

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program



1324234082

Doc#: 1324234082 **Fee:** \$110.00
RHSP Fee: \$9.00 **RPRF Fee:** \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/30/2013 01:56 PM Pg: 1 of 37

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 17-09-421-006-0000

Address:

Street: 77 West Wacker Drive

Street line 2:

City: Chicago

State: IL

ZIP Code: 60601

Lender: The Northwestern Mutual Life Insurance Company

Borrower: 77 West Wacker Drive, L.L.C.

Loan / Mortgage Amount: \$150,000,000.00

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

Certificate number: D9AF1EC7-D20E-4B34-8502-1D831ED782E0

Execution date: 08/26/2013

UNOFFICIAL COPY**Illinois****Loan No. 339937**

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

MORTGAGE and SECURITY AGREEMENT

THIS MORTGAGE and SECURITY AGREEMENT is made as of the 26th day of August, 2013 between 77 WEST WACKER DRIVE, L.L.C., a Delaware limited liability company, whose mailing address c/o State Teachers Retirement System of Ohio, 275 E. Broad Street, Columbus, Ohio 43215-3771, Attention: Director of Real Estate, herein (whether one or more in number) called "Mortgagor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Mortgagee":

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

- A. The land and interests in land in the City of Chicago, Cook County, Illinois, described in Exhibit "A" attached hereto and incorporated herein (the land and interests in land, together, the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to

UNOFFICIAL COPY

all waters, water rights, water courses, all ways, trees, rights, liberties and privileges;

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

Mortgagor agrees not to sell, transfer, assign or remove anything described in B, C and D above now or hereafter located on the Land without prior written consent from Mortgagee unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights, or relates to the removal or replacement of damaged or obsolete items and (ii) such action results in the substitution or replacement with similar items of equal value.

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

- E. cash and other funds now or at any time hereafter deposited by or for Mortgagor on account of tax, special assessment, replacement or other reserves required to be maintained

UNOFFICIAL COPY

pursuant to the Loan Documents (as hereinafter defined) with Mortgagee or a third party, or otherwise deposited with, or in the possession of, Mortgagee pursuant to the Loan Documents; and

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

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

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

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

- (a) Payment to the order of Mortgagee of the indebtedness evidenced by a promissory note of even date herewith (and any restatement, extension or renewal thereof and any amendment thereto) executed by Mortgagor for the principal sum of ONE HUNDRED FIFTY MILLION DOLLARS, with final maturity no later than September 1, 2018 and with interest as therein expressed (which promissory note, as such instrument may

UNOFFICIAL COPY

be amended, restated, renewed and extended, is hereinafter referred to as the "Note"), it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract; and

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

"Loan Documents" means this instrument, the Note, those provisions of that certain Loan Application dated August 9, 2013 from Mortgagor to Mortgagee and that certain acceptance letter issued by Mortgagee dated August 22, 2013 (together, the "Commitment"), which survive the closing of the Loan, that certain Absolute Assignment of Leases and Rents of even date herewith between Mortgagor and Mortgagee (the "Absolute Assignment"), that certain Certification of Borrower of even date herewith, that certain Limited Liability Company Supplement dated contemporaneously herewith, any other supplements and authorizations required by Mortgagee and any other agreement entered into or document executed by Mortgagor and delivered to Mortgagee in connection with the indebtedness evidenced by the Note, except for that certain Environmental Indemnity Agreement of even date herewith given by Mortgagor to Mortgagee (the "Environmental Indemnity Agreement"), as any of the foregoing may be amended from time to time.

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

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

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

Maintenance of Property and Compliance with Laws. Mortgagor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Mortgagee to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Mortgagee determines to be necessary in order to monitor Mortgagor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

UNOFFICIAL COPY

Tenants Using Chlorinated Solvents. Mortgagor agrees not to lease any of the Property, without the prior written consent of Mortgagee, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Business Restriction Representation and Warranty. Mortgagor represents and warrants that Mortgagor, to Mortgagor's actual knowledge, all persons and entities owning (directly or indirectly) an ownership interest in Mortgagor, all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Mortgagee in connection with the Indebtedness: (i) are not, and shall not become, a person or entity with whom Mortgagee is restricted from doing business with under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not, and shall not become, a person or entity with whom Mortgagee is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (iii) are not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) or (ii) above.

Insurance. Mortgagor agrees to keep the Property insured for the protection of Mortgagee and Mortgagee's wholly owned subsidiaries and agents in such manner, in such amounts and in such companies as Mortgagee may from time to time approve, and to keep the policies therefor, properly endorsed, on deposit with Mortgagee, or at Mortgagee's option, to keep evidence of insurance acceptable to Mortgagee evidencing all insurance coverages required hereunder on deposit with Mortgagee, which evidence shall reflect at least thirty (30) days notice of cancellation to Mortgagee and shall list Mortgagee as the certificate holder or as a similar additional interest with Mortgagee's correct mailing address and the loan number assigned to the loan 339937; if Mortgagor requests Mortgagee to accept a different form of evidence, Mortgagee shall not unreasonably withhold its consent, provided, a copy of a standard mortgagee endorsement in favor of Mortgagee stating that the insurer shall provide at least thirty (30) days notice of cancellation to Mortgagee accompanies such evidence. Mortgagor shall furnish Mortgagee with renewals of all applicable insurance evidence no later than the actual insurance expiration date.

UNOFFICIAL COPY

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty and the amount of such damage is greater than \$500,000.00, Mortgagor shall give prompt written notice thereof to Mortgagee (provided that Mortgagor shall be required to give such notice to Mortgagee in any event if any bodily injury or death occurs in connection with any such casualty). All insurance loss proceeds from all property insurance policies, whether or not required by Mortgagee (less expenses of collection) shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Mortgagee elects to apply the insurance loss proceeds on the Indebtedness, no prepayment fee shall be due thereon.

Notwithstanding the foregoing provision, Mortgagee agrees that if the insurance loss proceeds are less than the unpaid principal balance of the Note and if the casualty occurs prior to the last eighteen (18) months of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default (as hereinafter defined) at the time of casualty.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds to Mortgagor as a result of any act, neglect, use or occupancy of the Property by Mortgagor or any tenant of the Property.
- (c) Mortgagee shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Mortgagor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Mortgagee, be applied on the Indebtedness, whether or not due, or be released to Mortgagor.
- (d) If required by Mortgagee, Mortgagee shall be furnished a satisfactory report addressed to Mortgagee from an environmental engineer or other qualified professional satisfactory to Mortgagee to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Mortgagee shall release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Loan

UNOFFICIAL COPY

Documents and no Non-Monetary Default (as hereinafter defined) with respect to which Mortgagee shall have given Mortgagor notice pursuant to the "**Notice of Default**" provision herein and such Non-Monetary Default has not been cured. If a Monetary Default shall occur or Mortgagee shall give Mortgagor notice of a Non-Monetary Default and such Non-Monetary Default has not been cured, Mortgagee shall have no further obligation to release insurance loss proceeds hereunder unless such default is cured within the cure period set forth in the "**Notice of Default**" provision contained herein. If the estimated cost of restoration exceeds \$500,000.00, (i) the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the restoration, and (ii) Mortgagee shall receive an administration fee equal to one-half of one percent (0.5%) of the cost of restoration.

- (f) Prior to each release of funds, if requested by Mortgagee, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring Mortgagee's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Mortgagee.
- (g) Mortgagor shall pay all reasonable costs and expenses reasonably incurred by Mortgagee, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Mortgagee.
- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Mortgagee shall be satisfied that the improvements will be repaired to their functional equivalent that existed prior to the casualty.
- (j) The Key Leases (as hereinafter defined), to the extent that there would be more than twelve (12) months remaining in the term of such lease at the time of the completion of restoration, shall remain in full force and Mortgagee shall be satisfied that restoration can be completed within a time frame such that the tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the

UNOFFICIAL COPY

casualty).

In the event one or more of the Key Leases is or has been replaced with a lease (or leases) reasonably satisfactory to Mortgagee, solely for the purposes of paragraph (j) above such replacement leases shall be deemed Key Leases.

"Key Leases" means that certain (i) Lease dated October 6, 2006 as amended from time to time, between Mortgagor, as landlord, and United Air Lines, Inc., as tenant; (ii) Lease dated March 15, 1998 as amended from time to time, between Mortgagor, as landlord, and McGuireWoods LLP, as tenant; and (iii) Lease dated March 13, 1991 as amended from time to time, between Mortgagor, as landlord, and Jones Day, as tenant.

Condemnation. Subject to applicable law, Mortgagor hereby assigns to Mortgagee (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"). Any portion of such award and proceeds not applied to restoration shall, at Mortgagee's option, be applied on the Indebtedness without prepayment premium, whether due or not, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents. Notwithstanding the foregoing, if the Condemnation Proceeds are \$10,000,000.00 or less, the Taking does not materially affect the integrity of the Property as a whole in Mortgagee's reasonable discretion, and the Taking does not materially reduce the rental income or value of the Property, then Mortgagee shall apply the Condemnation Proceeds toward restoration of the Property.

Taxes and Special Assessments. Mortgagor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness (excluding income taxes of Beneficiary), or upon the interest of Mortgagee in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Mortgagee within 45 days after Mortgagee shall have given a written request to Mortgagor, the official receipt of the proper officer showing timely payment of all such taxes and assessments or, if such official receipt cannot reasonably be obtained within such time, then Grantor shall provide Beneficiary with reasonable evidence of timely payment within such 45-day period, and thereafter shall provide Beneficiary with the official receipt promptly after the same is posted by the assessor; provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be

UNOFFICIAL COPY

contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee.

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

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property (owned by Mortgagor and used in the operation of the Property) to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Mortgagor shall notify Mortgagee of, and shall indemnify and defend Mortgagee and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

(b) Except as otherwise provided above, Mortgagor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Mortgagee, with the exception of any Personal Property replaced (or to be replaced) with like property of equal or greater value thereto.

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

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

Other Liens. Mortgagor agrees to keep the Property and any Personal Property (owned by Mortgagor and used in the operation of the Property) free from all other liens either prior or

UNOFFICIAL COPY

subsequent to the lien created by this instrument. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby, (ii) assignment or pledge by Mortgagor of its revocable license to collect, use and enjoy rents and profits from the Property, or (iii) granting or permitting of a security interest in or other encumbrance on the direct or indirect ownership interests in Mortgagor, shall constitute a default under the terms of this instrument; except that upon written notice to Mortgagee, Mortgagor may proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Mortgagee.

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

Failure of Mortgagor to Act. If Mortgagor fails to make any payment or do any act as herein provided, Mortgagee may, without obligation to do so, after reasonable prior notice to Mortgagor, except in the event of an emergency, but without releasing Mortgagor from any obligation hereof: (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the

UNOFFICIAL COPY

judgment of Mortgagee appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended and all losses, liabilities, claims, damages, costs and expenses required to be reimbursed by Mortgagor to Mortgagee hereunder shall be payable by Mortgagor immediately upon demand with interest from date of expenditure or demand, as the case may be, at the Default Rate (as defined in the Note). All sums so expended or demanded by Mortgagee and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument. In no event shall the maximum amount secured hereby exceed two hundred percent (200%) of the principal amount of the Note.

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

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

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

Any other default under the Note or under any other Loan Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Mortgagee shall

UNOFFICIAL COPY

have given a written notice of such Non-Monetary Default to Mortgagor and Mortgagor shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Mortgagee shall have given such notice of default to Mortgagor (or, if the Non-Monetary Default is not curable within such 30-day period, Mortgagor shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and if requested by Mortgagee, Mortgagor shall not have deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Mortgagee).

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

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

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

UNOFFICIAL COPY

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

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

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

UNOFFICIAL COPY

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

"Change in the Proportionate Ownership" means a change in, or the existence of a lien on, the direct or indirect ownership of the limited liability company interests of Mortgagor.

Notwithstanding the foregoing, the following transfers shall be permitted without Mortgagee's consent or fee payable to Mortgagee, provided the conditions set forth below are satisfied (the "Permitted Transfers"):

- (a) A transfer of membership interests in Mortgagor provided that following such transfer State Teachers Retirement System of Ohio ("STRS Ohio") (i) continues to control Mortgagor and (ii) owns, in the aggregate, directly or indirectly, not less than 51% of the ownership interest in Mortgagor after such transfer. Mortgagor will promptly notify Mortgagee of such transfer and include in such notice documentation sufficient for Mortgagee to confirm compliance with the provisions of this subparagraph; or
- (b) A transfer of the Property to an entity that is at least 51% owned, in the aggregate, directly or indirectly, and controlled by STRS Ohio, provided that Mortgagor and the transferee comply with the provisions of subsection (v) below. Mortgagor shall provide Mortgagee with a detailed organizational chart for the transferee.

Notwithstanding the above, provided there is then no default in the terms and conditions of any Loan Document, and upon prior written request from Mortgagor, Mortgagee shall not withhold its consent to a one-time transfer of all but not less than all of the Property to a single entity or individual, provided:

- (i) the Property shall have achieved Debt Service Coverage (as hereinafter defined) of at least 2.25 for the last full fiscal year and there are no junior liens on the Property;

UNOFFICIAL COPY

- (ii) the transferee or an owner of the transferee (the "Creditworthy Party") has a net worth, determined in accordance with generally accepted accounting principles (or other accounting method satisfactory to Mortgagee), of at least \$450,000,000.00 with cash and cash equivalents of at least \$25,000,000.00 after funding the equity needed to close the purchase and a minimum overall real estate portfolio debt service coverage ratio of 1.30 for the prior twelve (12) month period. In the event that transferee shall satisfy the financial requirements set forth in this subsection (ii), all references to Creditworthy Party in subsections (iii) through (vi) hereafter shall be deemed deleted;
- (iii) the transferee or the Creditworthy Party is experienced in the ownership and management of at least 2.0 million square feet of class-A, high-rise office buildings and the transferee or the Creditworthy Party is or hires an entity experienced in the management of at least 2.0 million square feet of class-A, high-rise office buildings;
- (iv) subject to Mortgagee's reasonable discretion, the transferee, the Creditworthy Party, and all persons and entities owning (directly or indirectly) more than a five percent (5.0%) ownership interest in the transferee or the Creditworthy Party are not (and have never been) (i) subject to any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings, or (ii) a litigant, plaintiff or defendant in any suit brought against or by Mortgagee.
- Furthermore, the transferee, the Creditworthy Party and all persons and entities owning (directly or indirectly) an ownership interest in the transferee or the Creditworthy Party are not (and have never been) subject to any criminal charges or proceedings;
- (v) pursuant to written documentation prepared by and satisfactory to Mortgagee, the transferee assumes and the Creditworthy Party guarantees, all of the obligations and liabilities of Mortgagor under the Loan Documents, whether arising prior to or after the date of the transfer of the Property, and Mortgagee receives a satisfactory enforceability opinion with respect thereto from counsel approved by Mortgagee;
- (vi) to the extent that Mortgagee requires a guarantee from the Creditworthy Party, the Creditworthy Party executes Mortgagee's then current form of Guarantee of Recourse Obligations, and the transferee execute Mortgagee's

UNOFFICIAL COPY

then current form of Environmental Indemnity Agreement, and Mortgagee receives a satisfactory enforceability opinion with respect to the foregoing from counsel approved by Mortgagee;

- (vii) an environmental report on the Property which meets Mortgagee's then current format requirements, discloses no new conditions and is updated to no earlier than ninety (90) days prior to the date of transfer, is provided to Mortgagee at least thirty (30) days prior to the date of transfer;
- (viii) Mortgagor (a) shall remain liable under the Environmental Indemnity Agreement dated of even date herewith, except for acts or occurrences after the date of transfer of the Property and (b) shall, except as provided in (a) above, be released from all obligations and liabilities under the Loan Documents;
- (ix) Mortgagee receives either a new lender's policy of title insurance or an endorsement to its policy of title insurance, satisfactory to Mortgagee and paid for by transferee or the Creditworthy Party, insuring Mortgagee's lien on the Property as a first and valid lien subject only to liens and encumbrances theretofore approved by Mortgagee;
- (x) pursuant to written documentation prepared by and satisfactory to Mortgagee, the transferee (a) acknowledges that, in furtherance and not in limitation of clause (v) above, it shall be bound by the representation and warranty contained in the covenant entitled "**Business Restriction Representation and Warranty**" set forth in this instrument, and (b) certifies that such representation and warranty is true and correct as of the date of transfer and shall remain true and correct at all times during the term of the Note; and
- (xi) the outstanding balance of the Note at the time of the transfer is not more than 50% of the gross purchase price of the Property.

If Mortgagor shall make a one-time transfer pursuant to the above conditions, Mortgagee shall be paid a fee equal to one percent (1%) of the then outstanding balance of the Note at the time of transfer. The fee shall be paid on or before the closing date of such one-time transfer. At the time of such transfer, no modification of the interest rate or repayment terms of the Note will be required.

UNOFFICIAL COPY

No subsequent transfers of the Property shall be allowed and no Change in the Proportionate Ownership of transferee shall be allowed without Mortgagee's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Mortgagor and Mortgagee agree that the underlying ownership structure of a particular transferee may cause Mortgagee to determine that the definition of Change in the Proportionate Ownership of such transferee does not adequately address Mortgagee's underlying ownership concerns for such transferee, and accordingly, Mortgagee reserves the right to amend the definition of Change in the Proportionate Ownership as it applies to a particular transferee.

"Debt Service Coverage" means a number calculated by dividing Net Income Available for Debt Service for a fiscal period by the debt service during the same fiscal period under all indebtedness (including the Indebtedness) secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the actual debt service due under all indebtedness secured by any portion of the Property based upon an amortization schedule which is the shorter of the actual amortization schedule or 30 years (whether or not amortization is actually required) and, if an accrual loan, as if interest and principal on such indebtedness were due monthly.

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

- A) interest on indebtedness secured by any portion of the Property for such fiscal period;
- B) depreciation, if any, of fixed assets at or constituting the Property for such fiscal period;
- C) amortization, if any, of standard tenant finish expenditures at the Property (but specifically **excluding** the amortization of tenant finish expenditures by Mortgagor in excess of \$50.00 per square foot for new tenants and \$20.00 per square foot for renewal tenants (i.e., above standard tenant finishes)); and
- D) amortization of costs incurred in connection with any indebtedness secured by any portion of the Property and leasing commissions which have been prepaid;

UNOFFICIAL COPY

less:

- E) an amount (positive or negative) to offset any rent averaging adjustment resulting from adherence to FASB-13;
- F) the amortization of free rent and any other tenant concessions and promotional items not deducted in the calculation of net income above;
- G) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 88% of the gross leasable area in the Property;
- H) the amount, if any, by which the actual management fee is less than 1.0% of gross revenue during such fiscal period;
- I) the amount, if any, by which the actual real estate taxes are less than \$7,497,567.00 per annum; and
- J) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$8,221,454.00 per annum.

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

Financial Statements. Mortgagor agrees to furnish to Mortgagee:

- (A) the following financial statements for the Property within 60 days after the close of each fiscal year of the Mortgagor (the "Property Financial Statements Due Date"):
 - (i) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion; and
 - (ii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items; and

UNOFFICIAL COPY

- (iii) an operating budget for the current fiscal year; and
- (B) the following financial statements that Mortgagee may, in Mortgagee's sole discretion, require from time to time within 20 days after receipt of a written request from Mortgagee (the "Requested Financial Statements Due Date"):
- (i) an unaudited balance sheet for the Property as of the last day of Mortgagor's most recently closed fiscal year; and
 - (ii) an unaudited balance sheet for Mortgagor as of the last day of Mortgagor's most recently closed fiscal year; and
 - (iii) an unaudited statement of cash flows for the Property as of the last day of Mortgagor's most recently closed fiscal year; and
 - (v) an unaudited statement of cash flows for the Mortgagor as of the last day of Mortgagor's most recently closed fiscal year.

Furthermore, Mortgagor shall furnish to Mortgagee within 20 days after receipt of a written request from Mortgagee such reasonable financial and management information in the possession of, or accessible to, Mortgagor which Mortgagee may reasonably require with respect to the value and condition of the Property and Mortgagor. For the avoidance of doubt, Mortgagee and Mortgagor hereby agree that Mortgagor shall not be required to have prepared additional materials that are not: (i) in Mortgagor's possession or (ii) reasonably accessible to Mortgagor within such twenty (20) day period.

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

Notwithstanding the foregoing, in no event shall a Financial Statements Due Date for a particular financial statement be prior to the 60th day following the close of the fiscal year covered by such financial statement.

All unaudited statements shall contain a certification by the managing member (or other senior, authorized officer) of Mortgagor stating that they have been prepared in accordance with generally accepted accounting principles (or other accounting method satisfactory to Mortgagee and that they are true and correct. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Mortgagor.

UNOFFICIAL COPY

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

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

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

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

The amount of the payments due under the Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to reflect the payment of interest at the Increased Rate. Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the date (the "Receipt Date") on which all of the financial statements, additional information and proof of payment of property taxes and assessments (as requested by Mortgagee) shall be furnished to or made available to Mortgagee as required. Commencing on the Receipt Date, interest on the unpaid principal balance of the Note shall again accrue at the Interest Rate and the payments due thereafter shall be changed to an amount which is sufficient to reflect the payment of interest on the Note at the Interest Rate. Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit at its own expense at any time, but no more than once during any calendar year except if there is an Event of Default.

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

UNOFFICIAL COPY

Property Management. The management company for the Property shall be satisfactory to Mortgagee. Said management company shall be experienced in the professional management and operation of Class A, high-rise office product. Any change in the management company without the prior written consent of Mortgagee shall constitute a default under this instrument. Mortgagee shall not unreasonably withhold, delay or condition Mortgagee's approval of any replacement property manager. Mortgagee hereby approves Jones Lang LaSalle as Mortgagor's management company.

Deposits by Mortgagor. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of Default, Mortgagee shall thence forth have the option to require Mortgagor to deposit funds with Mortgagee or in an account satisfactory to Mortgagee, with interest earned for the benefit of Mortgagor, in monthly or other periodic installments in amounts estimated by Mortgagee from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Mortgagee, or in such other account, shall be insufficient to pay any of said expenses, Mortgagor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Mortgagee to be applied to the payment of such real estate taxes and special assessments and, at the option of Mortgagee after default, the Indebtedness.

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

Notices. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Mortgagor by certified mail or reputable courier service shall be addressed to Mortgagor c/o State Teachers Retirement System of Ohio, 275 E. Broad Street, Columbus, Ohio 43215-3771, Attention: Director of Real Estate, with a copy to, OTR, 44 Montgomery Street, Suite 2388, San Francisco, CA 94104-4704, Attention: Real Estate Legal or such other address in the United States of America as Mortgagor shall designate in a notice to Mortgagee given in the manner described herein. Any notice sent to Mortgagee by certified mail or reputable courier service shall be

UNOFFICIAL COPY

addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Mortgagee shall designate in a notice given in the manner described herein. Any notice given to Mortgagee shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

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

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

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

Legal Enforceability. No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall

UNOFFICIAL COPY

govern and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

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

Miscellaneous. Time is of the essence in each of the Loan Documents. The remedies of Mortgagee as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Mortgagee of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Mortgagor and Mortgagee. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

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

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

Governing Law. This instrument, the interpretation hereof and the rights, obligations, duties and liabilities hereunder shall be governed and controlled by the (i) laws of the state in which the Property is located; and (ii) terms of Exhibit "B" attached hereto, which terms are hereby incorporated herein.

(Signatures on following page)

UNOFFICIAL COPY

IN WITNESS WHEREOF, this instrument has been executed by the Mortgagor as of the day and year first above written.

77 WEST WACKER DRIVE, L.L.C., a Delaware limited liability company

By: *Stephen A. Mitchell*
Name: Stephen A. Mitchell
Its: Manager

Property of COOK COUNTY Clerk's Office

STATE OF OHIO

COUNTY OF FRANKLIN)
) ss.
)

The foregoing instrument was acknowledged before me this 27th day of August, 2013, by Stephen A. Mitchell, the Manager, of 77 WEST WACKER DRIVE, L.L.C., a Delaware limited liability company and acknowledged the execution of the foregoing instrument as the act and deed of said limited liability company.

My commission expires:

Thomas S. Counts
Notary Public



THOMAS S. COUNTS, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.



UNOFFICIAL COPY**EXHIBIT "A"**

Legal Description of Property:

THE PROPERTY LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS,
DESCRIBED AS FOLLOWS:

A. FEE SIMPLE AS TO PARCELS 1, 2, AND 4;

SAID PARCELS 1, 2, AND 4 BEING DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 3 (EXCEPT THE EAST 20.50 FEET THEREOF); TOGETHER WITH THE NORTH 1.00 FOOT OF THE ORIGINAL 18-FOOT ALLEY LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF SAID LOT 3 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND

LOTS 1 TO 9, BOTH INCLUSIVE, IN THE SUBDIVISION OF LOT 4; TOGETHER WITH THE NORTH 1.50 FEET OF THE ORIGINAL 18-FOOT ALLEY LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF SAID SUBDIVISION OF LOT 4 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE WEST 1/2 OF NORTH GARVEY COURT (SAID NORTH GARVEY COURT BEING THE WEST 1/2 OF LOT 2 AND THE EAST 20.50 FEET OF LOT 3; TOGETHER WITH THE NORTH 1.00 FOOT OF THE ORIGINAL 18-FOOT ALLEY LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF THE AFORESAID PARTS OF LOTS 2 AND 3; THE SOUTH LINE OF SAID 1.00 FOOT STRIP, BEING THE NORTH LINE OF WEST HADDOCK PLACE AS ESTABLISHED BY ORDINANCE PASSED SEPTEMBER 17, 1852) LYING ABOVE AN INCLINED PLANE HAVING AN ELEVATION OF +17.26 FEET ABOVE THE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF BLOCK 17 AND HAVING AN ELEVATION OF +21.23 FEET ABOVE THE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF WEST HADDOCK PLACE

UNOFFICIAL COPY

ALL IN BLOCK 17, (AS VACATED BY THE CITY OF CHICAGO IN AN ORDINANCE PASSED MARCH 21, 1990 AND RECORDED APRIL 11, 1990 AS DOCUMENT 90164868), IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THAT PART OF WEST HADDOCK PLACE AS ESTABLISHED BY ORDINANCE PASSED SEPTEMBER 17, 1852; TOGETHER WITH THE SOUTH 1.50 FEET OF THE ORIGINAL 18-FOOT ALLEY LYING NORTH OF AND ADJOINING THE NORTH LINE OF LOT 1 IN THE ASSESSOR'S DIVISION OF LOT 5 IN BLOCK 17; ALSO, THE SOUTH 1.00 FOOT OF SAID ORIGINAL 18-FOOT ALLEY LYING NORTH OF AND ADJOINING THE NORTH LINE OF LOT 6 IN BLOCK 17, ALL TAKEN AS ONE TRACT, LYING WEST OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 20.50 FEET OF LOT 3 IN SAID BLOCK 17 AND LYING EAST OF THE WEST LINE OF BLOCK 17 AND ITS EXTENSIONS, (AS VACATED BY THE CITY OF CHICAGO IN AN ORDINANCE PASSED MARCH 21, 1990 AND RECORDED APRIL 11, 1990 AS DOCUMENT 90164868) IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

B. THE LEASEHOLD ESTATE CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS "LEASE," EXECUTED BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 26, 1985, AND KNOWN AS TRUST NUMBER 66121, AS LESSOR, AND 77 WEST WACKER LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, AS LESSEE, DATED MARCH 7, 1991, WHICH LEASE WAS RECORDED MARCH 18, 1991, AS DOCUMENT 91119739 AND WHICH DEMISED PARCEL 7 FOR A TERM OF YEARS AS SET FORTH THEREIN, AND DEMISED THE "APPURTENANT RIGHTS" SET FORTH IN PARCEL B OF EXHIBIT 'B' TO SAID LEASE OVER PARCEL 10 FOR SAID TERM, AS AFFECTED BY THE MEMORANDUM OF ASSIGNMENT OF INTEREST IN LEASE AND SUBLEASE RECORDED OCTOBER 6, 1999, AS DOCUMENT 99946792 AND RE-RECORDED FEBRUARY 22, 2000, AS DOCUMENT 00129948, TO 77 WEST WACKER DRIVE, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY.

UNOFFICIAL COPY

SAID PARCELS 7 AND 10 BEING DESCRIBED AS FOLLOWS:

PARCEL 7:

THE PROPERTY AND SPACE WHICH LIES BETWEEN HORIZONTAL PLANES WHICH ARE +50.63 FEET AND +80.63 FEET, RESPECTIVELY ABOVE THE CHICAGO CITY DATUM, AND WHICH IS ENCLOSED BY VERTICAL PLANES EXTENDING UPWARD FROM THE BOUNDARIES, AT THE SURFACE OF THE EARTH, OF THAT PART OF BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

ALL OF SUB-LOTS 1 TO 7 AND THE ALLEY IN THE ASSESSOR'S DIVISION OF LOT 5 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO; ALSO, LOT 6 (EXCEPT THE EAST 20.00 FEET THEREOF) IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO ALL IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 10:

THAT PART OF THE LAND DESCRIBED BELOW WHICH IS DEMISED AS APPURTENANT RIGHTS IN THE LEASE NOTED ABOVE:

THAT PART OF BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

ALL OF SUB-LOTS 1 TO 7, AND THE ALLEY IN THE ASSESSOR'S DIVISION OF LOT 5 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO; ALSO LOT 6 (EXCEPT THE EAST 20.00 FEET THEREOF) IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO; ALL IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART WHICH LIES BETWEEN HORIZONTAL PLANES, WHICH ARE 50.63 FEET AND 80.63 FEET, RESPECTIVELY, ABOVE CHICAGO DATUM.

UNOFFICIAL COPY

C. EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCELS 1, 2, AND 4 CREATED BY THE GRANT OF EASEMENT RECORDED AS DOCUMENT 90164870, AS AMENDED BY DOCUMENT 91096330 FOR INGRESS, EGRESS, CONSTRUCTION, USE, AND MAINTENANCE OF A PLAZA WALKWAY OVER PARCELS 3 AND 5,

SAID PARCELS 3 AND 5, BEING DESCRIBED AS FOLLOWS:

PARCEL 3:

THAT PART OF THE EAST 1/2 OF NORTH GARVEY COURT (SAID NORTH GARVEY COURT BEING THE WEST 1/2 OF LOT 2 AND THE EAST 20.50 FEET OF LOT 3; TOGETHER WITH THE NORTH 1.00 FOOT OF THE ORIGINAL 18-FOOT ALLEY LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF THE AFORESAID PARTS OF LOTS 2 AND 3, THE SOUTH LINE OF SAID 1.00 FOOT STRIP BEING THE NORTH LINE OF WEST HADDOCK PLACE AS ESTABLISHED BY ORDINANCE PASSED SEPTEMBER 17, 1852) LYING ABOVE AN INCLINED PLANE HAVING AN ELEVATION OF +17.26 FEET ABOVE THE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF BLOCK 17 AND HAVING AN ELEVATION OF +21.23 FEET ABOVE THE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF WEST HADDOCK PLACE AND LYING BELOW AN INCLINED PLANE HAVING AN ELEVATION OF 47.26 FEET ABOVE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF SAID BLOCK 17 AND HAVING AN ELEVATION OF +51.23 FEET ABOVE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF WEST HADDOCK PLACE, ALL IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THAT PART OF WEST HADDOCK PLACE AS ESTABLISHED BY ORDINANCE PASSED SEPTEMBER 17, 1852; TOGETHER WITH THE SOUTH 1.00 FOOT OF THE ORIGINAL 18-FOOT ALLEY LYING NORTH OF AND ADJOINING THE NORTH LINE OF THE WEST 1/2 OF LOT 7 AND THE NORTH LINE OF THE EAST 20.50 FEET OF LOT 6 ALL TAKEN AS ONE TRACT LYING EAST OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 20.50 FEET OF LOT 3 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, LYING WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF THE WEST 1/2 OF LOT 2 IN SAID BLOCK 17, LYING ABOVE AN INCLINED PLANE, HAVING AN ELEVATION OF +21.23 FEET ABOVE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF WEST HADDOCK PLACE AFORESAID, AND HAVING AN ELEVATION OF +21.72 FEET ABOVE CHICAGO CITY DATUM, MEASURED ALONG THE SOUTH LINE OF THE ORIGINAL 18-FOOT ALLEY

UNOFFICIAL COPY

AFORESAID, AND LYING BELOW AND INCLINED PLANE, HAVING AN ELEVATION OF +71.23 FEET ABOVE CHICAGO CITY DATUM, MEASURED ALONG THE NORTH LINE OF WEST HADDOCK PLACE AFORESAID, AND HAVING AN ELEVATION OF +71.72 FEET ABOVE CHICAGO CITY DATUM, MEASURED ALONG THE SOUTH LINE OF THE ORIGINAL 18-FOOT ALLEY AFORESAID, ALL IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

D. EASEMENTS FOR SUPPORT AS CREATED BY GRANT OF EASEMENT RECORDED AS DOCUMENT 90164870 AS AMENDED BY DOCUMENT 91096330 OVER PARCEL 6, SAID PARCEL 6, BEING DESCRIBED AS FOLLOWS:

PARCEL 6:

THAT PART OF GARVEY COURT DEPICTED IN EXHIBIT "B" OF THE GRANT OF EASEMENT RECORDED AS DOCUMENT 90164870 AS AMENDED BY DOCUMENT 91096330.

E. RECIPROCAL EASEMENT AGREEMENT DATED DECEMBER 5, 1990, AND RECORDED AS DOCUMENT 91092145 MADE BY AND BETWEEN CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 12, 1986, AND KNOWN AS TRUST NO. 1088617, AND 77 WEST WACKER LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, FOR A JOINT ACCESS STAIRWAY CONNECTING THE TWO PARTIES PROPERTY AS SPECIFICALLY DESCRIBED IN SAID INSTRUMENT OVER PARCEL 8,

SAID PARCEL 8, BEING DESCRIBED AS FOLLOWS:

PARCEL 8:

THAT PORTION OF THE LAND DESCRIBED BELOW (THE STAIRWAY LAND) SUBJECT TO THE EASEMENT SET FORTH IN PARAGRAPH "E" ABOVE:

LOT 1 AND THE EAST 1/2 OF LOT 2 IN BLOCK 17 OF THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

AND

A STRIP OF LAND LYING SOUTH OF AND ADJOINING LOT 1 AND THE EAST 1/2 OF LOT 2 IN BLOCK 17 OF THE ORIGINAL TOWN OF CHICAGO BOUNDED ON THE NORTH BY THE SOUTH LINE OF SAID LOTS AND ON THE SOUTH BY

UNOFFICIAL COPY

THE NORTH LINE OF PUBLIC ALLEY AS NARROWED BY ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CHICAGO PASSED SEPTEMBER 17, 1852, ALL IN COOK COUNTY, ILLINOIS.

F. EASEMENTS OVER PARCEL 9 AS SET FORTH IN AGREEMENT BY AND AMONG AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 26, 1985, AND KNOWN AS TRUST NUMBER 66121, 200 NORTH DEARBORN PARTNERSHIP, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 19, 1989, AND KNOWN AS TRUST NUMBER 11025-08, AND 77 WEST WACKER LIMITED PARTNERSHIP, DATED DECEMBER 31, 1990, AND RECORDED MARCH 18, 1991, AS DOCUMENT 91119736, FOR WALL OPENINGS; USING, CONSTRUCTING, MAINTAINING, REPAIRING, RECONSTRUCTING, AND RENEWING THE PLAZA, AND EXTENDING AND CONTINUING THE PLAZA; AND FOR "WALL WORK" AS THEREIN DEFINED,

SAID PARCEL 9 BEING DESCRIBED AS FOLLOWS:

PARCEL 9:

THAT PORTION OF THE LAND DESCRIBED BELOW (THE WALL LAND) SUBJECT TO THE EASEMENTS SET FORTH IN PARAGRAPH "F" ABOVE:

ALL OF SUB-LOTS 1 TO 7 AND THE ALLEY IN THE ASSESSOR'S DIVISION OF LOT 5 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO; ALSO LOT 6 (EXCEPT THE EAST 20.00 FEET THEREOF) IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO ALL IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

G. SUPPORT AND INGRESS AND EGRESS EASEMENTS AS CREATED BY AGREEMENT DATED OCTOBER 22, 1991, AND RECORDED MARCH 26, 1992, AS DOCUMENT 92199746 AMONG AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 18, 1991, AND KNOWN AS TRUST NUMBER 52947, AND OTHERS OVER THOSE PORTIONS OF PARCELS 11A AND 11B, WHICH ARE SET FORTH IN SAID AGREEMENT;

SAID PARCEL 11, BEING DESCRIBED BELOW.

H. CONSTRUCTION, REPAIR, SUPPORT, AND INGRESS AND EGRESS EASEMENTS AS CREATED BY AGREEMENT DATED OCTOBER 22, 1991, AND

UNOFFICIAL COPY

RECORDED NOVEMBER 12, 1991 AS DOCUMENT 91591893 AMONG AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 26, 1985, KNOWN AS TRUST NUMBER 66121 AND OTHERS OVER THOSE PORTIONS OF PARCEL 11A, WHICH ARE SET FORTH IN SAID AGREEMENT,

SAID PARCEL 11, BEING DESCRIBED BELOW.

I. RIGHT TO PARK 169 CARS ON THOSE PORTIONS OF PARCEL 11B, AS SET FORTH IN PARKING AGREEMENT DATED OCTOBER 22, 1991 AND RECORDED APRIL 17, 1992 AS DOCUMENT 92280477 AMONG AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 18, 1991 AND KNOWN AS TRUST NUMBER 52947, 77 WEST WACKER LIMITED PARTNERSHIP, AND OTHERS,

SAID PARCEL 11, BEING DESCRIBED BELOW.

SAID PARCEL 11 BEING DESCRIBED, AS FOLLOWS:

PARCEL 11:

11A. ALL OF SUBLOTS 1 TO 7 AND THE ALLEY IN ASSESSOR'S DIVISION OF LOT 5 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO;

ALSO

LOT 6 (EXCEPT THE EAST 20.00 FEET THEREOF) IN SAID BLOCK 17;

ALSO

ALL OF SUB-LOTS 1 TO 8 IN THE SUBDIVISION OF LOT 8 IN SAID BLOCK 17 ALL IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THE NORTH 111.00 FEET OF THE EAST 1/2 OF LOT 7 (AS SUCH EAST 1/2 IS MEASURED ALONG THE SOUTH LINE OF LOT 7), LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +22.00 FEET ABOVE CHICAGO CITY DATUM;

THE SOUTH 16.00 FEET OF THE NORTH 127.00 FEET OF THE EAST 1/2 OF LOT 7 (AS SUCH EAST 1/2 IS MEASURED ALONG THE SOUTH LINE OF LOT 7), LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.66

UNOFFICIAL COPY

FEET ABOVE CHICAGO CITY DATUM;

THAT PART OF THE EAST 1/2 OF LOT 7 (AS SUCH EAST 1/2 IS MEASURED ALONG THE SOUTH LINE OF LOT 7) EXCEPT THE NORTH 127.00 FEET THEREOF, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +12.66 FEET ABOVE CHICAGO CITY DATUM;

THE EAST 20.00 FEET OF LOT 6 AND THE WEST 1/2 OF LOT 7 (AS SUCH WEST 1/2 IS MEASURED ALONG THE SOUTH LINE OF LOT 7), LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +29.00 FEET ABOVE CHICAGO CITY DATUM;

ALL IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

11B. LOT 27 IN LOOP TRANSPORTATION CENTER SUBDIVISION OF PART OF BLOCK 18 IN ORIGINAL TOWN OF CHICAGO IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 77 West Wacker Drive, Chicago, Illinois, and Permanent Index Numbers:

17-09-421-006-0000
 17-09-421-007-0000
 17-09-421-008-0000
 17-09-421-012-0000
 17-09-421-013-0000
 17-09-421-014-0000
 17-09-421-015-0000
 17-09-421-016-0000
 17-09-421-018-0000
 17-09-422-009-0000
 17-09-422-011-0000
 17-09-422-010-0000
 17-09-422-012-0000

UNOFFICIAL COPY

"EXHIBIT "B" Mortgage and Security Agreement

PRINCIPALS OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Exhibit "B" and the terms and conditions of this Mortgage, the terms and conditions of this Exhibit "B" shall control and be binding.

ILLINOIS MORTGAGE FORECLOSURE. It is the express intention of Mortgagor and Mortgagee that the rights, remedies, powers and authorities conferred upon the Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 et seq.) (herein called the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.

(a) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Mortgage, shall be added to the Debt secured by this Mortgage or by the judgment of foreclosure.

(b) The powers, authorities and duties conferred upon the Mortgagee, in the event that the Mortgagee takes possession of the Property, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a "mortgage-in-possession" or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by the IMFL at the time of their exercise or discharge.

(c) Mortgagor knowingly and voluntarily waives, on behalf of itself and all persons or entities now or hereafter interested in the Property, to the fullest extent permitted by applicable law including the IMFL, (i) all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshaling statutes, laws or equities now or hereafter existing, (ii) any and all requirements that at any time any action may be taken against any other person or entity and Mortgagor agrees that no defense based on any thereof will be asserted in any

UNOFFICIAL COPY

action enforcing this Mortgage, and (iii) any and all rights to reinstatement and redemption as allowed under Section 15-1601(b) of the IMFL or to cure any defaults, except such rights of reinstatement and cure as may be expressly provided by the terms of this Mortgage.

(d) BORROWER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE IMFL, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF BORROWER AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PROPERTY DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS SECURITY INSTRUMENT, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

PROTECTIVE ADVANCES. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or by the IMFL (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:

(e) all advances by Mortgagee in accordance with the terms of the Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, each as referred to in Subsection (b)(5) of Section 5/15-1302 of the IMFL;

(f) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the IMFL;

UNOFFICIAL COPY

(g) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(h) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Sections 1504(d)(2) and 5/15-1510 of the IMFL; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action related to the Mortgage or the Property;

(i) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the IMFL;

(j) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the IMFL;

(k) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (ii) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Property imposed by Subsection (c)(1) of Section 5/15-1704 of the IMFL; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (vii) if the Loan is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement, and (viii) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by mortgagor.

UNOFFICIAL COPY

(l) All Protective Advances shall be additional indebtedness secured by the Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents.

(m) The Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b) of Section 5/15-1302 of the IMFL.

(n) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the IMFL, apply to and be included in: (i) the determination of the amount of indebtedness secured by the Mortgage at any time; (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL; (iv) application of income in the hands of any receiver or "mortgagee-in-possession"; and (v) computation of any deficiency judgment pursuant to Section 5/15-1508(e) of the IMFL.