to the reasonable satisfaction of Mortgagee) of all improvements in substantial accordance with the drawings and specifications (including change orders) approved by Mortgagee (including punchlist items), as evidenced by (a) affidavits of completion by the general contractor working on the improvements, (b) final lien waivers by all parties working on, or supplying materials for, the improvements (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), (c) certificates of completion by the architect of record (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), and (d) a final endorsement to Mortgagee's policy of title insurance, and (ii) the receipt by Mortgagee of all partial (or final) certificates of occupancy necessary for occupancy of all of the improvements (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), a partial (or final) certificate of occupancy for the Retail Tenant Space portion of the Improvements (or other evidence satisfactory to Mortgagee, in Mortgagee's reasonable discretion), an as-built survey and a final set of drawings showing actual changes made during construction.

"Debt Service Coverage" means a number calculated by dividing Net Income Available for Debt Service for a fiscal period by the debt service during the same fiscal

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period under all indebtedness (including the Indebtedness) secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the actual debt service due under all indebtedness secured by any portion of the Property based upon an amortization schedule which is the shorter of the actual amortization schedule or 30 years (whether or not amortization is actually required) and, if an accrual loan, as if interest and principal on such indebtedness were due monthly.

"Net Income Available for Debt Service" means net income (prior to giving effect to any capital gains or losses and any extraordinary items) from the Property, determined in accordance with generally accepted accounting principles ("GAAP"), for a fiscal period, plus (to the extent deducted in determining net income from the Property):

- A) interest on indebtedness secured by any portion of the Property for such fiscal period;
- B) depreciation, if any, of fixed assets at or constituting the Property for such fiscal period;
- C) amortization, if any, of standard tenant finish expenditures at the Property (but specifically **excluding** the amortization of tenant finish expenditures by Mortgagor in excess of \$100.00 per square foot for new retail tenants and \$50.00 per square foot for renewal retail tenants (i.e., above standard tenant finishes)); and
- D) amortization of costs incurred in connection with any indebtedness secured by any portion of the Property and leasing commissions which have been prepaid;

less:

- E) an amount (positive or negative) to offset any rent averaging adjustment resulting from adherence to FASB-13;
- F) the amortization of free rent and any other tenant concessions and promotional items not deducted in the calculation of net income above;
- G) a replacement reserve for capital improvements, unit remodels and structural items including future tenant improvements and leasing commissions for the Retail Tenant Space, based on not less than \$360,550.00 per annum;



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- H) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 93.8% of the gross leasable area in the Property;
- I) the amount, if any, by which the actual management fee is less than 2.50% of gross revenue during such fiscal period;
- J) the amount, if any, by which the actual real estate taxes are less than \$1,716,600.00 per annum; and
- K) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$3,068,850.00 per annum.

All adjustments to net income referenced above shall be calculated in a manner reasonably satisfactory to Mortgagee.

**Appointment of Receiver.** Upon the occurrence of an Event of Default and the commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Mortgagee (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and or whether the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

**Foreclosure.** Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Mortgagee, become immediately due and payable for all purposes without any notice or demand, except as required by law, (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Mortgagee may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Mortgagee may, to the extent permitted by applicable law, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may complete construction of the Improvements and manage, rent or lease the Property or any portion thereof upon such terms as Mortgagee may deem expedient, and collect,



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receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Mortgagee is hereby further authorized and empowered, to the extent permitted by applicable law, as agent or attorney in fact, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Mortgagee may think best), and all the right, title and interest of Mortgagor therein, by advertisement or in any manner provided by applicable law, (MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE, TO THE EXTENT PERMITTED BY APPLICABLE LAW), and to issue, execute and deliver a deed of conveyance, all as then may be provided by applicable law; and Mortgagee, to the extent permitted by applicable law, shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, apply such proceeds to the Indebtedness, including all sums advanced or expended by Mortgagee or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Mortgagor, the heirs, successors and assigns of Mortgagor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Mortgagor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

**Waiver of Redemption.** Mortgagor releases and waives all rights to retain possession of the Property after any default in payment or breach of any of the obligations, covenants, undertakings or agreements herein or in the note and after the expiration of any applicable cure period; Mortgagor hereby releases and waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and, if Mortgagor is a trust, on behalf of the beneficiary of Mortgagor, and each and every person, except decree and judgment creditors of the Mortgagor, including any and all persons acquiring any interest in or title to the Property or any beneficial interest in Mortgagor. Mortgagor shall not, and will not, apply for or avail itself of any appraisement, valuation, stay, extension or exemption law, or so-called "Moratorium Laws" now existing or hereinafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the Property, and any estates comprising the Property, marshalled upon any foreclosure of the lien hereon and agree that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. If Mortgagor is a trust, no provision of this paragraph or of this Mortgage shall prevent the beneficiary of Mortgagor from bidding at any foreclosure sale of the Property.

**Prohibition on Transfer/One-Time Transfer.** The present ownership and management of the Property is a material consideration to Mortgagee in making the Indebtedness secured by this instrument, and Mortgagor shall not (a) convey title to all or any part of

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the Property, (b) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (c) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Mortgagor. Any such unpermitted conveyance, entering into a Contract to Convey or Change in the Proportionate Ownership of Mortgagor shall constitute a default under the terms of this instrument.

For purposes of this Condition, a "Change in the Proportionate Ownership" means: the existence of a lien on, the direct or indirect ownership interest in Mortgagor, with the exception of the Lakeshore Pledge; or any transfer or series of transfers of any direct or indirect ownership interest in Mortgagor if, after any such transfer (or series of transfers), one of the following is no longer true:

- (i) a JPMorgan Entity (as defined below) (so long as such JPMorgan Entity has and maintains a net worth of at least \$500,000,000.00, as determined in accordance with GAAP (the "JPMorgan Entity Net Worth Test")) owns, directly or indirectly, a minimum of a fifty one percent (51%) controlling ownership interest in Mortgagor; or
- (ii) SPF (as defined below): (a) is and continues to be controlled by JPMorgan; and (b) owns, directly or indirectly, a minimum of a fifty one percent (51%) controlling ownership interest in Mortgagor

Notwithstanding the language contained in (i) above, relative to a JPMorgan Entity, so long as the JPMorgan Entity (with the exception of SPF), continues to qualify as a JPMorgan Entity, continues to own a 51% and controlling interest in Mortgagor and maintains its JPMorgan Entity Net Worth Test (sometimes herein referenced as the "Qualifying JPMorgan Entity"), then and in such event, the following shall be allowed:

- (A) Internal JPMorgan Transfers. internal transfers of ownership interests in the JPMorgan Entity shall be permitted amongst its members or partners, without Mortgagee's prior written approval.
- (B) Transfers to Lakeshore A LLC. transfers from the JPMorgan Entity to Lakeshore A LLC shall be permitted; provided, however, that Mortgagor, JPMorgan Entity and Lakeshore A LLC must timely notify Mortgagee of such transfer(s).

Notwithstanding the language contained in (ii) above relative to SPF, so long as SPF, continues to qualify as a JPMorgan Entity; and continues to own a 51% and controlling interest in Mortgagor, then and in such event, a transfer(s) from SPF to Lakeshore A LLC

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shall be permitted; provided, however, that Mortgagor, SPF and Lakeshore A LLC must timely notify Mortgagee of such transfer(s).

Notwithstanding the language contained in (i) or (ii) above, in the event either of the following occurs (or is contemplated to occur):

- (X) A transfer to Lakeshore A LLC is made, in whole or in part, of the interest in Mortgagor held by SPF or the Qualifying JPMorgan Entity, such that any remaining interest in Mortgagor held by SPF or the Qualifying JPMorgan Entity falls below the mandated 51% and controlling interest; or
- (Y) SPF or the Qualifying JPMorgan Entity desires to transfer all or a portion of its/their interest to Lakeshore A LLC, and such transfer would have the effect of making the ownership interest in Mortgagor held by SPF and/or the Qualifying JPMorgan Entity fall below the mandated 51% and controlling interest,

If (X) or (Y) above occurs or is contemplated, then and in such event, such action may only be allowed if the following is true and continues to be true following the transfer of the ownership interest(s) by SPF and/or the Qualifying JPMorgan Entity to Lakeshore A LLC:

- (AA) Lakeshore A LLC (or any owners thereof), at the time of the contemplated transfer has (and continues to maintain) a net worth (in the aggregate, including the net worth (as determined in accordance with GAAP) of any new investment partners, or any owner thereof) of at least \$500,000,000.00 and liquidity reasonably acceptable to Mortgagee (the "\$500 Million Net Worth Test"), all as determined in accordance with GAAP; and
- (BB) Mortgagor, Lakeshore A LLC, and SPF or the Qualifying JPMorgan Entity must obtain the prior written consent of Mortgagee, which consent will not be unreasonably withheld or delayed.

"JPMorgan Entity" means any entity directly or indirectly Controlled by JPMorgan (including, without limitation, SPF) and any entity directly or indirectly Controlled by SPF (including, without limitation, Lakeshore Parcel A Acquisition Investor and Lakeshore Land Funding Company) and any entity for which JPMorgan Chase Bank, N.A. or its successor, in whole or in part, or an affiliate thereof is, directly or indirectly, a Controlling entity, whether as shareholder, member, manager, partner, trustee, advisor or investment manager.

"Lakeshore Land Funding Company" means Lakeshore Land Funding Company LLC, a Delaware limited liability company, a SPF Affiliate.

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"Lakeshore Pledge" means that certain pledge (made pursuant to the terms of the Lakeshore Pledge Agreement), pledging Lakeshore A LLC's ten percent (10%) interest in Mortgagor to Lakeshore Land Funding Company to serve as a portion of the Lakeshore A LLC Loan Security, pursuant to terms reasonably satisfactory to Mortgagee.

"Lakeshore Pledge Agreement" means that certain agreement whereby the Lakeshore Pledge is made granting Lakeshore A LLC's ten percent (10%) interest in Mortgagor to Lakeshore Land Funding Company (as lender) in connection with the Lakeshore East Loan, all in a form reasonably satisfactory to Mortgagee; provided, however, that, without the prior written consent of Mortgagee (which consent shall be given at Mortgagee's sole discretion), in the event of a default by Lakeshore East under the terms of the Lakeshore East Loan, no foreclosure or similar action shall be allowed by Lakeshore Land Funding Company under the Lakeshore Pledge Agreement until Substantial Completion (as defined below) has been achieved.

"Lakeshore East" means Lakeshore East LLC, an Illinois limited liability company, an Affiliate of Lakeshore A LLC.

"Lakeshore East Loan" means that certain loan made to Lakeshore East LLC (as borrower) by Lakeshore Land Funding Company (as lender), in an original principal amount of \$46 Million, secured by the Lakeshore East Loan Security.

"Lakeshore East Loan Security" means the security for the Lakeshore East Loan given by Lakeshore East LLC and/or its affiliates (including but not limited to Lakeshore A LLC) to Lakeshore Land Funding Company in connection with the Lakeshore East Loan, a portion of which shall include (but not be limited to) the Lakeshore Pledge.

"SPF" means Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank, N.A. and any successor thereto, in whole or in part, whether by reason of a merger, reorganization, acquisition, dissolution or otherwise, and any transferee of interests previously owned by such fund, provided, with respect to such transferee, JPMorgan Chase Bank, N.A. or its successor, in whole or in part, or an affiliate thereof including, without limitation, J.P. Morgan Chase & Co. or an affiliate thereof (collectively "JPMorgan") is, directly or indirectly, a Controlling entity, whether as shareholder, member, manager, partner, trustee, advisor or investment manager.

With the exception of the Lakeshore Pledge granted (or to be granted) by the members of Lakeshore A LLC, which pledge that has been previously approved and agreed to by Lender, the continuing ownership and influence of David Carlins, Joel Carlins, James Loewenberg and Robin Loewenberg Berger in Lakeshore A LLC, one of Mortgagor's Members (which, in turn, relates to their continuing ownership and influence in Mortgagor), are an important factor to Mortgagee. Accordingly, notwithstanding the foregoing, Mortgagee's consent shall not be required for a Change in the Proportionate



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Ownership of Lakeshore A LLC, a member of Mortgagor, so long as such transfers consists solely of a transfer of direct or indirect ownership interests in Lakeshore A LLC: (a) to or among: David Carlins, Joel Carlins, James Loewenberg; Robin Loewenberg Berger or a Permitted Trust; or (b) to or among: the David Carlins Family, the Joel Carlins Family, the Loewenberg Family or the Loewenberg Berger Family provided:

(A) The following is true immediately after such transfer and continues to be true at all times thereafter:

(i) David Carlins, Joel Carlins, James Loewenberg, Robin Loewenberg Berger and/or a Permitted Trust continue to own, directly or indirectly, free and clear of any security interest, more than a 51% interest in Lakeshore A LLC (a member of Mortgagor) or, following the death or legal incompetency of David Carlins, Joel Carlins, James Loewenberg, or Robin Loewenberg Berger, then; (a) the survivors of David Carlins, Joel Carlins, James Loewenberg, or Robin Loewenberg Berger; (b) the David Carlins Family, (c) the Joel Carlins Family, (d) the Loewenberg Family, (e) the Loewenberg Berger Family, and/or (f) a Permitted Trust, continue to own, directly or indirectly, free and clear of any security interest, a 51% or greater controlling interest in Lakeshore A LLC (a member of Mortgagor); and

(ii) If the transferee is a third party (or third parties); then

(a) Any single third party shall own (upon the conclusion of the contemplated transfer) a passive interest (in Lakeshore A LLC) equal to less than a 10% interest in Lakeshore A LLC; and

(b) All such third parties, in the aggregate, shall own (upon the conclusion of the contemplated transfer) a passive interest not to exceed a 40% interest, in the aggregate, in Lakeshore A LLC; and

(B) Each unrelated transferee (owning a 10% or greater interest in Lakeshore A LLC) as permitted herein and all persons and entities owning directly an interest in such transferee(s) are not (and have never been):

(1) Subject to any bankruptcy, reorganization, or insolvency proceedings or any criminal charges or proceedings, or



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- (2) A litigant, plaintiff, or defendant in any suit brought against or by Mortgagee.

"David Carlins Family" means David Carlins, his spouse, his descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

"Joel Carlins Family" means Joel Carlins, his spouse, his descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

"Loewenberg Family" means James Loewenberg, his spouse, his descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

"Loewenberg Berger Family" means Robin Loewenberg Berger, her spouse, her descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

"Permitted Trust" means a trust in which either

- (A) David Carlins, Joel Carlins, James Loewenberg or Robin Loewenberg Berger are either (i) the sole trustees or (ii) hold more than a 50% beneficial interest; or
- (C) Following the death or legal incompetency of David Carlins, Joel Carlins, James Loewenberg or Robin Loewenberg Berger, then the David Carlins Family, the Joel Carlins Family, the Loewenberg Family or the Loewenberg Berger Family holds more than a 50% beneficial interest.

Notwithstanding the above language relative to Lakeshore A LLC and allowed transfers of interests therein, if there is a default by Lakeshore East LLC under the terms of the Lakeshore East Loan (including but not limited to the Lakeshore Pledge), then and in such event of a default by Lakeshore East LLC, no foreclosure or similar action shall be allowed by Lakeshore Land Funding Company under the Lakeshore Pledge Agreement until Substantial Completion has been achieved. As used herein, Substantial Completion means the satisfactory completion of the work under the construction contracts to complete the Improvements, except for punchlist items, as evidenced by a Certificate of Substantial Completion (AIA document G704) to which Mortgagee's consultant concurs and, the receipt of partial (or, if available, final) certificates of occupancy.

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Notwithstanding any language contained herein to the contrary, the following transfers shall not be deemed to constitute Changes in Proportionate Ownership of Mortgagor, shall be excluded from the prohibitions hereof on transfers of direct or indirect interests in Mortgagor, are expressly permitted, and shall be freely permitted without the consent of Mortgagee or the payment of any fee (collectively, "Permitted Transfers"):

- (i) any transfer, directly or indirectly, occurring as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto;
- (ii) any transfer, directly or indirectly, occurring as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto;
- (iii) transfers of stock internally in JPMorgan Chase Bank, N.A. or any successor entity;
- (iv) transfers of units of, or interests in SPF;
- (v) the replacement of JPMorgan Chase Bank, N.A. (or its parent, affiliates, subsidiaries or successors) as trustee, agent or investment or independent advisor for SPF by a successor entity; or
- (vi) the Lakeshore Pledge granted (or to be granted) by the members of Lakeshore A LLC.

Mortgagor shall provide timely written notice to Mortgagee of any transfer or replacement described in clauses (v) and above.

Following prior written notice being given to Mortgagee, any transfer not prohibited by the foregoing shall be permitted without the payment of any transfer or assumption fee and without the consent of Mortgagee; provided, however, that each transferee permitted herein and all persons and entities owning a direct interest in such transferee (of 10% or more) are not (and have never been): (i) subject to any bankruptcy, reorganization, or insolvency proceedings or any criminal charges or proceedings, or (ii) a litigant, plaintiff, or defendant in any suit brought against or by Mortgagee.

Notwithstanding anything herein to the contrary, transfers of any direct or indirect ownership interest in any JPMorgan Entity to the extent such transfer does not (or will not) materially adversely effect the ability of the Mortgagor (or any member of the Mortgagor) from performing its duties under the Indebtedness shall not be prohibited.

Notwithstanding the above, provided there is then no default in the terms and conditions of any Loan Document, Breakeven (as hereinafter defined) has been achieved and upon prior written request from Mortgagor, Mortgagee shall not withhold or delay its

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consent to a one-time transfer of all but not less than all of the Property to a single entity or individual, provided:

- (i) the Property shall have achieved Debt Service Coverage (as hereinafter defined) of at least 1.39x as reasonably determined by Mortgagee for the last full fiscal year as determined from audited financial statements and there are no junior liens on the Property (with the exception of any mechanics liens bonded over and/or insured over to the reasonable satisfaction of Mortgagee);
- (ii) the transferee or an owner of the transferee (the "Transferee Creditworthy Party") has a net worth, determined in accordance with GAAP, of at least \$500 Million; with cash and cash equivalents of at least \$25 Million after funding the equity needed to close the purchase and a minimum overall real estate portfolio debt service coverage ratio of 1.30 for the prior twelve (12) month period. In the event that transferee shall satisfy the financial requirements set forth in this subsection (ii), all references to Creditworthy Party in subsections (iii) through (vi) hereafter shall be deemed deleted;
- (iii) the transferee or the Transferee Creditworthy Party, or the managing agent of either of them, shall be experienced in the ownership and management of comparable high-rise apartment buildings;
- (iv) the transferee, the Transferee Creditworthy Party and all persons and entities owning (directly or indirectly) an ownership interest in the transferee or the Transferee Creditworthy Party are not (and have never been) (a) subject to any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings, or (b) a litigant, plaintiff or defendant in any suit brought against or by Mortgagee; provided, however, that the provisions of this subsection shall not apply to (i) holders of common stock or other securities of a corporation or other organization that is traded on a US national securities exchange or a US national over-the-counter securities market, provided such holders do not own a 25% or greater interest therein; (ii) holders of units of participation in a comingled pension fund, provided such holders do not own 25% or more of such units of participation; or (iii) holders of limited partnership, non-manager limited liability company interests and other similar interests, provided such holders do not own a 25% or greater partnership interest therein;
- (v) pursuant to written documentation prepared by and reasonably satisfactory to Mortgagee, the transferee assumes and the Creditworthy Party guarantees, all of the obligations and liabilities of Mortgagor for which the Mortgagor is

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- personally liable under the Loan Documents (i.e., not full recourse), arising after the date of the transfer of the Property (including the obligations under the Environmental Indemnity Agreement), and Mortgagee receives a reasonably satisfactory enforceability opinion with respect thereto from counsel approved by Mortgagee, (which approval shall not be unreasonably withheld);
- (vi) the Transferee Creditworthy Party executes Mortgagee's then current form(s) of Guarantee of Recourse Obligations, the Transferee Creditworthy Party and the transferee execute an Environmental Indemnity Agreement (in substantially the same form as that executed by Mortgagor in connection with the Note), and Mortgagee receives a reasonably satisfactory enforceability opinion with respect to the foregoing from counsel approved by Mortgagee, which approval shall not be unreasonably withheld;
- (vii) an environmental report on the Property which meets Mortgagee's then current requirements and is updated to no earlier than ninety (90) days prior to the date of transfer, is provided to Mortgagee at least thirty (30) days prior to the date of transfer and said report shall be satisfactory to Mortgagee at the time of transfer;
- (viii) Mortgagor (a) shall remain liable under the Environmental Indemnity Agreement dated of even date herewith, except for acts or occurrences after the date of transfer of the Property and (b) Mortgagor and Principal shall, except as provided herein, be released from all obligations and liabilities under the Loan Documents;
- (ix) Mortgagee receives an endorsement to its policy of title insurance, satisfactory to Mortgagee, in its reasonable judgment, insuring Mortgagee's lien on the Property as a first and valid lien subject only to liens and encumbrances theretofore approved by Mortgagee, which approval shall not be unreasonably withheld;
- (x) pursuant to written documentation prepared by and satisfactory to Mortgagee, the transferee (a) acknowledges that, in furtherance and not in limitation of clause (v) above, it shall be bound by the representation and warranty contained in the covenant entitled "**Business Restriction Representation and Warranty**" set forth in this instrument, and (b) certifies that such representation and warranty is, to its knowledge, true and correct as of the date of transfer and shall, to its knowledge, remain true and correct at all times during the term of the Note; and



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- (xi) the outstanding principal balance of the Note at the time of the transfer is not more than 60% of the gross purchase price of the Property; provided, however, that Mortgagor shall have the right to repay the Note with a prepayment fee as set forth in the Note, to the extent necessary to reduce the principal balance to the 60% loan to gross purchase price threshold.

If Mortgagor shall make a one-time transfer pursuant to the above conditions, Mortgagee shall be paid a fee equal to one-half percent (0.5%) of the then outstanding balance of the Note at the time of transfer. The fee shall be paid on or before the closing date of such one-time transfer. At the time of such transfer, no modification of the interest rate or repayment terms of the Note will be required.

No subsequent transfers of the Property shall be allowed and no Change in the Proportionate Ownership of transferee shall be allowed without Mortgagee's prior written consent. Notwithstanding the foregoing, Mortgagor and Mortgagee agree that the underlying ownership structure of a particular transferee may cause Mortgagee to determine that the definition of Change in the Proportionate Ownership with respect to such transferee does not adequately address Mortgagee's underlying ownership concerns for such transferee, and accordingly Mortgagee reserves the right to amend the definition of Change in the Proportionate Ownership and the exclusions therefrom as the same applies to a particular transferee. In addition, Mortgagee shall agree to commercially reasonable modifications to the definition of "Permitted Transfer" in order to accommodate the specific ownership structure of a transferee.

**Financial Statements.** Mortgagor agrees to furnish to Mortgagee:

(A) Upon the occupancy of the Property, the following financial statements for the Property within 90 days after the close of each fiscal year of the Mortgagor (the "Property Financial Statements Due Date"):

- (i) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion; and
- (ii) a current rent roll (or other documentation reasonably satisfactory to Mortgagee) identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, to the extent applicable, and any other recovery items; and
- (iii) an operating budget for the current fiscal year.

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(B) the following financial statements that Mortgagee may, in Mortgagee's sole discretion, require from time to time within 30 days after receipt of a written request from Mortgagor (the "Requested Financial Statements Due Date")

- (i) an unaudited balance sheet for the Property as of the last day of Mortgagor's most recently closed fiscal year;
- (ii) upon first occupancy of the Property, an unaudited balance sheet for Mortgagor as of the last day of Mortgagor's most recently closed fiscal year;
- (iii) an unaudited balance sheet for Principal as of the last day of each such Principal's most recently closed fiscal year;
- (iv) upon first occupancy of the Property, an unaudited statement of cash flows for the Property as of the last day of Mortgagor's most recently closed fiscal year; and
- (v) an unaudited statement of cash flows for the Mortgagor as of the last day of Mortgagor's most recently closed fiscal year.

Furthermore, during the term of the Note, Mortgagor shall furnish to Mortgagee within 30 days after receipt of a written request from Mortgagee (which may be made no more frequently than four (4) times per fiscal year) such reasonable financial and management information in the possession of, or accessible to, Mortgagor which Mortgagee determines to be useful in Mortgagee's monitoring of the value and condition of the Property, Mortgagor, or Principal.

The Property Financial Statements Due Date and the Requested Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

Notwithstanding the foregoing, in no event shall a Financial Statements Due Date for a particular financial statement be prior to the 90<sup>th</sup> day following the close of the fiscal year covered by such financial statement.

If audited, the financial statements of Mortgagor and/or Property identified in sections (A)(i), (A)(ii), (B)(i) through (B)(ii) and (B)(iv) through (B)(v), above, shall each be prepared in accordance with GAAP by a certified public accountant reasonably satisfactory to Mortgagee. All unaudited statements shall contain a certification by a senior officer of the managing member of Mortgagor stating that they have been prepared in accordance with either (a) GAAP, or (b) sound accounting principles consistently applied, and that, to the best of such officer's knowledge, they are true and correct in all material respects. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Mortgagor.

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Mortgagor acknowledges that Mortgagee requires the financial statements and information required herein to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Mortgagee hereunder, at law and in equity, if any financial statement, additional information or proof of payment of property taxes and assessments (unless Mortgagor shall be escrowing said payments pursuant to the section hereof entitled "**Deposits by Mortgagor**") is not furnished to Mortgagee as required in this section entitled "**Financial Statements**" and in the section entitled "**Taxes and Special Assessments**", within 30 days after Mortgagee shall have given written notice to Mortgagor that it has not been received as required,

(x) interest on the unpaid principal balance of the Indebtedness shall, as of the applicable Financial Statements Due Date or the date such additional information or proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Mortgagee may elect to obtain an independent appraisal and audit of the Property at Mortgagor's expense, and Mortgagor agrees that it will, upon request, promptly make Mortgagor's books and records regarding the Property available to Mortgagee and the Person(s) performing the appraisal and audit (which obligation Mortgagor agrees can be specifically enforced by Mortgagee).

Prior to the Amortization Period Commencement Date (as defined in the Note), the amount of the interest payments due under the Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to cover the amount of the Increased Rate and, following the Amortization Period Commencement Date, the amount of the payments due under the Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 30 years commencing with the Amortization Period Commencement Date (as defined in the Note). Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the financial statements, additional information and proof of payment of property taxes and assessments (as requested by Mortgagee) shall be furnished to Mortgagee as required. Commencing on the date on which the financial statements, additional information and proof of payment of property taxes and assessments are received by Mortgagee, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of the Note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 30 years commencing with the Amortization Period Commencement Date. Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit at its own expense at any time;

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provided, however, such audits will not be conducted any more often than one time per year unless an Event of Default exists.

Mortgagee agrees that all such financial statements shall be subject to the Confidentiality Restriction. As used herein, the "Confidentiality Restriction" means the restriction on a Person (a "Restricted Person") possessing information so that such information may not be disclosed to any party other than (i) such Restricted Person and such Restricted Person's subsidiaries, officer, trustees, directors, employees, independent public accountants, consultants and counsel, (ii) any governmental, administrative or regulatory authority having or asserting jurisdiction over such Restricted Person, (iii) any prospective purchaser of all or any portion of the Indebtedness (provided the prospective purchaser agrees to be bound by the Confidentiality Restriction), (iv) any Person entitled to receive such information pursuant to a subpoena or other legal process, or (v) any Person in connection with a legal proceeding involving such Restricted Person or subsidiary of such Restricted Person.

**Usury Law Compliance.** The indebtedness constitutes a loan secured by a mortgage on real estate under Chapter 815, Act 205, Section 4(1)(1) of Illinois Compiled Statutes, 1993, as the same may subsequently be amended.

**Property Management.** Mortgagee hereby approves NNP Residential LLC, an Illinois limited liability company, an affiliate of a member of Mortgagor as the initial management company for the Property. Thereafter, any change to the management company for the Property shall be satisfactory to Mortgagee. Any change in the management company without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, shall constitute a default under this instrument.

**Construction Mortgage.** This is a Construction Mortgage or a refinancing of a Construction Mortgage, as that term is defined in Section 9-313(1)(c) of Chapter 810, Act 5, Illinois Compiled Statutes 1993.

**Deposits by Mortgagor.** To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), Mortgagor agrees to deposit: (i) an amount equal to the real estate taxes and special assessments which have accrued, but remain unpaid for the period prior to the initial advance of principal of the Note and which have not been included in the Project Budget (as defined in the Funding Agreement), and (ii) upon final completion of the Improvements following the occurrence, and during the continuance of, an Event of Default, Mortgagee shall thenceforth have the option to require that Mortgagor remit monthly payments in amounts reasonably satisfactory to Mortgagee into: (i) an account held by Mortgagee; or (ii) a separate interest bearing bank account with a commercial bank with an A- rating or better according to Fitch Ratings or, if no longer available, a similar publication



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satisfactory to Mortgagee, which account shall be pledged to Mortgagee as additional security for the Indebtedness (and documented in a manner satisfactory to Mortgagee). In the event such monthly payment account (whether held by Mortgagee or a commercial third party bank) accrues interest on such deposits, the same, shall accrue to the benefit of Mortgagor.

If at any time the funds so held by Mortgagee shall be insufficient to pay any of said expenses, Mortgagor shall, within ten (10) business days of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Mortgagee to be applied to the payment of such real estate taxes and special assessments and, at the option of Mortgagee after occurrence of an Event of Default, the Indebtedness.

Interest on such deposits shall accrue to the benefit of Mortgagor. In the event such monthly payment amounts are held by Mortgagee, interest earned on the deposits in such account shall be earned on the average daily balance of the funds so held by Mortgagee during a month (the "Applicable Month") shall be credited with interest on the first day of the following month at a rate equal to the 30-Day United States Treasury Bill Yield. The "30-Day United States Treasury Bill Yield" means the "Ask Yield" on the first business day of the Applicable Month for United States Treasury bills maturing the closest to 30 days from the first day of the Applicable Month as reported in The Wall Street Journal or a similar yield as reasonably determined by Mortgagee.

**Notices.** Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Mortgagor by certified mail or reputable courier service shall be addressed to Mortgagor: c/o Lakeshore A LLC, 225 North Columbus Drive, Suite 100, Chicago, Illinois 60601; c/o J.P. Morgan Investment Management Inc., 270 Park Avenue, New York, NY 10017, Attn: Jay Minchill; c/o J.P. Morgan Investment Management Inc., P.O. Box 5005, New York, NY 10063; with copy to Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038, Attn: Steven Moskowitz, Esq. or such other address in the United States of America as Mortgagor shall designate in a notice to Mortgagee given in the manner described herein. Any notice sent to Mortgagee by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Mortgagee shall designate in a notice given in the manner described herein. Any notice given to Mortgagee shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address

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specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

**Modification of Terms.** Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Mortgagee may have, (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

**Exercise of Options.** Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Mortgagee is given any option, such option may be exercised when the right accrues or at any time thereafter, and no acceptance by Mortgagee of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

**Nature and Succession of Agreements.** Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Mortgagee" shall include the owner and holder of the Note

**Legal Enforceability.** No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

**Limitation of Liability.** Notwithstanding any provision contained herein to the contrary, the personal liability of Mortgagor shall be limited as provided in the Note.

**Miscellaneous.** Time is of the essence in each of the Loan Documents. The remedies of Mortgagee as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Mortgagee of

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payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Mortgagor and Mortgagee. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

**Waiver of Jury Trial.** Mortgagor and Mortgagee hereby waive any right to trial by jury with respect to any action or proceeding (a) brought by Mortgagor, Mortgagee or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Mortgagee is a party.

**Captions.** The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

**Governing Law.** This instrument, the interpretation hereof and the rights, obligations, duties and liabilities hereunder shall be governed and controlled by the laws of the state in which the Property is located.

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**UNOFFICIAL COPY****EXHIBIT "A"**  
(Legal Description of Property)

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

## PARCEL 1:

LOT 4 (EXCEPT THE WEST 60 FEET) IN LAKESHORE EAST SUBDIVISION, BEING A SUBDIVISION OF PART OF THE LANDS LYING EAST OF AND ADJOINING FORT DEARBORN ADDITION TO CHICAGO, SAID ADDITION BEING IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID LAKESHORE EAST SUBDIVISION RECORDED MARCH 4, 2003 AS DOCUMENT 0030301045, IN COOK COUNTY, ILLINOIS.

P.I.N. 17-10-318-061-0000

## PARCEL 2:

THE WEST 60.00 FEET OF LOT 4 LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 3 IN LAKESHORE EAST SUBDIVISION, BEING A SUBDIVISION OF PART OF LANDS LYING EAST OF AND ADJOINING FORT DEARBORN ADDITION TO CHICAGO, SAID ADDITION BEING IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID LAKESHORE EAST SUBDIVISION, RECORDED MARCH 4, 2003 AS DOCUMENT 0030301045, AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 41.00 FEET ABOVE CHICAGO CITY DATUM, AND LYING BELOW THE CENTER LINE OF THE STRUCTURAL SLAB OF THE ROADWAY AT THE PLAZA LEVEL, BEING AN INCLINE PLANE HAVING AN ELEVATION OF 53.55 FEET ABOVE CHICAGO CITY DATUM ALONG THE NORTH LINE OF SAID LOT 4 AND AN ELEVATION OF 55.33 FEET ABOVE CHICAGO CITY DATUM ALONG SAID EASTERLY EXTENSION OF THE NORTH LINE OF LOT 3, IN COOK COUNTY, ILLINOIS.

P.I.N. 17-10-318-062-0000 (Affects Parcel 2 and other property)

*Property address : 345 E. Wacker Dr., Chicago, IL*

*(continued)*

**UNOFFICIAL COPY****PARCEL 3:**

NON-EXCLUSIVE EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1, INCLUDING EASEMENTS FOR ACCESS TO IMPROVEMENTS BEING CONSTRUCTED OVER TEMPORARY CONSTRUCTION EASEMENT AREAS, FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS ON, OVER, THROUGH AND ACROSS THE STREETS, AND TO UTILIZE THE UTILITIES AND UTILITY EASEMENTS, ALL AS MORE PARTICULARLY DEFINED, DESCRIBED AND CREATED BY DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST MADE BY AND BETWEEN LAKESHORE EAST LLC, LAKESHORE EAST PARCEL P LLC, AND ASN LAKESHORE EAST LLC DATED AS OF JUNE 26, 2002 AND RECORDED JULY 2, 2002 AS DOCUMENT 0020732020, AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF MARCH 3, 2003 AND RECORDED MARCH 7, 2003 AS DOCUMENT NUMBER 0030322531 AND AS FURTHER AMENDED BY SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF NOVEMBER 18, 2004 AND RECORDED NOVEMBER 19, 2004 AS DOCUMENT NUMBER 0501919099 AND THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC, DATED FEBRUARY 24, 2005 AND RECORDED FEBRUARY 25, 2005 AS DOCUMENT NUMBER 0505632009 AND FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF FEBRUARY 24, 2005 AND RECORDED FEBRUARY 25, 2005 AS DOCUMENT NUMBER 0505632012 AND BY THE FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF OCTOBER 27, 2006 AND RECORDED NOVEMBER 9, 2006 AS DOCUMENT 0631333004 AND SUBSEQUENTLY RE-RECORDED ON FEBRUARY 9, 2007 AS DOCUMENT 0704044062, AND AS SUPPLEMENTED BY NOTICE OF SATISFACTION OF CONDITIONS RELATED TO FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAKESHORE EAST LLC, DATED AS OF FEBRUARY 9, 2007 AND RECORDED MAY 22, 2007 AS DOCUMENT 0071422037, AND THE SIXTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF DECEMBER 20, 2007 AND RECORDED

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DECEMBER 21, 2007 AS DOCUMENT 0735531065 AND RE-RECORDED ON APRIL 8, 2008 AS DOCUMENT 0809910104 AND THE SEVENTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF NOVEMBER 13, 2008 AND RECORDED NOVEMBER 14, 2008 AS DOCUMENT 0831910034 AND THE EIGHTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF NOVEMBER 13, 2008 AND RECORDED NOVEMBER 14, 2008 AS DOCUMENT 0831910035 AND THE AMENDMENT TO EIGHTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF FEBRUARY 10, 2011 AND RECORDED FEBRUARY 15, 2011 AS DOCUMENT 1104616038 AND THE NINTH AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR LAKESHORE EAST EXECUTED BY LAKESHORE EAST LLC DATED AS OF JANUARY 10, 2011 AND RECORDED MARCH 17, 2011 AS DOCUMENT 1107644102.

## PARCEL 4:

NON-EXCLUSIVE EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCELS 1 AND 2 AS MORE PARTICULARLY DEFINED, DESCRIBED, AND CREATED BY AN EASEMENT AND PARTY WALL AGREEMENT MADE BY AND BETWEEN AQUA REALTY HOLDING COMPANY LLC, AND LAKESHORE EAST PARCEL A LLC, DATED AS OF June 15, 2011 AND RECORDED June 21, 2011 AS DOCUMENT NUMBER 1117231073.

## PARCEL 5:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR CONNECTION TO AND PEDESTRIAN INGRESS AND EGRESS THROUGH PEDESTRIAN MALL AS CREATED BY EASEMENTS, COVENANTS AND RESTRICTIONS DATED JUNE 25, 1986 AND RECORDED JUNE 30, 1986 AS DOCUMENT 86267044 AS AMENDED BY FIRST AMENDMENT TO EASEMENT, COVENANTS AND RESTRICTIONS DATED JUNE 27, 1996 AND RECORDED JULY 9, 1996 AS DOCUMENT 96522549 AND SECOND AMENDMENT TO EASEMENTS, COVENANTS AND RESTRICTIONS DATED AUGUST 24, 2007 AND RECORDED AUGUST 29, 2007 AS DOCUMENT 0724134059 BY AND AMONG AQUA AT LAKESHORE EAST LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AND BRE/SWISS L.L.C., A DELAWARE LIMITED LIABILITY COMPANY.

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**PARCEL 6:**

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 2 FOR PEDESTRIAN INGRESS AND EGRESS, UTILITIES, ENCROACHMENTS, STORM DRAIN AND GENERAL ACCESS, AS CREATED BY EASEMENT AND PARTY WALL AGREEMENT DATED OCTOBER 24, 2008 AND RECORDED OCTOBER 27, 2008 AS DOCUMENT 0830145051, BY AND AMONG AQUA AT LAKESHORE EAST, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY AND BRE/SWISS L.L.C., A DELAWARE LIMITED LIABILITY COMPANY AS AMENDED BY FIRST AMENDMENT TO EASEMENT AND PARTY WALL AGREEMENT DATED FEBRUARY 3, 2010 AND RECORDED FEBRUARY 25, 2010 AS DOCUMENT 1005615044.

**PARCEL 7:**

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR INGRESS AND EGRESS FOR VEHICLES, PERSONS, MATERIALS AND EQUIPMENT AS CREATED BY SUPPLEMENTARY GRANT OF EASEMENTS RECORDED FEBRUARY 25, 2010 AS DOCUMENT 1005615045 MADE BY AND BETWEEN TIDES AT LAKESHORE EAST LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AQUA AT LAKESHORE EAST LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AND BRE/SWISS L.P., A DELAWARE LIMITED PARTNERSHIP.