

# UNOFFICIAL COPY



Prepared by and  
After recording please mail to:  
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Doc#: 1125212140 Fee: \$58.00  
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Cook County Recorder of Deeds  
Date: 09/09/2011 01:40 PM Pg: 1 of 12

## AGREEMENT REGARDING GROUND LEASE

THIS AGREEMENT REGARDING GROUND LEASE (this "Agreement") is made and executed this 30th day of August, 2011, by and among THE BAPTIST THEOLOGICAL UNION, LOCATED AT CHICAGO, an Illinois not-for-profit corporation ("Landlord"), PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation ("Lender") and 33 West Monroe Associates, LLC, a Delaware limited liability company ("Tenant").

### RECITALS:

A. Landlord is the owner of the land in Cook County, Illinois, which is described on Exhibit "A" attached hereto and made a part hereof for all purposes, and any rights, privileges and appurtenances thereto (collectively, the "Property"). Pursuant to a certain Lease (the "Lease") dated as of April 1, 1978, Landlord leased the Property to American National Bank and Trust Company, as Trustee under Trust Agreement dated February 1, 1978 and known as Trust No. 42199 ("Original Tenant"), who constructed certain buildings and other improvements upon the Property (the "Improvements"). Landlord and Tenant entered into an Agreement ("First Agreement") dated as of April 7, 1978 and recorded in the Cook County Recorder's Office on April 12, 1978 as Document No. 24399610. Original Tenant assigned all of its rights, titles and interest under the Lease to American National Bank and Trust Company of Chicago (predecessor to LaSalle Bank National Association), not individually, but solely as Trustee under Trust Agreement dated January 11, 1999 and known as Trust No. 124770-06 ("Successor Tenant"). On April 16, 2004, Tenant purchased the Improvements and has received an assignment of all of the Successor Tenant's rights, titles and interests under the Lease. The Lease was subsequently supplemented by that certain Memorandum of Agreement dated October 12, 1988, between Landlord and Original Tenant ("Memorandum"), and amended by that certain First Amendment to Lease Agreement between Landlord and Successor Tenant dated January 29, 1999 ("First Amendment"), that certain agreement regarding Ground Lease by and among Landlord, Successor Tenant and Bankers Trust dated January 29, 1999 ("Agreement"), that certain letter dated March 26, 2004 from AmTrust Realty Corp. an affiliate of Tenant to Landlord ("Letter"), that certain Assignment and Assumption of Ground Lease ("Assignment") dated April 16, 2004, between LaSalle Bank National Association, not individually but as Successor Trustee to Successor Tenant, 33 West Monroe L.L.C. and Tenant, that certain Second Amendment to Ground Lease ("Second Amendment") between Landlord and Tenant dated April 16, 2004, that certain Agreement regarding Ground Lease ("Second Agreement") by and among Landlord,

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Tenant, and JPMorgan Chase Bank dated April 16, 2004, that certain Notice of Exercise of Extension Option dated April 11, 2006 from Tenant to Landlord ("Extension Notice"), that certain Third Amendment to Ground Lease ("Third Amendment") between Landlord and Tenant dated March 30, 2007; that certain 2008 Memorandum of Agreement dated April 25, 2008, between Landlord and Tenant ("2008 Memorandum") and that certain First Amendment to 2008 Memorandum of Agreement dated October 24, 2008 between Landlord and Tenant ("2008 Memorandum First Amendment"). Additionally, a Short Form Lease ("Short Form Lease") was recorded on April 12, 1978 as Document No. 24399609, a Memorandum of First Amendment to Lease Agreement ("Second Memorandum") was recorded on February 1, 1999 as Document No. 99105027, and a Memorandum of Third Amendment to Lease Agreement with a Plan to Purchase ("Third Memorandum") dated March 30, 2007 was recorded on April 9, 2007 as Document No. 0709934076.

B. Tenant has requested that Lender advance one (1) or more loans (the "Loans") to Tenant to be secured, in part, by the lien and provisions of a certain deed of trust or mortgage (the "Mortgage"), covering the Improvements, all of Tenant's right, title and interest under the Lease, and certain other assets and rights of Tenant. The collateral covered by the Mortgage is collectively called the "Mortgaged Property." The Mortgage and all of the other documents and instruments which evidence or secure the Loans are sometimes collectively called the "Loan Documents."

C. As a condition to Lender's agreement to advance the Loans to Tenant, and as a material inducement to Lender to do so, Lender has requested that Tenant obtain this Agreement for the benefit of Lender.

NOW, THEREFORE, for and consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto hereby agree as follows:

1. Leasehold Mortgagee. Landlord hereby agrees that Lender shall constitute a Leasehold Mortgagee under the terms and provisions of the Lease, including without limitation, Section 9.03(d) of the Lease, and shall be entitled to all of the rights of a Leasehold Mortgagee set forth therein. The parties hereto hereby agree that Section 9.04 of the Lease has been deleted in its entirety. Landlord hereby agrees that the provisions of Section 9.03(j)(i) of the Lease shall be inapplicable to Lender and shall not be a condition to Landlord entering into a new Lease with Lender if the Lease is terminated by a trustee in bankruptcy under the provisions of The Bankruptcy Act.

2. Acquisition of Property by Lender. If Lender shall become the owner of the Mortgaged Property as a result of a foreclosure of the Mortgage, or if the Mortgaged Property shall be sold by reason of a foreclosure of the Mortgage to any third party, or if the Mortgaged Property shall be transferred by deed-in-lieu of foreclosure (any such foreclosure or deed-in-lieu of foreclosure being collectively called a "Foreclosure"), then the Lease shall continue as a direct lease between Landlord and the Lender or the third party who acquires the Mortgaged Property at a Foreclosure (Lender and any such third party being collectively called the "Successor Owner").

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3. Extension Options. Each of the extension options provided for in the Third Amendment to Lease Agreement dated March 30, 2007 may be unconditionally exercisable by Lender, absent a default under the Ground Lease which is capable of being cured by Lender by payment of money.

4. No Liability. In the event the Successor Owner acquires the Mortgaged Property, the Successor Owner shall not be:

(a) liable or responsible for any default, act or omission by Tenant under the Lease which cannot be cured by Successor Owner. Provided, however, the Successor Owner shall be obligated after its acquisition of the Mortgaged Property to cure any monetary defaults by Tenant under the Lease other than a default in the payment of Base Period Rental or Base Period Annual Tax Equivalent Rental for which Lender did not receive a written advice of such default within 105 days of such initial payment default by Tenant;

(b) liable or responsible for any agreement of Tenant to reimburse Landlord for any sums expended by Landlord in exercising its rights and remedies to regain possession of the Property following a default by Tenant; or

(c) bound by any amendment to the Lease not approved by Lender in writing.

5. Certifications by Landlord. Landlord hereby agrees that Lender shall also be permitted to rely on the certifications set forth in that certain Ground Lessor Estoppel Certificate dated August 30, 2011 delivered by Landlord to Tenant and Lender in connection with the Loans made by Lender with the knowledge that Lender is relying on such statements in connection with the funding of the Loans. In addition, Landlord hereby certifies the following to Lender with the knowledge that Lender is relying on such certifications in connection with the funding of the Loans:

(a) The Lease has not been modified, altered or amended (except for the First Agreement, Memorandum, Short Form Lease, First Amendment, Second Memorandum, Agreement, Letter, Assignment, the Second Amendment, Second Agreement, Extension Notice, the Third Amendment, Third Memorandum, 2008 Memorandum and 2008 Memorandum First Amendment) and the Lease is in full force and effect; provided, however, that Sections 9.04, 18.01, 18.02 and 19.12 are no longer applicable thereunder;

(b) All material agreements and understandings between Landlord and Tenant relating to the Property are set forth in the Lease or other written documentation delivered by Landlord to Lender;

(c) Landlord has not mortgaged or otherwise encumbered its interest in the Property;

(d) To the best of the undersigned's knowledge, Landlord has no current right to terminate the Lease based on any acts or omissions of Tenant as of the date hereof; and

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(e) Landlord has all requisite power and authority to execute and deliver this Agreement.

6. Covenants and Agreements of Landlord. Landlord hereby covenants to and agrees with and for the benefit of Lender as follows:

(a) The Lease shall not be amended, modified or terminated after the date hereof without Lender's prior written consent (except for any termination resulting from a default by Tenant under the Lease which is not cured by Tenant in accordance with the terms of the Lease or by Lender in accordance with the terms of Section 9.03 of the Lease):

(b) In the event the Successor Owner acquires the Mortgaged Property, the obligations of the Successor Owner under the Lease shall be nonrecourse, and Landlord shall look solely to the interest of the Successor Owner in the Mortgaged Property for the recovery of any judgment against the Successor Owner, and Landlord hereby covenants and agrees not to bring any action or suit seeking to impose liability on the Successor Owner beyond its interest in the Mortgaged Property, except to the extent of fraud or the misapplication of rents and proceeds by Successor Owner; and

(c) Landlord confirms the terms of Section 9.02B of the Lease which provides that Landlord's interest in the rents, revenues, income, proceeds and profits from any sublease by Tenant of the Mortgaged Property are subject to and subordinate to the lien of Lender's mortgage and security agreement.

7. Notice of Leasehold Mortgage. This Agreement shall constitute notice to Landlord of the Mortgage. Lender's address for notice is as set forth below.

8. Notices. All notices shall be given under this Agreement (and under the Lease to Lender) shall be in writing and shall be given in accordance with the requirements of Section 9.02 of the Lease as amended by the Second Amendment to Lease Agreement. Notices shall be sent by either certified mail, return receipt requested or by a national overnight courier service. Notices shall be deemed delivered on the next business day following deposit of such notice with a national overnight courier service or within four (4) business days following deposit of such notices with the United States Postal Service. The respective addresses for Landlord and Lender are as follows:

Landlord:	The Baptist Theological Union, Located at Chicago Offices of Investments 450 North Cityfront Plaza Drive, Suite 440 Chicago, Illinois 60611
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Lender:	Principal Life Insurance Company c/o Principal Real Estate Investors, LLC 801 Grand Avenue Des Moines, Iowa 50392-1450 Attn: Servicing - Loan No. 756995
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The address to which any notice or other writing must be sent to either party hereto may be changed upon written notice given by such party as provided in the Lease.

9. Conflict. In the event any conflict between the terms of this Agreement and any of the terms of the Lease, the terms of this Agreement shall govern and control.

10. Further Acts. Landlord agrees to execute and deliver to Lender from time to time such other reasonable documents and instruments as may be requested in order to effectuate the terms of this Agreement. Lender agrees to execute and deliver to Landlord from time to time such other reasonable documents and instruments as may be requested in order to effectuate the terms of this Agreement.

11. Illegal or Invalid Provisions. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining terms and provisions of this Agreement shall not be affected thereby, and in lieu of such illegal, invalid or unenforceable term or provision there shall be added automatically to this Agreement a legal, valid and enforceable term or provision as similar as possible to the term or provision declared illegal, invalid, and unenforceable.

12. Governing Law. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Illinois.

13. Captions. The captions herein are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Agreement or any particular paragraph or section hereof, or the proper construction hereof.

14. Benefit to Lender. Landlord acknowledges that Lender is entitled to the benefit of all provisions of the Lease which are applicable to a "Leasehold Mortgagee."

15. Successor and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

16. Release. Upon payment of the Loans, this Agreement shall be released of record by Lender at Tenant's expense.

17. Agreements of Lender. Lender hereby agrees as follows: (a) Lender shall have no claim under this Agreement against Landlord in respect of facts, events and circumstances about which Lender has knowledge as of the date hereof; (b) Landlord shall have no liability whatsoever under or in respect of the Loans or any of the Loan Departments; and (c) the terms and provisions of Section 20.01 of the Lease are hereby incorporated herein by reference as if set forth herein and shall be applicable to Landlord's liability hereunder.

[Signature Page to Follow]

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**EXECUTED, ACKNOWLEDGED AND DELIVERED** on the date first above written.

**LANDLORD:**

THE BAPTIST THEOLOGICAL UNION,  
LOCATED AT CHICAGO,  
an Illinois not-for-profit corporation

By: Ma Schmid  
Print: Mark A. Schmid  
Its: Treasurer

**TENANT:**

33 WEST MONROE ASSOCIATES, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

**LENDER:**

PRINCIPAL LIFE INSURANCE COMPANY, a  
corporation

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

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**EXECUTED, ACKNOWLEDGED AND DELIVERED** on the date first above written.

**LANDLORD:**

THE BAPTIST THEOLOGICAL UNION,  
LOCATED AT CHICAGO,  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

**TENANT:**

33 WEST MONROE ASSOCIATES, LLC,  
a Delaware limited liability company

By: *Nathan Aber*  
Print: Nathan Aber  
Its: Manager

(signatures continued on the following page)

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

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LENDER:

PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation

By: PRINCIPAL REAL ESTATE INVESTORS, LLC, a Delaware limited liability company, its authorized signatory

By *Carol Kraayebriak*  
 Name: **Carol Kraayebriak**  
 Title: **Assistant Managing Director  
 Commercial Mortgage Financing**

By *Janet D. Harwood*  
 Name: **Janet D. Harwood**  
 Title: **Senior Financing Consultant**

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



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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

Personally came before me this 25 day of August, 2011 the above named Mark Schmid, Treasurer of The Baptist Theological Union, Located at Chicago, an Illinois not-for-profit corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Denise Wheatley  
Notary Public in and for the State of Illinois

Printed Name of Notary Public

Denise Wheatley

My Commission Expires:  
7-1-13

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

Personally came before me this \_\_\_\_ day of August, 2011 the above named \_\_\_\_\_ of 33 WEST MONROE ASSOCIATES, LLC, a Delaware limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public in and for the State of Illinois

Printed Name of Notary Public

My Commission Expires:  
\_\_\_\_\_

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK        )

Personally came before me this \_\_\_\_\_ day of August, 2011 the above named \_\_\_\_\_, \_\_\_\_\_ of The Baptist Theological Union, Located at Chicago, an Illinois not-for-profit corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public in and for the State of Illinois

Printed Name of Notary Public

My Commission Expires:  
\_\_\_\_\_

*New York*  
STATE OF ~~ILLINOIS~~     )  
  ) SS  
*New York*  
COUNTY OF ~~COOK~~        )

Personally came before me this 26<sup>th</sup> day of August, 2011 the above named Nathan Aber, Manager of 33 WEST MONROE ASSOCIATES, LLC, a Delaware limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

*Benjamin M. Keller*  
\_\_\_\_\_  
Notary Public in and for the State of ~~Illinois~~ *New York*

Printed Name of Notary Public

My Commission Expires:  
\_\_\_\_\_

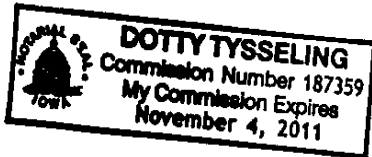
**BENJAMIN M. KELLER**  
Notary Public, State of New York  
No. 02KE6207625  
Qualified in New York County  
Commission Expires June 15, 2013

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STATE OF IOWA )  
  )  
COUNTY OF POLK )

On this 29th day of August, 2011, before me, the undersigned, a Notary Public in and for the said State, personally appeared Carol Kraayenbrink and Grant D. Harwood, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, who being by me duly sworn, did say that they are the Assistant Managing Director Commercial Mortgage Services and Senior Financing Consultant, respectively, of PRINCIPAL REAL ESTATE INVESTORS, LLC, a Delaware limited liability company, authorized signatory of PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, and that the instrument was signed on behalf of the corporation by Principal Real Estate Investors, LLC, as authorized signatory of Principal Life Insurance Company, by authority of the Board of Directors of Principal Life Insurance Company; and that the aforesaid individuals each acknowledged the execution of the foregoing instrument to be the voluntary act and deed of Principal Real Estate Investors, LLC, as authorized signatories of said corporation, by it and by them voluntarily executed.

Dotty Tysseling  
Notary Public in and for said State  
My Commission Expires:  
[Affix Notarial Stamp or Seal]



Cook County Clerk's Office

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## EXHIBIT A

THE WEST ¼ OF LOT 2 AND THAT PART OF LOT 1 LYING EAST OF THE EAST LINE OF DEARBORN STREET IN BLOCK 141 IN THE SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

4818-2199-0666, v. 4  
8/9/2011

Address: 33 West Monroe, Chicago, IL.

PINs: 17-16-213-017-8001  
17-16-213-017-8002  
17-16-213-020-0000  
17-16-213-021-0000

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

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