



Doc#: 1231431094 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/09/2012 03:37 PM Pg: 1 of 11

**RECORDING REQUESTED BY AND
AFTER RECORDING, RETURN TO:**

Arnstein & Lehr, LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606
Attention: Raymond J. Werner

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("**Agreement**"), is made as of this 1st day of November, 2012 among BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for a group of lenders ("**Lender**"), Ascent CH2, LLC a Delaware limited liability company ("**Landlord**"), and HSBC Technology & Services (USA) Inc, a Delaware corporation ("**Tenant**").

Background

A. Lender is the owner and holder of a mortgage and other security instruments (individually and collectively, as amended from time to time, the "**Security Instrument**"), covering, among other things, the real property commonly known and described as 505 Railroad Drive, Northlake, Illinois, and further described on **Exhibit "A"** attached hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "**Property**").

B. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated as of November 1, 2012 (as amended from time to time, the "**Lease**"), demising a portion of the Property described more particularly in the Lease (the "**Leased Space**").

C. Landlord, Tenant, and Lender desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Subordination**. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument.

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2. Nondisturbance. Lender agrees that no foreclosure, deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights to possess and use the Leased Space provided, however, that at the time of such foreclosure the Lease is in full force and effect and no uncured Tenant event of default exists under the Lease.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan, including Lender (each, a "**Successor Owner**"). Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property was transferred to Successor Owner. In no event, however, will any Successor Owner be:

(a) liable for any default, breach of representation or warranty, act, or omission of any prior landlord under the Lease; provided, however, that, subject to the other provisions of this Agreement, the foregoing shall not limit either (i) Successor Owner's liability for events occurring after the date such Successor Owner has "Control" of the Property (for the purposes of this Agreement, "Control" shall be deemed to mean that the Successor Owner succeeds to the interest of Landlord under the Lease by reason of foreclosure, deed-in-lieu of foreclosure, or other sale, or has physical possession of the Property), regardless of whether such acts or omissions commenced prior to such period of Control, (ii) Successor Owner's obligation to correct any conditions which are continuing and violate Successor Owner's obligations as landlord under the Lease; or (iii) Tenant's right to, or Successor Owner's obligation for, the rent abatements, self-help rights, offset rights, Service Level Credits and Delay Damages described in the Lease; provided, however, that Successor Owner shall have no liability for damages owing to Tenant with respect to any act or omission of any prior landlord other than as a result of Tenant's right to offsets or abatements of rent pursuant to the Lease (subject to the limitation set forth in clause (b) below);

(b) subject to any offsets, abatements or defenses which Tenant has against any prior landlord other than Service Level Credits and Delay Damages (as such terms are defined in the Lease), unless Tenant shall have provided Lender with notice of the Landlord's Default (as such term is hereinafter defined) that gave rise to such offset, abatement or defense and the opportunity to cure the same, all in accordance with the terms of Section 5 below, but subject to the exceptions set forth in Section 5 below;

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(c) bound by any payment of rent or additional rent made by Tenant to Landlord more than thirty (30) days in advance (except for periodic reconciliation of any additional rent);

(d) bound by any modification or supplement to the Lease, or waiver of Lease terms (but not including the exercise of any option in accordance with the terms of the Lease), made without Lender's written consent thereto, which consent shall not be unreasonably withheld, conditioned, or delayed;

(e) liable to refund or otherwise account to Tenant for any security or other deposits not actually paid over to such Successor Owner by Landlord;

(f) bound by, or liable for any breach of, any obligation in the Lease to complete the Landlord Work (as such term is defined in the Lease) or satisfy any of the Commencement Date Conditions (as such term is defined in the Lease) or satisfy any of the construction obligations set forth in Section 3.7 of the Lease (the "Early Access Obligations"); provided, however, Successor Owner, within thirty (30) days after the earlier of the date Successor Owner has Control of the Property or the date a receiver is appointed for the Property at Lender's request, may, in its sole discretion, give Tenant written notice as to whether it will complete the Landlord Work and satisfy the Commencement Date Conditions and the Early Access Obligations, the date by which the Landlord Work will be completed and the Commencement Date Conditions satisfied ("Successor Owner's Target Commencement Date"), and the date by which the Early Access Obligations will be satisfied ("Successor Owner's Early Access Date"). If Successor Owner fails to give such notice within such thirty (30) day period, or elects within such thirty (30) day period not to complete Landlord Work or satisfy any of the Commencement Date Conditions or any of the Early Access Obligations, or if the Successor Owner's Target Commencement Date or the Successor Owner's Early Access Date set forth in such notice is unacceptable to Tenant in its sole discretion, then Tenant may terminate the Lease, but Successor Owner shall have no liability to Tenant for the failure to give such notice. If Successor Owner gives such notice and thereby elects to complete the Landlord Work and satisfy the Commencement Date Conditions and the Early Access Obligations, then Successor Owner shall be bound by, or liable for any breach of, any obligation in the Lease to complete the Landlord Work or satisfy any of the Commencement Date Conditions or Early Access Obligations; If the Lease is not terminated pursuant to this Section 3(f) and Successor Owner has given such notice and thereby elected to complete the Landlord Work and satisfy the Commencement Date Conditions, but fails to complete the Landlord Work and satisfy the Commencement Date Conditions on or before the Successor Owner's Target Commencement Date, Tenant shall have Delay Damages set forth in Section 3.3 of the Lease (the Successor Owner's Target Commencement Date being deemed the Target Commencement Date for purposes of Section 3.3 of the Lease) or the right to terminate the Lease by giving thirty (30) days written notice to Successor Owner;

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(g) bound by, or liable for any breach of, any restriction in the Lease on the transfer of the Property or any interest therein; or

(h) personally liable or obligated to perform any obligation of the landlord under the Lease, such Successor Owner's liability being limited in all cases to its interest in the Property and all rents and proceeds arising therefrom.

Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time reasonably request in order to confirm this Agreement.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Notice and Cure Rights. In the event that Tenant ever notifies Landlord of a default or claimed default by Landlord under the Lease ("**Landlord's Default**"), Tenant shall send a copy of the written notice thereof (the "Notice") concurrently therewith to Lender at the address set forth below. Lender shall be permitted (but shall have no obligation) to remedy any such default or claimed default specified in the Notice within an equal period of time, commencing on the date Lender receives or is deemed to have received such Notice, that Landlord would be permitted to remedy the same pursuant to the terms of the Lease. Notwithstanding the foregoing, if a Landlord's Default can be reasonably remedied only if Lender first obtains possession of the Property, Lender shall have additional time as is reasonably necessary under the circumstances (provided however, in no event shall such additional time exceed thirty (30) days from the cure period set forth under the Lease to remedy the Landlord's Default) to obtain possession of the Property and to remedy the default so long as Lender is diligently pursuing a cure. Except as provided in this Agreement, Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Lender fails to cure same within the time period specified above. Notwithstanding anything to the contrary in this Agreement, (a) Tenant shall not be required to give Lender notice of any Service Level Failure, and Lender shall not have any additional time to cure any Service Level Failure, and (b) Tenant shall not be required to deliver to Lender any notice of termination delivered pursuant to Section 3.4 of the Lease, and Lender shall not have any additional time to cure the Landlord's Default that gave rise to such termination right.

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6. No Consensual Termination. Tenant hereby agrees that it will not agree with Landlord to terminate the Lease or any portion thereof (except pursuant to termination rights expressly granted to Tenant under the Lease).

7. Termination Fee. Tenant hereby agrees to deliver any Termination Fee (as such term is defined in the Tenant Options Addendum to the Lease) directly to Lender and Landlord hereby expressly authorizes Tenant to make payment to Lender and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with this Section 7.

8. Miscellaneous.

(a) Notices. All notices and other communications under this Agreement are to be in writing and sent to the addresses as set forth below. Default or demand notices shall be deemed to have been duly given upon the receipt thereof by the party to whom such notice is addressed (or the refusal of such party to accept delivery of such notice, as the case may be). Notices may be sent via: (i) personal delivery; (ii) overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; or (iii) U.S. certified mail, postage prepaid and return receipt requested. A new address for notice may be established by written notice to the other parties in the manner set forth herein; provided, however, that no address change will be effective until written notice thereof actually is received (or refused, as the case may be) by the party to whom such address change is sent.

To Lender: Bank of America, N.A.
135 S. LaSalle Street, 6th Floor
Mail Code: IL4-135-06-30
Chicago, Illinois 60603
Attn: Shannon Westberg

with a copy to:

Bank of America, N.A.
135 South LaSalle Street, 6th Floor
Mail Code: IL4-135-06-41
Chicago, IL 60603
Attn: Julie Frapolly

To Tenant: HSBC Technology & Services (USA) Inc. (Property # NDC)
c/o Jones Lang LaSalle Americas, Inc.
525 William Penn Way, 20th Floor
Pittsburgh, PA 15259

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With a copy to:

HSBC Technology & Services (USA) Inc.
One HSBC Center, 27th Floor
Buffalo, NY 14203
Attn: Office of the General Counsel

To Landlord: Ascent CH2, LLC
c/o Ascent LLC
2350 Ball Drive
St. Louis, Missouri 63146
Attention: Phil Horstmann

With a copy to:

Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
Attention: David Orwick

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations, and agreements (oral and written) with respect to the subordination and nondisturbance of the Lease. This Agreement supersedes any inconsistent provision of the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law. If the Security Instrument is a deed of trust, this Agreement is entered into by the trustee of the Security Instrument solely in its capacity as trustee and not individually.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable, or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability, or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located (without giving effect to its rules governing conflicts of laws).

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(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

(h) Consent to Jurisdiction. Each party hereto irrevocably consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and state where the Property is located with respect to any legal action arising with respect to this Agreement and waives all objections which it may have to such jurisdiction and venue.

[SIGNATURE PAGES TO FOLLOW]

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IN WITNESS WHEREOF, this Agreement is executed as of the date first set forth above.

LENDER:

BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for a group of lenders

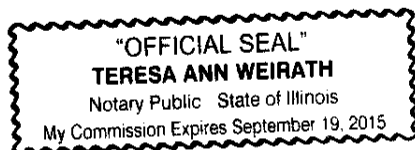
By: [Signature]
 Name: Shannon R Westberg
 Title: SVP

State of Illinois)

County of COOK) ss)

This instrument was acknowledged before me on October 30th, 2012, by Shannon R Westberg as SVP of BANK OF AMERICA, N.A., a national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal



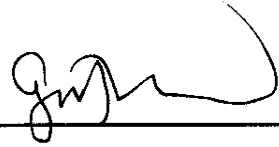
[Signature]
 Notary Public

{seal}

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TENANT:

HSBC TECHNOLOGY & SERVICES (USA) INC.,
a Delaware corporation

By: 

Name: GREGORY T ZEEHAN

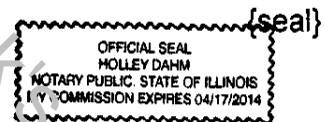
Title: CHIEF OPERATING OFFICER

State of Illinois)
County of Lake) ss

This instrument was acknowledged before me on November 1, 2012, by
GREGORY T ZEEHAN as CHIEF OPERATING OFFICER of
HSBC TECHNOLOGY & SERVICES (USA) INC., a Delaware corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public



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LANDLORD:

ASCENT CH2, LLC,
a Delaware limited liability company

By: Grande Property Holdings LLC, its Manager

By: 

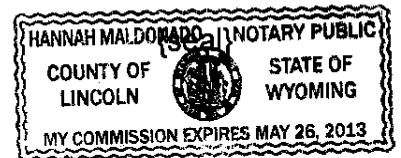
Philip Horstmann, Manager

State of Wyoming)
)ss
County of Lincoln)

This instrument was acknowledged before me on October 30, 2012, by Philip Horstmann as Manager of Grande Property Holdings LLC, as Manager of ASCENT CH2, LLC, a Delaware limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public



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Exhibit "A"
(Legal Description of the Property)

LOT 1 IN NORTHLAKE BUSINESS PARK, BEING A SUBDIVISION OF PART
OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 12
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 12-31-200-023-0000

Property of Cook County Clerk's Office