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PREPARED BY AND AFTER  
RECORDING RETURN TO:



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Doc#: 1307722131 Fee: \$66.00  
RHSP Fee: \$10.00 Affidavit Fee:  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 03/18/2013 03:10 PM Pg: 1 of 15

EXECUTION VERSION

TERRA FUNDING-BURNHAM CENTER, LLC, a Delaware limited liability company,  
as assignor

(Assignor)

to

WELLS FARGO BANK NORTHWEST, N.A., as Trustee  
as assignee

(Assignee)

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ASSIGNMENT OF LEASES AND RENTS

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DATED: March 15, 2013

LOCATION: 111 West Washington Street  
Chicago, Illinois 60606

COUNTY: Cook

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304

FIDELITY NATIONAL TITLE

999011562 NL

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This ASSIGNMENT OF LEASES AND RENTS (“*Assignment*”) made as of March 15, 2013, by Terra Funding-Burnham Center, LLC, a Delaware limited liability company having an address at 841 Bishop Street, Suite 1700, Honolulu, Hawaii 96813, as assignor (“*Assignor*”), to WELLS FARGO BANK NORTHWEST, N.A., a national banking association, as trustee, having an address at MAC: U1240-026, 260 N. Charles Lindbergh Drive, Salt Lake City, Utah 84116, Attention: Corporate Trust Lease Group, as assignee (“*Assignee*”).

## WITNESSETH:

WHEREAS, Assignor by its 4.16% Senior Secured Note of March 15, 2013, due on December 15, 2041 given to Assignee is indebted to Assignee in the principal sum of \$42,000,000 in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, collectively, the “*Note*”), with interest from the date thereof at the rates set forth in the Note, and with principal and interest to be payable in accordance with the terms and conditions provided in the Note.

WHEREAS, the Note is secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement given by Assignor to or for the benefit of Assignee, dated the date hereof, covering the Mortgaged Property at 111 West Washington Street, Chicago, Illinois 60606 (more particularly described on **Exhibit A** attached hereto) and intended to be duly recorded (the “*Mortgage*”).

WHEREAS, Assignor desires to secure the payment of the principal sum, interest, make whole amount or other premium and all other sums due and payable under the Note, the Mortgage, this Assignment and the other Operative Agreements and the performance of all of its obligations under the Note and the Indebtedness Hereby Secured as defined in the Mortgage.

WHEREAS, capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed to such terms in the Mortgage.

## ARTICLE 1 ASSIGNMENT

*Section 1.1 Assignment.* In addition to, and not in contravention of, Granting Clause Second or Section 2.18 of the Mortgage, Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by Assignor of all Indebtedness Hereby Secured hereby absolutely and unconditionally assigns, transfers and grants to Assignee the following property, rights, interests and estates, now owned, or hereafter acquired, by Assignor:

(a) *Lease.* The Ground Lease dated January 15, 2013 between the Assignor, as landlord, and Burnham Center-111 West Washington, LLC, a Delaware limited liability company (“*Tenant*”), as tenant (such Lease as it may heretofore or hereafter be amended, supplemented or modified and any replacement thereof is herein referred to as the “*Lease*”) and the right, title and interest of Assignor, its successors and assigns, therein and thereunder.

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(b) *Other Leases and Agreements.* To the extent of the Company's right, title and interest therein, if any, other leases, subleases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Mortgaged Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same (collectively, the "*Other Leases*"), this assignment of the Other Leases being effective without further or supplemental assignment. As of the date hereof and so long as the Lease remains in effect, the Company has and will have no right, title or interest in any Other Leases or any related Lease Guaranties, except for the Company's reversionary interest under the Lease. Therefore, except for the assignment and pledge of the Company's interest in such Other Lease and any related Lease Guaranties in this Section 1.1(b), the provisions of this Assignment with respect to the Other Leases and any related Lease Guaranties shall only apply in the event that the Company becomes the direct Landlord thereunder.

(c) *Rents.* To the extent of Assignor's interest, rents, additional rents, percentage rents, shell rent, service rent, revenues, income, proceeds, payments, reimbursable amounts, issues and profits arising from the Lease, the Other Leases and the Lease Guaranties, if any, and any cash or security deposited in connection therewith (including, without limitation, all commissions and all oil and gas and other mineral royalties and bonuses) payable by the Tenant under the Lease or any other tenant under the Other Leases or any Lease Guarantor under any Lease Guaranty or otherwise, for or in connection with the use, enjoyment and occupancy of the Mortgaged Property (collectively, the "*Rents*").

(d) *Bankruptcy Claims.* All of Assignor's claims and rights (the "*Bankruptcy Claims*") to the payment of damages arising from any rejection by the Tenant of the Lease or any other tenant under the Other Leases under the Bankruptcy Code, 11 U.S.C. §101 et seq., as the same may be amended (the "*Bankruptcy Code*") or under similar State bankruptcy or receivership laws.

(e) *Lease Guaranties.* All of the Assignor's right, title and interest in and to any and all lease guaranties, letters of credit and any other credit support given in connection with the Lease and the Other Leases to the Company or predecessors (individually, a "*Lease Guaranty*" and, collectively, the "*Lease Guaranties*") by any guarantor (individually, a "*Lease Guarantor*" and, collectively, the "*Lease Guarantors*").

(f) *Proceeds.* All proceeds from the sale or other disposition of the Lease, the Other Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) *Other.* All rights, powers, privileges, options and other benefits of Assignor as lessor under the Lease and the Other Leases and beneficiary under any Lease Guaranties, including without limitation, to the extent the Assignor has such rights, (A) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Lease and the Other Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Indebtedness Hereby Secured) and to do all other things which Assignor or any lessor is or may become entitled to do under the Lease, the Other Leases or the Lease

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Guaranties; (B) the right to pursue and collect any claim in bankruptcy or receivership proceedings of the Tenant, any other tenant under the Other Leases or any Lease Guarantor; (C) the right to accept or reject any offer made by the Tenant, any other tenant under the Other Leases (unless the Lease is then in full force and effect) or any Lease Guarantor to purchase the Mortgaged Property or any part thereof and any other property subject to the Lease, the Other Leases or any Lease Guaranty and to perform all other necessary or appropriate acts with respect to such purchases; (D) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, under the Lease, the Other Leases or any Lease Guaranty as Assignor shall have the right under the Lease, the Other Leases or any Lease Guaranty or at law to take, including the right to commence, conduct and consummate eviction proceedings; (E) the right, at Assignee's option to enter upon the Mortgaged Property or any portion thereof in person, by agent or by court-appointed receiver; and (F) Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in the Mortgage and any or all other actions designated by Assignee for the proper management and preservation of the Mortgaged Property

*Section 1.2 Consideration.* This Assignment is made in consideration of that certain extension of credit made by Assignee to Assignor evidenced by the Note and secured by the Mortgage given by Assignor to or for the benefit of Assignee, dated the date hereof, covering the Mortgaged Property and intended to be duly recorded.

## ARTICLE 2 COVENANTS

*Section 2.1 Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guarantor.*

(a) *Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guarantors.*

(i) At all times the Mortgaged Property shall be leased to the Tenant under the Lease, *provided* that, to the extent permitted thereby and by the SNDA Agreement, the Lease may be assigned or the Mortgaged Property sublet by the Tenant upon the terms and conditions set forth in the Lease and in the SNDA Agreement. The Assignor will punctually perform all obligations, covenants and agreements by it to be performed under the Lease, the Other Leases and the Lease Guaranties strictly in accordance with the terms thereof, and will, subject to the limitations on the exercise of remedies set forth in Section 2.1(a)(iii)(A) below, at all times compel performance by the Tenant or other tenant under the Other Leases (unless the Lease is then in full force and effect) and the Lease Guaranties of all covenants and agreements by them to be performed under the Lease, the Other Leases or the Lease Guaranties, as applicable. The Assignor will take no action and will use commercially reasonable efforts to prevent action to be taken by other Persons which will release the Tenant, any other tenant or any Lease Guarantor under the Other Leases (unless the Lease is then in full force and effect) or the Lease Guaranties from their obligations and liabilities under the Lease or the Other Leases, as

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applicable, or result in the termination, amendment or modification of, or impair the validity of, the Lease, the Other Leases or the Lease Guaranties, as applicable. The Assignor will give to the Assignee notice of all defaults by the Tenant, any other tenant and the Lease Guarantors under the Other Leases (unless the Lease is then in full force and effect) or the Lease Guaranties, as applicable, under the Lease, Other Leases, or the Lease Guaranties promptly after they have become actually known to the Assignor. Neither this Assignment nor any action or inaction on the part of the Assignee shall constitute an assumption on the part of the Assignee of any obligation to the Tenant, any other tenant under the Other Leases or any Lease Guarantor or any other Person under the Lease, the Other Leases or the Lease Guaranties. No action or inaction on the part of the Assignor shall adversely affect or limit in any way the rights of the Assignee under this Assignment, or, through this Assignment, under the Lease, the Other Leases (unless the Lease is then in full force and effect) or the Lease Guaranties.

(ii) The Assignor will not, except with the prior written consent of the Assignee, take or suffer to be taken any action or consent to or permit any prepayment or discount of Rents or payment of Rents under the Lease, the Other Leases or the Lease Guaranties.

(iii) The Assignor will not, without the prior written consent of the Assignee:

(A) declare a default (provided that the Assignor may give the Tenant written notice of the Tenant's failure to comply with any terms of the Lease and may demand satisfaction of such obligations) or exercise the remedies of the landlord under, or terminate, modify or accept a surrender of, or exercise any recapture rights, or offer or permit any termination, modification or surrender of, the Lease, the Other Leases (unless the Lease is then in full force and effect) or the Lease Guaranties (other than in accordance with their respective terms), or any reciprocal easement or restrictive covenant agreement or similar agreement running with the land or create or consent to the creation or existence of any mortgage or other lien to secure the payment of indebtedness upon the landlord's interest under the Lease, the Other Leases or the Lease Guaranties or any part thereof, subject, however, to Tenant's rights to assign its interest in the Lease in accordance with the terms thereof; or

(B) assign, transfer or hypothecate any Rents or other payment due or to become due under the Lease, the Other Leases or the Lease Guaranties.

(iv) The Assignor acknowledges that the Assignee has directed the Tenant and the Account Administrator in a letter of direction to deliver or remit directly to the Escrow Agent, all Rents (including, without limitation, all fixed rent, basic rent, percentage rent and all additional rent), income, revenues, issues, profits, insurance proceeds, condemnation awards, liquidated damages, purchase price proceeds and other payments, tenders and security now or hereafter due and payable to or receivable by the Assignor under the Lease, such amounts to be paid directly to the Escrow Agent in the manner provided therein or in such other manner as the Assignee may from time to time reasonably designate in accordance with the Escrow and Servicing Agreement. All

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amounts received by the Escrow Agent shall be applied in the manner provided herein and in the Escrow and Servicing Agreement. The Assignor hereby agrees to send to the Assignee, in accordance with Section 6.3 of the Mortgage, copies of all material notices and all other material instruments or communications required or permitted to be given by the Assignor under the Lease, the Other Leases (unless the Lease is then in full force and effect) and the Lease Guaranties pursuant thereto.

(v) Notwithstanding anything to the contrary set forth in the SNDA Agreement or any other document, the Assignor agrees that it will not enter into any agreement subordinating, amending, supplementing, hypothecating, waiving, discharging or terminating the Lease, the Other Leases (unless the Lease is then in full force and effect) or any Lease Guaranty without the Assignee's prior written consent thereto, and that any attempted subordination, amendment, supplement, hypothecation, waiver, discharge or termination without such consent shall be void. The Assignor will not terminate the Lease, the Other Leases (unless the Lease is then in full force and effect) or any Lease Guaranty or take possession of the Mortgaged Property in the event of default without the express prior written consent of the Assignee. In the event that the Lease, the Other Leases or any Lease Guaranty shall be amended or supplemented as herein permitted, the Lease, the Other Leases and the Lease Guaranties as so amended or supplemented shall continue to be subject to the provisions of this Assignment without the necessity of any further act by any of the parties hereto.

(vi) The Lease Assignment set forth in this Section 2.1 shall run with the land and be good and valid against the Assignor or those claiming by, under or through the Assignor, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Assignment. In the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency. The Assignee shall be permitted, at its sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Mortgaged Property.

### ARTICLE 3 TERMS OF ASSIGNMENT

*Section 3.1 Present Assignment.* Assignor hereby absolutely and unconditionally assigns to Assignee Assignor's right, title and interest in and to the Lease and Assignor's right, title and interest, if any, in and to all current and future Other Leases and Rents and any and all Lease Guaranties; it being intended by Assignor that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Assignor hereby presently, unconditionally and irrevocably designates Assignee to receive, and directs the Tenant to pay to Assignee or its designated servicer, all payments, payable or receivable under the Lease (including, without limitation, all Rents and other sums payable to the landlord under the Lease). Any Rents collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee, and Assignor shall, within two (2) business days after receipt of any Rents, pay the same to Assignee. All payments received by Assignee shall be applied as set forth in the Mortgage and the Escrow and Servicing Agreement. Assignor agrees to execute and deliver to Assignee such additional instruments, in form and substance

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reasonably satisfactory to Assignee, as may hereinafter be requested by Assignee to further evidence and confirm said assignment, *provided* that no such documents shall increase Assignor's obligations or decrease Assignor's rights. Assignee is hereby granted and assigned by Assignor the right to enter the Mortgaged Property subject to the terms of the Lease for the purposes of enforcing its interest in the Lease and the Other Leases and the Rents. Upon the occurrence and during the continuance of an Event of Default (as defined in the Mortgage), Assignee shall immediately be entitled to possess the Lease and the Other Leases and exercise all rights of landlord under the Lease and the Other Leases, whether or not Assignee enters upon and takes control of the Mortgaged Property. Assignor hereby grants and assigns to Assignee the right, at its option, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver, subject to the terms of the Lease.

**ARTICLE 4  
REMEDIES**

*Section 4.1 Remedies of Assignee.* Upon or at any time after the occurrence of a default beyond the expiration of any applicable cure period under this Assignment or an Event of Default occurs under the Mortgage (a "Default"), Assignee personally or by agents or attorneys may, subject always to the then existing rights, if any, of the Tenant or any permitted subtenant or assignee under the Lease and to the extent permitted by law (i) enter into and take possession of all or any part of the Mortgaged Property, and may forthwith use, operate, manage, insure, repair and improve the Mortgaged Property and take any other action which, in Assignee's judgment, is necessary or proper to conserve the value of the Mortgaged Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Mortgaged Property or any part thereof (and for such purpose Assignor does hereby irrevocably constitute and appoint Assignee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Assignor irrevocably acknowledging that any payment made to Assignee hereunder shall be a good receipt and acquittance against Assignor to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of Assignor hereunder and (iv) apply the net proceeds arising from any such operation of the Mortgaged Property as provided in Section 5.3 of the Mortgage in respect of the proceeds of a sale of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Assignee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby and which Assignor promises to pay within ten (10) days after demand together with interest at the Default Rate which shall commence to accrue ten (10) days after Assignee makes its demand. The Assignee shall not be liable to account to Assignor for any action taken pursuant hereto other than to account for any rents actually received by Assignee. Without taking possession of the Mortgaged Property, Assignee may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Indebtedness Hereby Secured payable upon demand with interest thereon at the Default Rate.

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*Section 4.2 Other Remedies.* Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Mortgage, or the other Operative Agreements and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Indebtedness Hereby Secured and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignor hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Assignor under this Assignment, the Note, the Mortgage, the other Operative Agreements or otherwise with respect to the Note secured hereby (other than payment or performance thereof) in any action or proceeding brought by Assignee to collect the same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Note, the Mortgage, or any of the other Operative Agreements (*provided, however*, that the foregoing shall not be deemed a waiver of Assignor's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Assignor's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Assignee in any separate action or proceeding).

*Section 4.3 Other Security.* Assignee may take or release other security for the payment of the Indebtedness Hereby Secured, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Indebtedness Hereby Secured without prejudice to any of its rights under this Assignment.

*Section 4.4 Non-Waiver.* The collection of the Rents and sums due under the Lease and the application thereof as herein provided by Assignee shall not be considered a waiver of any default by Assignor under the Note, the Mortgage, the Lease, this Assignment or the other Operative Agreements. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (a) the failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Mortgage, the Note or the other Operative Agreements, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (c) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Mortgage or the other Operative Agreements. Assignee may resort for the payment of the Indebtedness Hereby Secured to any other security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Indebtedness Hereby Secured, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

*Section 4.5 Bankruptcy.* Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the



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rejection of the Lease or any Other Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Tenant or any other tenant under the Lease or any other Leases under the Bankruptcy Code or any applicable State bankruptcy or receivership laws.

**ARTICLE 5**  
**NO LIABILITY, FURTHER ASSURANCES**

*Section 5.1 No Liability of Assignee.* This Assignment shall not be construed to bind Assignee to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Mortgaged Property after a Default or from any other act or omission of Assignee in managing the Mortgaged Property after a Default. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease, the Other Leases or any Lease Guaranties or by reason of this Assignment. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Lease, the Other Leases or any Lease Guaranties; nor shall it operate to make Assignee responsible or liable for any waste committed on the Mortgaged Property by the tenant or any other parties, or for any dangerous or defective condition of the Mortgaged Property, including without limitation the presence of any Hazardous Material (as defined in the Mortgage), or for any negligence in the management, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger unless resulting from the gross negligence, intentional misconduct or bad faith of Assignee.

*Section 5.2 No Mortgagee in Possession.* Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Assignee.

*Section 5.3 Further Assurances.* Assignor will, at the cost of Assignor, and without expense to Assignee, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Assignee shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Assignee the property and rights hereby assigned, or which Assignor may be or may hereafter become bound to convey or assign to Assignee, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Assignee to execute in the name of Assignor to the extent Assignee may lawfully do so, one or more financing statements, chattel mortgages or comparable mortgages, to evidence more effectively the lien and security interest hereof in and upon the Lease or the Other Leases, provided that no such documents shall increase Assignor's obligations or decrease Assignor's rights.

*Section 5.4 Limitations of Liability.* Except as set forth in the Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement, no Person who directly or

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indirectly owns any membership or other equity interest in the Assignor (each, a “*Non-Recourse Person*”) shall have any personal liability for (i) the payment of any sum of money which is or may be payable under the Note or any other Operative Agreement, including, but not limited to, the repayment of the Note or amounts due under the Mortgage or (ii) the performance or discharge of any covenants, obligation or undertakings of the Assignor under any Operative Agreement, and no monetary or deficiency judgment shall be sought or enforced against any Non-Recourse Person with respect thereto. Nothing in this Section 5.4 is intended to or shall in any way affect or invalidate any lien or security interest created by the Mortgage or this Assignment. This Section 5.4 shall not be construed to prohibit the joining of the Assignor in any foreclosure procedure involving the Mortgaged Property. This Section 5.4 shall not in any way affect the obligations of the Tenant under the Lease, any other tenant under the Other Leases or any Lease Guarantor under any Lease Guaranty.

**ARTICLE 6  
DEPOSITS, RELOCATIONS**

*Section 6.1 Security Deposits.* All security deposits of lessees, if any, whether held in cash or any other form, shall be deposited in escrow with Assignee.

**ARTICLE 7  
MISCELLANEOUS PROVISIONS**

*Section 7.1 Conflict of Terms.* In case of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of the Mortgage shall prevail.

*Section 7.2 No Oral Change.* This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

*Section 7.3 Certain Definitions.* Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word “Assignor” shall mean “each Assignor and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein,” the word “Assignee” shall mean “Assignee and any subsequent holder of the Note,” the word “Note” shall mean “the Note and any other evidence of indebtedness secured by the Mortgage,” the word “person” shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word “Property” shall include any portion of the Mortgaged Property and any interest therein, the phrases “attorneys’ fees” and “counsel fees” shall include any and all reasonable attorneys’, paralegal and law clerk fees and disbursements, including, but not limited to, reasonable fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Assignee in protecting its interest in the Mortgaged Property, the Lease, the Other Leases and the Rents and enforcing its rights hereunder, and the word “Indebtedness Hereby Secured” shall mean the principal balance of the Note with interest thereon as provided in the Note and the Mortgage and

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all other sums due pursuant to the Note, the Mortgage, this Assignment and the other Operative Agreements.

*Section 7.4 Authority.* Assignor represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Mortgaged Property.

*Section 7.5 Inapplicable Provisions.* If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

*Section 7.6 Duplicate Originals; Counterparts.* This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

*Section 7.7 Governing Law.*

This Assignment shall be governed, construed, interpreted and enforced in accordance with the laws of the State of Illinois, without regard to principles of conflicts of law.

*Section 7.8 Termination of Assignment.* Upon payment in full of the Indebtedness Hereby Secured, this Assignment shall be void and of no effect, as evidenced by the recording of an instrument of release of the Mortgage.

*Section 7.9 Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when received (or refused) delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, or by prepaid overnight air courier, addressed as follows:

If to Assignor:

Terra Funding-Burnham Center, LLC  
841 Bishop Street, Suite 1700  
Honolulu, Hawaii 96813  
Attention: Kimberly Aquino  
Phone: 808-531-3000  
Fax: 808-544-1284

If to Assignee:

Wells Fargo Bank Northwest, N.A.,  
as Trustee  
260 N. Charles Lindbergh Drive  
Salt Lake City, Utah 84116  
Attention: Corporate Trust Lease Group

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TERRA FUNDING-BURNHAM CENTER, LLC

Assignment of Leases and Rents

or as to either party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

*Section 7.10 Waiver of Trial by Jury.* Assignor hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating directly or indirectly to the loan evidenced by the Note, the application for the extension of credit evidenced by the Note, this Assignment, the Note, the Mortgage or the other Operative Agreements or any acts or omissions of Assignee, its officers, employees, directors or agents in connection therewith.

*Section 7.11 Liability.* If Assignor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

*Section 7.12 Headings, Etc.* The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

*Section 7.13 Number and Gender.* Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

*Section 7.14 Sole Discretion of Assignee.* Wherever pursuant to this Assignment (a) Assignee exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Assignee, or (c) any other decision or determination is to be made by Assignee, the decision of Assignee to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Assignee, shall be in the sole discretion of Assignee, except as may be otherwise expressly and specifically provided herein.

*Section 7.15 Successors and Assigns.* This Assignment, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee and its successors and assigns, including any subsequent holder of the Mortgage, and shall be binding upon Assignor, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Mortgaged Property.

*Section 7.16 Recitals.* The recitals are a substantive portion of this Assignment and are incorporated by reference as though set forth herein in full.

*[signature page follows]*

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TERRA FUNDING-BURNHAM, LLC

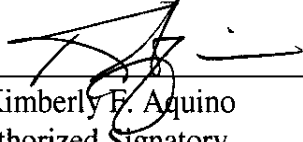
Assignment of Leases and Rents

IN WITNESS WHEREOF, Assignor has executed this Assignment of Leases and Rents as of the day and year first above written.

ASSIGNOR:

TERRA FUNDING-BURNHAM CENTER, LLC, a  
Delaware limited liability company

By \_\_\_\_\_

  
Name: Kimberly F. Aquino

Title: Authorized Signatory

Property of Cook County Clerk's Office

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TERRA FUNDING-WEST ADAMS, LLC

Assignment of Leases and Rents

STATE OF Hawaii )  
City & ) SS  
COUNTY OF Honolulu )

*del  
n.p.*

I, Dorna L Magsayo, a Notary Public in and for the County and State aforesaid, do hereby certify that Kimberly F. Aquino to me known, who declared and acknowledged that he is the Authorized Signatory of TERRA FUNDING-BURNHAM CENTER, LLC a limited liability company under the laws of the State of Delaware, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited partnership and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 12<sup>th</sup> day of March, 2013.

*Dorna L Magsayo*  
Notary Public, State of Hawaii

Printed Name: Dorna L. Magsayo



Commission expires: 10/30/14

Doc. Date: Undated # Pages: \_\_\_\_\_

Name: Dorna L. Magsayo First Circuit

Doc. Description: Assign. of Leases

and Rents

*Dorna L Magsayo* 3/12/13  
Signature Date

NOTARY CERTIFICATION



# UNOFFICIAL COPY

## Legal Description

**Lots 1, 2 and the East 47 feet of Lot 3 in Block 56 in the Original Town of Chicago, in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.**

**Commonly known as: 111 West Washington Street, Chicago, IL**

**PIN: 17-09-459-002-0000**

Property of Cook County Clerk's Office