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Doc#: 1227131057 Fee: \$80.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/27/2012 12:43 PM Pg: 1 of 22

Application #: AAA-6849
Mortgage #: 0006698-00
Property: Elk Grove #8

SECOND PRIORITY ASSIGNMENT OF LEASES AND RENTS

by

PROLOGIS NA2 U.S. LLC,
as Assignor

for the benefit of

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA,
as Lender

Property Known As:

Elk Grove #8
747 Chase Avenue
Elk Grove Village, IL 60007
Cook County

Permanent Index Number: 08-27-303-074-0000

Prepared By
and

After Recordation Return To:

~~Richard D. Jones, Esquire
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104~~

Return To:

Chicago Title Insurance Company
Southwest Region Commercial Center
2001 Bryan Street, Suite 1700
Dallas, Texas 75201 214-303-5300

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SECOND PRIORITY ASSIGNMENT OF LEASES AND RENTS

THIS SECOND PRIORITY ASSIGNMENT OF LEASES AND RENTS (this "**Assignment**") made this 25th day of September, 2012, by PROLOGIS NA2 U.S. LLC, a Delaware limited liability company ("**Assignor**"), for the benefit of TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation, having an address at 730 Third Avenue, New York, New York 10017 (together with its successors and assigns, "**Lender**").

RECITALS:

A. Pursuant to that certain Loan Agreement dated as of November 26, 2008 (as amended by that certain First Amendment to Loan Agreement and Other Loan Documents, dated as of March 15, 2012, by and among Lender, Assignor and certain affiliates thereof, the "**Original Loan Agreement**"), by and among Lender, Assignor and certain affiliates thereof (each a "**Borrower**" and collectively "**Borrowers**"), Lender made a loan (the "**Loan**") in the maximum principal amount of ONE HUNDRED FOUR MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$104,700,000.00) (such amounts, or so much as is outstanding from time to time is referred to as the "**Principal**").

B. To evidence the Loan, each Borrower (including, without limitation, Assignor) (a) executed a certain Promissory Note dated as of November 26, 2008 (each such promissory note, together with all modifications, increases and supplements, thereof, a "**Note**" and collectively, the "**Notes**") in favor of Lender, evidencing a portion of the Loan (with the balance of the principal amounts evidenced by the Notes equal to the balance of the amount of the Loan) and providing for a maturity date of December 10, 2018 (the "**Maturity Date**") and (b) executed a certain Guaranty (Payment and Performance) dated as of November 26, 2008 (each such guaranty, as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, each a "**Guaranty**") in favor of Lender, pursuant to which each Borrower agreed to pay and perform certain obligations of the other Borrowers.

C. The Note executed by Assignor (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, the "**Assignor's Note**") evidences an initial principal amount of THIRTY MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$30,250,000.00).

D. Assignor secured its obligations under the Assignor's Note and the other Loan Documents executed by Assignor (other than the Guaranty executed by Assignor (such Guaranty, the "**Assignor's Guaranty**")), by, *inter alia*, executing (a) that certain First Priority Assignment of Leases and Rents dated as of the date hereof (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, the "**First Priority Assignment**") for the benefit of Lender, pursuant to which Assignor, *inter alia*, granted Lender a first priority assignment of all Leases and Rents derived from certain real property located in Elk Grove Village, Illinois and more particularly described in Exhibit A (the "**Land**") and all improvements now or hereafter erected thereon and (b) that certain First Priority Mortgage,

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Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement dated as of the date hereof (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, the "**First Priority Mortgage**") for the benefit of Lender, pursuant to which Assignor granted Lender a first priority lien on, inter alia, the Land and such improvements. The First Priority Assignment and the First Priority Mortgage are to be recorded prior to this Assignment.

E. Borrowers have requested that Lender consent to certain modifications to the Original Loan Agreement and the Loan Documents (as defined in the Loan Agreement (as defined below)), including, without limitation, the substitution of the New Property (as defined in the First Amendment (as defined below)) for existing Property (as defined in the Original Loan Agreement) pursuant to the terms of the Loan Agreement (such modifications, collectively, the "**Modification**" or the "**Modifications**").

F. The Modifications are evidenced by, inter alia, that certain First Omnibus Amendment to Loan Agreement and Loan Documents, dated as of the date hereof, (the "**First Amendment**") and together with the Original Loan Agreement, as the same may be further amended, supplemented, extended, restated or otherwise modified from time to time, the "**Loan Agreement**") by and between Borrowers, Indemnitor and Lender.

G. As a condition to Lender consenting to the Modifications and to secure the Assignor's Guaranty and the Guaranteed Obligations (as defined in the Assignor's Guaranty), this Assignment grants Lender, among other things, a second priority assignment of all such Leases and Rents.

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Definitions. Capitalized terms used in this Assignment and not specifically defined in this Assignment are defined in the Loan Agreement.

Section 1.2. Rules of Construction. This Assignment will be interpreted in accordance with the rules of construction set forth in Exhibit C of the Loan Agreement.

ARTICLE II GRANTING CLAUSES

Section 2.1. Assignment.

(a) In consideration of the Guaranteed Obligations, Assignor irrevocably, absolutely, presently, unconditionally and not merely as additional security for the payment and performance of the Guaranteed Obligations, sells, assigns, sets over and delivers to Lender the following property, rights, interests and estates now or in the future owned or held by Assignor (the "**Assigned Property**"), for Lender's uses and purposes as set forth in this Assignment, subject to the license granted by Lender to Assignor in this Assignment to collect and receive the Rents so long as no Event of Default exists:

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(i) all present and future leases, subleases, licenses and other agreements relating to the use and occupancy of the Property including all amendments to the leases, subleases, licenses and other agreements in existence on the date of this Assignment (the "Leases");

(ii) the immediate and continuing right to collect and receive all present and future rents, prepaid rents, percentage, participation or contingent rents, issues, profits, proceeds, parking fees, revenues and other consideration under or in connection with the Leases or otherwise derived from the use and occupancy of the Property, including contributions to expenses by present and future tenants, subtenants, licensees and other occupants of the Property (the "Tenants"), security deposits and royalties, if any, and all other fees, charges, accounts, accounts receivable or payments paid or payable to or for the benefit of Assignor including liquidated damages following a default under a Lease, any termination, cancellation, modification or other fee or premium payable by a Tenant for any reason; the proceeds of rental insurance and any payments received in any bankruptcy or similar proceeding as described below (the "Rents");

(iii) all present and future guarantees or other credit enhancements given to Assignor in connection with any Tenant's performance under any of the Leases; and

(iv) all rights or causes of action that Assignor now or hereafter may have against any Tenant.

(b) Assignor further assigns, transfers and sets over to Lender all of Assignor's right, title and interest in and to all payments and claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Leases by a Tenant or trustee of the Tenant under Sections 502(b) or 365 of the Bankruptcy Code, including all rights to recover damages arising out of such breach or rejection, all rights to charges payable by the Tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of such Tenant and all rentals and other charges outstanding under the Lease as of the date of entry of such order for relief and all payments and all claims and rights to the payment of money in connection with the commencement or continuance of any bankruptcy, insolvency, reorganization, arrangement, dissolution, receivership or similar proceedings or assignment for the benefit of creditors relating to any Tenant.

(c) Lender's acceptance of this Assignment, with all of the rights, powers, privileges and authority so created, will not, prior to Lender's entry upon and taking possession of the Property, be deemed to constitute Lender a mortgagee-in-possession, will not obligate Lender to appear in or defend any action or proceeding relating to the Leases or to take any action under this Assignment, to expend any money or incur any expenses under the Leases or this Assignment, to perform or discharge any obligation under the Leases or to assume any obligation for security deposits or other deposits delivered to Assignor by any Tenant and not delivered to Lender and Lender will not be liable for any injury or damage to person or property sustained in or about the Property.

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(d) This Assignment, including, without limitation, the sale, assignment, set over and delivery of the Assigned Property is in all respects subject and subordinate to the interest in the Assigned Property granted to Lender under the First Priority Assignment and, as applicable, the First Priority Mortgage.

ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.1. Representations, Warranties and Covenants with Respect to Leases. Except as set forth in the Rent Rolls delivered to Lender in connection with the closing of the Modification.

(a) All of the Leases affecting the Property as of the date of this Assignment (the "Existing Lease") are in full force and effect with no material defaults or matters that with the passage of time or giving of notice would constitute a material default, there are no existing defenses or offsets to the payment of Rent under the Existing Leases; each Existing Lease represents the entire agreement between the parties as to the leasing and to Assignor's knowledge, all of the Existing Leases are enforceable in accordance with their terms.

(b) Each of the Tenants under the Existing Leases is in occupancy, paying Rent, open and conducting business in its respective leased premises and, to Assignor's knowledge is free from any bankruptcy, reorganization or other Proceeding for the relief of debtors under any federal or state insolvency statute.

(c) Assignor has complied with all obligations and satisfied all conditions (including any co-tenancy requirements) under the Existing Leases which Assignor as landlord must have complied with or satisfied on or before the date of this Assignment.

(d) Assignor has not collected and will not collect Rents under the Leases, excluding security deposits, more than one month in advance.

(e) Assignor is the landlord under the Leases, has the authority to assign the Leases and the Rents and there is not and will not be any assignment, pledge or mortgage of the Assigned Property other than this Assignment and the First Priority Assignment, except with Lender's prior consent which may be withheld in Lender's sole discretion.

(f) None of the Leases contains or will contain (i) an option to purchase the Property (including rights of first or last offer); (ii) any rights to set-off against Rents, except any rights to set-off included in the Lender-approved form lease; or (iii) (other than commercially reasonable termination or cancellation provisions contained in any Lease wherein the premises leased thereunder represents less than 7.5% of the net rentable area of the Properties) any early termination or cancellation rights (including those arising from a failure to meet continuing co-tenancy requirements).

(g) None of the Leases contains or will contain obligations of Assignor to make improvements to the Property, including the respective leased premises, to make any

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payment or give any credit or allowance to tenants or to pay any leasing commissions arising out of the Leases, except for improvement obligations, payments, credit allowances or leasing commissions provided for in the Lender-approved form lease, obligations which have been satisfied by Assignor prior to the date of this Assignment or which specifically exclude Lender or any other purchaser in foreclosure from liability for such obligations.

(h) Assignor has not and will not discount, compromise or discharge any of Tenants' obligations under the Leases, except in the ordinary course of business and only to the extent that the same shall not result in a Material Adverse Effect with respect to the Property.

(i) None of the Leases includes or will include percentage or participation rent that is based on net sales figures or net profit amounts.

(j) Assignor as landlord does not and will not have any obligations under the Leases with respect to off-site improvements other than improvements which Lender can lawfully perform (and which would not impose any material obligation on Lender or any other purchaser at foreclosure).

(k) None of the Leases limits or will limit the type or identity of tenant to whom the landlord is permitted to lease or limits the use to which another tenant may put its leased premises, except for (i) limitations on use generally affecting all Tenants and (ii) limitations regarding parking, road access and/or road use typical for properties similar in use and size to the Property.

(l) None of the Tenants has or will have the right to receive or to direct the use of Insurance Proceeds, except for proceeds of the Tenant's own insurance, or to receive or direct the use of Condemnation Awards, except for moving expenses and tenant fixtures costs.

(m) Assignor will perform the landlord's obligations under the Leases and will enforce the terms of the Leases to be performed by the Tenants.

(n) Assignor has notified the Tenants under all Existing Leases and will notify the Tenants under all Leases executed after the date of this Assignment that:

- (i) the Mortgage is in existence;
- (ii) the Leases and the Rents have been assigned to Lender; and
- (iii) Assignor's interest in any security deposits made under the Leases have been assigned to Lender.

Lender acknowledges that Assignor's delivery of Lender's form estoppels and/or subordination and non-disturbance agreements to the Tenants in connection with this Modification constitute the notice required hereunder to such Tenants.

Section 3.2. Prohibition Against Percentage Rents Based on Net Receipts. Assignor will not enter into any lease or approve any sublease that provides for rent based in whole or in

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part on the income or profits derived from the premises leased or subleased except for percentage rent based on gross (not net) receipts or sales.

ARTICLE IV FUTURE LEASING

Section 4.1. Covenants Regarding Future Leasing.

- (a) Intentionally Omitted.
- (b) Assignor will lease the Property in its reasonable discretion and may enter into new leases and may amend, renew or extend Leases without Lender's prior consent if the following conditions are met:
- (i) there is no Event of Default at the time the new lease, amendment, renewal or extension is exercised;
- (ii) annual base rent and other economic terms (including free rent periods and other tenant concessions) of each new lease, amendment, renewal or extension are, in Assignor's reasonable business judgment, at prevailing market terms for similar space in properties comparable to the Property in the same geographic location;
- (iii) each new lease is written on a Lender-approved form of lease without material deviation, each renewal or extension is of a Lease written on a Lender-approved form of lease without material deviation and each amendment does not represent a material deviation from a Lender-approved form of lease or, if not the case, then the new lease, amendment, renewal or extension, as the case may be, is submitted to Lender together with Lender's form of subordination, non-disturbance and attornment agreement executed by Tenant;
- (iv) each new lease (A) grants the tenant thereunder a leasehold estate in premises comprised of 400,000 square feet or less and is for a term of ten (10) years or less (as determined without regard to any renewal option), or (B) grants the tenant thereunder a leasehold estate in premises comprised of 200,000 square feet or less and is for a term of more than ten (10) years;
- (v) Lender has not revoked Assignor's privilege of entering into new leases and amending, renewing or extending Leases without Lender's consent as provided below;
- (vi) no lease amendment reduces the initial term of the Lease or any renewal term of the Lease after the renewal has been exercised, other than the instance in which (A) the term of the affected Lease will otherwise expire within six (6) months, (B) the tenant is in default under the affected Lease for more than sixty (60) days or (C) Assignor has determined in Assignor's reasonable business judgment that it is economically beneficial to the Property to enter into the amendment; and

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(vii) no lease amendment reduces the Rent except in connection with an extension or renewal of the Lease that complies with the provisions of this Section, other than the instance in which (A) the conditions set forth in items (i) and (v) above are met and (B) after the effective date of any such amendment the Properties will provide for a Debt Service Coverage Ratio of at least 1.25 to 1.00.

(viii) no new lease or lease amendment shall grant the tenant thereunder the right to assign, sublet or transfer the lease or tenant's rights thereunder without landlord's consent, except for rights to assign, sublet or transfer to a tenant's affiliate (for purposes hereof an assignment shall include a transfer of Equity Interests in a tenant).

If the preceding conditions are not met, Assignor may not enter into any new lease or any amendment, renewal or extension of a Lease without Lender's prior consent (which shall not be unreasonably withheld).

(c) If annual gross revenues from the Properties are less than the aggregate of annual Debt Service Payments, Impositions, Insurance Premiums and operating expenses for (or, in the instance of Debt Service Payments, attributable to) the Properties, Lender may (upon sixty (60) days' prior notice to Assignor) revoke Assignor's privilege to enter into new leases and to amend, renew and extend Leases without Lender's prior consent; notwithstanding the foregoing, such privilege shall be automatically reinstated at any time at which (i) annual gross revenues, from the Properties then exceed the aggregate of annual Debt Service Payments, Impositions, Insurance Premiums and operating expenses for (or, in the instance of Debt Service Payments, attributable to) the Properties, (ii) there has been no Event of Default in existence during the preceding six (6) month period and (iii) such privilege has not been revoked at any time within the prior nine (9) month period.

(d) Assignor's privilege to enter into new leases and to amend, renew or extend Leases without Lender's prior consent automatically terminates upon the occurrence of an Event of Default.

(e) Not more than sixty (60) days after execution of each new lease and each amendment, renewal or extension of any Lease by Assignor and Tenant, Assignor will deliver to Lender or Lender's designated servicer, an original or a copy certified by Assignor.

In the event Assignor is required to obtain Lender's prior consent in connection with any new lease, amendment, renewal or extension, and Lender fails to approve or disapprove any written request received by Assignor for such approval (which request shall be accompanied by a final version of such proposed lease, amendment, renewal, or extension, as the case may be) within ten (10) Business Days of receipt thereof, Assignor may send a second written request to Lender and if Lender fails to approve or disapprove of Assignor's second written request within five (5) Business Days of receipt thereof, such lease, amendment, renewal or extension shall be deemed approved, provided that Lender will be deemed to have given such approval if, and only if, (A) Assignor shall have timely provided Lender with all information as it shall reasonably request in connection with Lender's review of such new lease, amendment, renewal or extension

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and (B) each such request includes the following in all capital, bolded, block letters on the first page thereof and on the envelope or other packaging containing such request:

**THE FOLLOWING REQUEST REQUIRES A RESPONSE
WITHIN [SELECT, AS APPLICABLE: 10 OR 5] BUSINESS
DAYS OF RECEIPT. FAILURE TO DO SO WILL BE
DEEMED AN APPROVAL OF THE REQUEST.**

ARTICLE V

TERMINATION, CANCELLATION OR SURRENDER OF LEASES

Section 5.1. Termination, Cancellation or Surrender of Leases.

(a) Assignor may terminate or cancel any Lease or accept surrender of any leased premises prior to the scheduled expiration date of the Lease in its reasonable discretion and without Lender's prior consent, if the following conditions are met:

(i) there is no Event of Default at the time of termination, cancellation or surrender;

(ii) the term of the affected Lease will expire within six months, the tenant is in default under the affected Lease for more than sixty (60) days or Assignor has determined in Assignor's reasonable business judgment that it is economically beneficial to the Property to terminate or cancel the affected Lease and relet the space taking into account the time and costs associated with reletting the space;

(iii) after any such termination, cancellation or surrender, the Properties remain at least 85% leased and provide for a Debt Service Coverage Ratio of at least 1.25 to 1.00.

(iv) the affected Lease represents less than 7.5% of the net rentable area of the Properties; and

(v) Assignor's privilege to terminate or cancel Leases and accept surrender of leased premises as provided in this Assignment is not then revoked pursuant to clause (b) below or any similar provision of any other Assignment of Leases and Rents entered into in connection with the Modification and has not been revoked in the past six (6) months.

If the preceding conditions are not met, Assignor will not terminate or cancel any Lease or accept surrender of any leased premises prior to the scheduled expiration date of the Lease without Lender's prior consent.

(b) If annual gross revenues from the Properties are less than the aggregate of annual Debt Service Payments, Impositions, Insurance Premiums and operating expenses for (or, in the instance of Debt Service Payments, attributable to) the Properties, Lender may (upon sixty (60) days' prior notice to Assignor) revoke Assignor's privilege to terminate or cancel Leases and accept surrender of leased premises absent prior consent; notwithstanding the foregoing,

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Lender shall reinstate such privilege at any time at which (i) annual gross revenues, from the Properties then exceed the aggregate of annual Debt Service Payments, Impositions, Insurance Premiums and operating expenses for (or, in the instance of Debt Service Payments, attributable to) the Properties, (ii) there has been no Event of Default in existence during the preceding six (6) month period and (iii) such privilege has not been revoked at any time within the prior nine (9) month period.

(c) Assignor's privilege to terminate or cancel Leases and accept surrender of leased premises without Lender's prior consent automatically terminates upon the occurrence of an Event of Default.

(d) Notwithstanding anything to the contrary set forth herein or in any other Loan Document, Assignor shall provide Lender with prior written notice of the termination of any Lease pursuant to which the Tenant or any other party will pay any termination, cancellation or surrender fee (the "**Termination Fee**"). Without limiting any other provision contained herein or in any other Loan Document, in the event (a) after any such termination, cancellation or surrender the Debt Service Coverage Ratio will be less than 1.25 : 1.00, and (b) the Termination Fee at issue is in excess of \$1,500,000.00, then Assignor shall immediately upon receipt of such Termination Fee (or any portion thereof) pay over (or cause to be paid over) the same to Lender, to be held by Lender as additional security for the Guaranteed Obligations in accordance with the terms of the First Priority Assignment (which provides, in part, that in the event there is an Event of Default at the time of any such termination, cancellation or surrender, any and all Termination Fees shall be immediately paid over to Lender to be held by Lender as additional security for the obligations secured by the First Priority Assignment and may be applied by Lender to any portion of such obligations as selected by Lender in its sole discretion and upon payment in full of such obligations, Lender may apply any remaining Termination Fee to any portion of the Guaranteed Obligations as selected by Lender in its sole discretion). Except in the instances set forth above, and subject to the terms of the First Priority Assignment, Assignor may retain the Termination Fee and apply such funds to lost rent for such premises or for the costs of reletting the affected premises and general working capital purposes, with respect to the Properties in accordance with the terms hereof.

ARTICLE VI REPORTING

Section 6.1. Reporting.

(a) Assignor will deliver to Lender within one hundred twenty (120) days after the close of each Fiscal Year a then current rent roll for the Property accompanied by a Certification of Rent Roll substantially in the form attached as **Exhibit B**, certified by a Responsible Officer of Assignor.

(b) Assignor will deliver to Lender within sixty (60) days after the close of each Fiscal Year operating and capital budgets for the Property for the then current Fiscal Year.

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(c) If Lender requests, Assignor will deliver to Lender within forty-five (45) days after the end of each fiscal quarter a quarterly income and expense statement for the Property prepared in accordance with GAAP for the immediately preceding fiscal quarter.

(d) If Lender reasonably requests upon a material change in the financial condition of Assignor or the Property, Assignor will deliver to Lender within fifteen (15) Business Days of the request:

(i) a certificate disclosing any contracts with Affiliates of Assignor in connection with the Property;

(ii) a rent roll for the Property prepared not more than five (5) Business Days before delivery; and

(iii) an income and expense statement for the Property prepared in accordance with GAAP for the period requested by Lender or, if not specified, then for the period commencing the later of the beginning of the Fiscal Year in which the request is made or the date of the last certified income and expense statement delivered to Lender and continuing through the last day of the calendar month preceding the request.

(e) Assignor will deliver promptly to Lender any other information with respect to the operation and management of Assignor and the Property as Lender may reasonably request from time to time.

(f) Items delivered to Lender pursuant to the First Priority Assignment or the First Priority Mortgage shall be sufficient to satisfy delivery requirements of such items hereunder.

ARTICLE VII

LICENSE TO COLLECT, AND APPLICATION OF, RENTS

Section 7.1. License to Collect Rents.

(a) Lender grants to Assignor a license to collect the Rents as they become due under the Leases, receiving and holding the Rents as a trust fund for the benefit of Lender.

(b) Assignor will apply the Rents in the following order of priority (i) the payment of Impositions; (ii) the payment of Insurance Premiums; (iii) the payment of the reasonable and customary costs of operating, maintaining and leasing the Property as required by the Loan Documents (other than fees and commissions payable to Assignor or Assignor's affiliates); (iv) the payment of Debt Service Payments in accordance with its obligations under the Assignor's Note, the Assignor's Guaranty, and the other Loan Documents and any and other payments required to be made by any Borrower under the Loan Documents; (v) the payment of reasonable and customary fees and commissions to Assignor and Assignor's affiliates in connection with operating, maintaining and leasing the Property; and (vi) maintenance of cash reserves adequate to meet the projected costs of operating, maintaining and leasing the Property

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from time to time in accordance with its Permitted Use, including projected leasing costs, tenant improvement costs, capital expenditures and reserves for replacements, before using any of the Rents for any other purpose.

(c) If an Event of Default occurs, Assignor's license to collect the Rents will terminate automatically, without any action required of Lender. If Assignor nevertheless collects any Rents after the license terminates, Assignor nevertheless will hold such Rents as a trust fund for the benefit of Lender and will apply such Rents only to the payments described in clauses (i) - (iv) in the preceding subsection.

ARTICLE VIII DEFAULTS AND REMEDIES

Section 8.1. Events of Default. It is an Event of Default under this Assignment if:

(a) Assignor fails to pay any amount due under the Loan Documents and such failure continues beyond any applicable notice or cure period expressly set forth in such Loan Documents;

(b) there is a material default in the performance of any other provision of this Assignment or any other Loan Document (which does not otherwise constitute an Event of Default under this Assignment or any other Loan Document) or if there is any material inaccuracy or falsehood in any representation or warranty contained in this Assignment or any other Loan Document (which does not otherwise constitute an Event of Default under this Assignment or any other Loan Document) which is not remedied within thirty (30) days after Assignor receives notice thereof, provided that if the default, inaccuracy or falsehood is of a nature that it cannot be cured within the thirty (30) day period and during that period Assignor commences to cure, and thereafter diligently continues to cure, the default, inaccuracy or falsehood, then the thirty (30) day period will be extended for a reasonable period not to exceed one hundred eighty (180) days after the notice to Assignor; or

(c) an Event of Default occurs under any other Loan Document.

Section 8.2. Remedies. (a) If an Event of Default occurs, Lender may take any of the following actions (the "Assignment Remedies") without notice to Assignor:

(i) exercise any of the Remedies; and
(ii) directly or through a Receiver or as a mortgagee-in-possession as authorized by the court:

(A) take possession and control of the Property;

(B) manage and operate the Property;

(C) redevelop or reconfigure the Property and retain consultants or other professional advisors in connection therewith;

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(D) market the Property for sale and sell or otherwise dispose of the Property;

(E) require Assignor to deliver to Lender or the Receiver all security deposits, all books and records relating to the Property and Assignor and all original counterparts of the Leases;

(F) collect, sue for and give receipts for the Rents and, after paying all expenses of collection, including a Receiver's fee and expenses, any broker's fees and commissions, and any attorneys' fees (including expert fees, disbursements and costs) apply the net collection to the operation, management and leasing of the Property and thereafter as provided in the Loan Documents;

(G) make, modify, enforce, terminate or accept surrender of Leases and evict tenants;

(H) appear in and defend any Proceeding brought in connection with the Assigned Property and bring any Proceeding, in the name and on behalf of Assignor, that Lender, in its sole discretion, determines should be brought to protect the Assigned Property or Lender's interest in the Assigned Property;

(I) perform any act in the place of Assignor that Lender or the Receiver deems necessary to preserve the value, marketability or rentability of the Property, to increase the gross receipts from the Property or to protect Lender's interest in the Property; and

(J) take any other action with respect to the Assigned Property as Lender may deem necessary to preserve or realize upon Lender's interest in the Assigned Property.

Section 8.3. General Provisions Pertaining to Remedies.

(a) The Assignment Remedies are cumulative and may be pursued concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion and without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Assignor. In addition, the Assignment Remedies are cumulative with those set forth in any other Loan Documents and otherwise permitted by law or in equity and may be pursued concurrently with such other Remedies or otherwise, at such time and in such order as Lender may determine in its sole discretion and without presentment, demand, protest or further notice of any kind all of which are expressly waived by Assignor.

(b) The enumeration in the Loan Documents of specific rights or powers will not be construed to limit any general rights or powers or impair Lender's rights with respect to the Assignment Remedies.

(c) If Lender exercises any of the Assignment Remedies, Lender will not be deemed a mortgagee-in-possession.

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(d) Lender will not be liable for any act or omission of Lender in connection with the exercise of the Assignment Remedies.

(e) Lender's right to exercise any Remedy will not be impaired by Lender's delay in exercising or failure to exercise the Assignment Remedies and will not be construed as extending any cure period or constitute a waiver of the default or Event of Default.

(f) If an Event of Default occurs, Lender's or a Receiver's payment or performance or acceptance of payment or performance will not be deemed a waiver or cure of the Event of Default.

(g) Lender's or a Receiver's acceptance of partial payment will not extend or affect any grace period or constitute a waiver of a default or Event of Default but will be credited against the unpaid Guaranteed Obligations.

(h) If Lender or a Receiver exercises any of the Assignment Remedies, such action will not cure or waive any default, will not waive, modify or affect any notice of default under the Loan Documents and will not invalidate any act done pursuant to a notice of default under the Loan Documents. Once Lender exercises the Assignment Remedies, Lender's enforcement will continue for so long as Lender elects, notwithstanding that the collection and application of the Rents may have cured the original default. If Lender elects to discontinue the exercise of the Assignment Remedies, the Assignment Remedies may be reasserted at any time and from time to time following a subsequent Event of Default.

(i) A demand by Lender or the receiver on any Tenant to pay the Rents to Lender or the receiver by reason of an Event of Default will be sufficient notice to the Tenant to make future payments of Rents to Lender or the receiver without the necessity for consent by Assignor.

Section 8.4. Payment of Expenses. Assignor is obligated to pay all expenses incurred by Lender or the receiver or that are otherwise payable in connection with this Assignment or the Leases, the Rents or any other Assigned Property, including expenses relating to (i) any Proceeding or other claim asserted against Lender and (ii) the preservation of Lender's security and the exercise of any Assignment Remedies.

Section 8.5. Duty to Defend. If Lender or any of its trustees, officers, participants, employees or affiliates is a party in any Proceeding relating to this Assignment or the Leases and the Rents (other than any Proceeding resulting solely from the acts or failures to act of Lender or any of its trustees, officers, participants, employees or Affiliates), Assignor will defend and hold harmless the party with attorneys and other professionals retained by Assignor and approved by Lender. At its option, Lender may engage its own attorneys and other professionals, at Assignor's expense, to defend or assist the party. In either event, the Proceeding will be controlled by Lender.

Section 8.6. Attorney-In-Fact. Assignor appoints Lender as Assignor's attorney-in-fact to perform, at Lender's election, any actions and to execute and record any instruments

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necessary to effectuate the actions described in this Article, in each instance only at Lender's election and only to the extent Assignor has failed to comply with the provisions of this Article. Such appointment is coupled with an interest and is irrevocable so long as any Guaranteed Obligation remains outstanding.

ARTICLE IX LIMITATION OF LIABILITY

This Assignment is subject to the limitations on liability set forth in Article XI of the Loan Agreement entitled "**Limitation of Liability**". The provisions of Article XI of the Loan Agreement are hereby incorporated by reference in their entirety, provided that references to Borrower or any Obligor in such Article XI shall be deemed to refer to the Assignor named herein.

ARTICLE X MISCELLANEOUS

Section 10.1. Further Assurances. Assignor will execute, acknowledge and deliver to Lender, a Receiver or any other entity Lender designates, any additional or replacement documents and perform any additional actions that Lender or the Receiver determines are reasonably necessary to evidence, perfect or protect Lender's interest in the Assigned Property or to carry out the intent or facilitate the performance of the provisions of this Assignment.

Section 10.2. Bankruptcy Proceeding Provisions.

(a) If Assignor receives on account of any Proceeding including any Proceeding under the Bankruptcy Code, any sums relating to the breach or rejection of any of the Leases by a Tenant or trustee of such Tenant under Section 265 of the Bankruptcy Code, including all damages arising out of such breach or rejection, all rights to charges payable by the Tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of the Tenant and all rentals and other charges outstanding under the Lease as of the date of entry of such order for relief, Assignor will promptly deposit such sums in the Account specified in Section 10.2 of the First Priority Assignment and, pursuant to the First Priority Assignment, in the event any amounts remain in the Account following payment in full of the obligations secured by the First Priority Assignment, such amounts shall continue to be held in such Account with a depository and Assignor will cause the Account to be designated on the records of the depository as collateral for the payment and performance of the Guaranteed Obligations in accordance with the terms hereof. Assignor hereby assigns, transfers and sets over to Lender, and grants to Lender a security interest in, all sums in the Account in consideration of the payment and performance of the Guaranteed Obligations (which security interest shall be subject and subordinate solely to Lender's security interest under the First Priority Assignment). Assignor will not withdraw any sums from or further encumber the Account without the Lender's prior consent so long as any of the Guaranteed Obligations remain outstanding, provided that if no Event of Default occurs the Account will be released to Assignor free of the lien and security interest granted hereby on the date on which Assignor enters into a

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new lease of the leased premises with a tenant and on terms and conditions satisfactory to Lender.

(b) Any proof of claim or similar document filed by the Lender in connection with the breach or rejection of any of the Leases by any lessee thereunder or trustee of any such lessee under Section 365 of the Bankruptcy Code, 11 U.S.C. §365, will for the purpose of perfecting the Lender's rights conferred in Section 2.1 be deemed to constitute a petition by Lender against Assignor for sequestration of rents under the laws of the State or Commonwealth where the Property is located.

Section 10.3. Assignment Terminates Upon Payment in Full. Upon payment and performance in full of the Guaranteed Obligations, this Assignment will terminate, but the affidavit, certificate, letter or statement of any officer of Lender showing any part of the Guaranteed Obligations to be unpaid will be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation, may and is hereby authorized to rely thereon.

Section 10.4. No Further Assignment. Other than in connection with the First Priority Assignment, Assignor will not further assign or otherwise transfer or encumber its interest in the Assigned Property without Lender's prior consent which may be withheld in Lender's sole discretion. If Lender consents to any further assignment, transfer or encumbrance of the Assigned Property, it will only do so provided that (i) the subordinate assignment restricts the subordinate assignee from subordinating the Leases to any mortgage or other security instrument held by the subordinate assignee and requires the subordinate assignee to subordinate its interests to any Leases executed after the date of the subordinate assignment; (ii) the subordinate assignment prohibits the subordinate assignee from taking any action that would terminate, modify or amend or could result in the termination, modification or amendment of any of the Leases; and (iii) the subordinate assignee agrees that if it exercises its remedies under its assignment and either it or any party acting on its behalf collects any Rents, such Rents will be deemed collected for the benefit of Lender and held in trust for Lender and upon written demand, the party holding the Rents collected will immediately pay them to Lender. If any subordinate assignment does not contain the foregoing provisions, to the extent permitted by Law, the subordinate assignee will be deemed bound by such provisions as if set forth in the subordinate assignment or any action taken by subordinate assignee that violates the foregoing provisions will be null and void.

Section 10.5. Applicable Law. The Assignment will be governed by and construed in accordance with the Laws of the State of Illinois.

Section 10.6. Loan Agreement Provisions Incorporated. The provisions of Article XV, Section 14.1 and Article XVI of the Loan Agreement entitled, "Waivers", "Notices" and "Miscellaneous," respectively, are applicable to this Assignment and are deemed incorporated by reference as if set forth at length, provided that references to Borrower or any Obligor in such Articles and Sections shall be deemed to refer to the Assignor named herein.

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Section 10.7. Covenants Run with the Land. The terms, covenants, conditions and warranties contained in this Assignment and the powers granted hereby will run with the Land, and will inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all lessees, sub-tenants and assigns of same, and all subsequent owners of the Property, and all subsequent holders of the Loan Documents.

Section 10.8. Guarantied Obligations; Severability. Any and all references to the Guarantied Obligations shall include all of the Guarantied Obligations, including but not limited to, Assignor's guaranty of the timely payment of that portion of the Debt guaranteed by Assignor in the Assignor's Guaranty, and pursuant to the terms of the Loan Agreement, and in the event any portion of the Guarantied Obligations or the assignments or security granted with respect thereto shall be deemed unenforceable for any reason (or if the assignment granted hereunder with respect to any Guarantied Obligation shall be avoided), the remainder of the Guarantied Obligations and any assignment of security with respect thereto shall remain in full force and effect (without loss of priority and without impairment of any of Lender's rights and remedies with respect to the remaining Guarantied Obligations).

Section 10.9. Headings. Notwithstanding the title of this Assignment contained in the first paragraph hereof, the provisions hereof pertain to all Leases and not just those which are not recorded.

Section 10.10. Conflicts. As set forth in **Exhibit C** to the Loan Agreement, in the event of any conflict between the terms of this Assignment and the Loan Agreement, the terms and conditions of the Loan Agreement shall govern and control.

[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, this Assignment has been duly executed by Assignor the day and year first above written.

ASSIGNOR:

PROLOGIS NA2 U.S. LLC,
a Delaware limited liability company

By: ProLogis NA2 Fund,
a Delaware general partnership,
its sole member

By: ProLogis NA2 Fund GP LLC,
a Delaware limited liability company,
its managing general partner

By: ProLogis NA2 Sub Holdings LLC,
a Delaware limited liability company,
its sole member

By: ProLogis NA2 Holdings LP,
a Delaware limited partnership,
its sole member

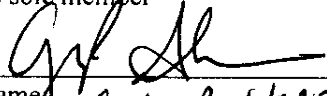
By: ProLogis NA2 Direct LLC,
a Delaware limited liability company,
its general partner

By: ProLogis NA2 PEIT II LLC,
a Delaware limited liability company,
its sole member

By: ProLogis NA2 Sub LP,
a Delaware limited partnership,
its managing member

By: ProLogis NA2 Sub GP LLC,
a Delaware limited liability company,
its general partner

By: ProLogis Logistics Services Incorporated,
a Delaware corporation,
its sole member

By: 
Name: Gayle P. Starr
Title: SVP

Property of Cook County Clerk's Office

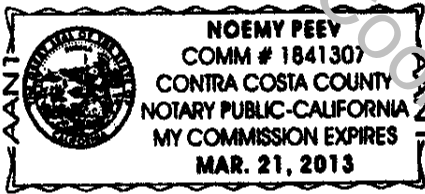
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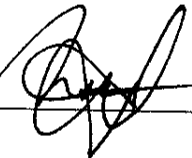
STATE OF CALIFORNIA)

SAN) SS:
COUNTY OF FRANCISCO)

On September 12th, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared SAYLE P. STARR, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Name 

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EXHIBIT A

Legal Description

LOT 395 IN CENTEX INDUSTRIAL PARK UNIT 242, BEING A SUBDIVISION IN THE SOUTH ½ OF SECTION 27, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 6, 1979 AS DOCUMENT 25085633, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-27-303-074-0000

Address of real estate: 747 Chase Avenue, Elk Grove Village, Illinois

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EXHIBIT B

Annual Certification Of Rent Roll

Dated: _____

Teachers Insurance and Annuity
Association of America ("Lender")
730 Third Avenue
New York, NY 10017

Re: TIAA Appl. # AAA-6849
TIAA Mtge. # 0006698-00
Property located at _____
(the "Property")

Ladies and Gentlemen:

1. Pursuant to the documents evidencing and securing the captioned loan (the "Loan Documents"), the undersigned certifies to Lender, as follows:

(a) The leases ("Leases") identified on the rent roll¹ attached as Schedule "A" and made a part of this certification constitute all of the existing leases affecting the Property, all other information set forth on the attached rent roll is true and correct and to the best knowledge of the undersigned, the only subleases, licenses or other agreements (the "Other Agreements") relating to the use and occupancy of the Property are as follows.

(b) To the best knowledge of the undersigned upon customary diligence, there are no persons or entities in occupancy of all or any portion of the Property except pursuant to the Leases and the Other Agreements.

2. With respect to the Leases and except as set forth on Schedule "B" or in the Rent Roll² the undersigned further certifies to Lender as follows:

(a) To the best knowledge of the undersigned upon customary diligence, (i) each of the Leases is in full force and effect with no defaults or matters that with the passage of time or giving of notice would constitute a default, (ii) there are no existing defenses or offsets to

¹ The attached rent roll should detail the following information for each lease: Name of tenant (including d/b/a), date of lease and any amendments thereto, square footage, fixed rental and all escalations, additional and percentage rent, unrealized concessions (including free rent), security deposit, commencement date, expiration date and the date through which rentals have been paid.

² Delivery to Lender of this Certification with exceptions listed on Schedule B and/or the Rent Roll will not be deemed approval of such matters by Lender and will not affect or impair Lender's rights to exercise its remedies under the Loan Documents if any of the exceptions listed in Schedule B violate any terms or covenants of the Loan Documents.

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the payment of rent; and (iii) all of the Leases are enforceable in accordance with their terms. In addition, each of the Leases represents the entire agreement between the parties as to the leasing transaction described therein.

(b) Each of the tenants under the Leases is in occupancy, paying rent, open and conducting business in its leased premises and, to the best knowledge of the undersigned upon customary diligence, is free from pending bankruptcy and from reorganization.

(c) To the best knowledge of the undersigned upon customary diligence, there is no pending action, suit or proceeding against any tenant that would result in termination of any Major Lease (as defined below) or removal of a tenant under any Major Lease, none of the tenants under any Major Lease has filed suit against Assignor and, to the actual knowledge of the undersigned upon customary diligence, no action, suit or proceeding has been threatened against any tenant that would result in termination of any Major Lease or the removal of a tenant under any Major Lease. As used herein a "Major Lease" shall mean a Lease of space in excess of 50,000 square feet.

Name:
Title:

Sworn to and Subscribed
before me this ____ day
of _____, 20__

Notary Public