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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1402719045 Fee: \$76.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 01/27/2014 10:48 AM Pg: 1 of 20

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 17-09-426-030-0000

**Address:**

**Street:** 35 West Wacker

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60601

**Lender:** Hartford Life Insurance Company

**Borrower:** 35 W. Wacker Owner, LLC

**Loan / Mortgage Amount:** \$60,000,000.00

This property is located within the program area and is exempt from the requirements of 765 IL CS 7/70 et seq. because it is commercial property.

**Certificate number:** 1E3DDE4E-9990-421C-AB84-C6CEBB9BF04A

**Execution date:** 12/30/2013

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PREPARED BY (WITH THE ASSISTANCE OF LOCAL COUNSEL) AND RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:  
 KROLL, McNAMARA, EVANS & DELEHANTY, LLP  
 65 MEMORIAL ROAD, SUITE 300  
 WEST HARTFORD, CONNECTICUT 06107  
 ATTENTION: ADAM F. ZWEIFLER, ESQ.

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SPACE ABOVE LINE RESERVED FOR OFFICIAL RECORDER'S USE

ATTENTION: COUNTY CLERK - THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES AND DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE OR DEED OF TRUST, BUT ALSO AS A FINANCING STATEMENT UNDER THE ILLINOIS UNIFORM COMMERCIAL CODE, CHAPTER 810 ILCS 5/9-502(b) ET SEQ. COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND STATE FARM (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.

**MORTGAGE, ASSIGNMENT OF RENTS,  
 SECURITY AGREEMENT AND FIXTURE FILING**

Hartford Loan No. BHM0XJ4M8

This Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (this "**Mortgage**") is executed as of December 30, 2013 by **35 W. WACKER OWNER, LLC**, a Delaware limited liability company, whose address for notice hereunder is c/o UBS Realty Investors LLC, 10 State House Square, 15th Floor, Hartford, Connecticut 06103-3604, Attention: Stephen Olstein ("**Borrower**") to **HARTFORD LIFE INSURANCE COMPANY**, a Connecticut corporation (together with its participants, successors and/or assigns, ("**Lender**"), whose address for notice hereunder is c/o Hartford Investment Management Company, One Hartford Plaza, NP5, Hartford, Connecticut 06155.

NCS 643409 MR/TM

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## ARTICLE 1.

### DEFINITIONS

#### Section 1.1 Definitions.

- (a) As used herein, the following terms shall have the following meanings:

**“Collateral”** means: (a) the real property described in Exhibit A, together with any greater estate therein as hereafter may be acquired by Borrower (collectively, the **“Land”**); (b) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (collectively, the **“Improvements”**); (c) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (collectively, the **“Fixtures”** and collectively with the Land and Improvements the **“Property”**); (d) all right, title and interest of Borrower in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character including such items of personal property as defined in the UCC, now owned or hereafter acquired by Borrower and now or hereafter located at or used in connection with, arising from or otherwise related to the Land, Improvements and Fixtures or which may be used in or relating to the planning, development, ownership or operation of the Collateral, including furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, certain proprietary software to the extent assignable by Borrower, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Borrower under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any governmental authorities, boards, corporations, providers of utility services, public or private, including all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs (collectively, the **“Personal Property”**); (e) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Borrower with respect to the Collateral; (f) Borrower’s interest in all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (collectively, the **“Plans”**); (g) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or right to use or occupy, all or any part of the Collateral (collectively, the **“Leases”**); (h) all guaranties and other surety arrangements (written or oral, now or at any time in effect) of, for or otherwise relating to any of the Leases (collectively, the **“Lease Guaranties”**), together with any security and other deposits now or hereafter given to secure, or otherwise relating to, the Leases or the Lease Guaranties; (i) all minimum, percentage and other rentals paid or payable by any tenant, licensee, concessionaire, occupant or other user of all or any portion of the Property, whether pursuant to a Lease or otherwise (collectively, **“Tenants”**), all amounts paid or payable by Tenants pursuant to escalation or other adjustment provisions in their respective Leases or on account of maintenance or service charges, taxes, assessments, insurance, utilities, air conditioning and heating, and other administrative, management, operating and leasing expenses for the Collateral, all awards hereafter made to

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Lender in any bankruptcy, insolvency or reorganization case or proceeding with respect to any Lease or Lease Guaranty, and all royalties, issues, profits, revenues, income, charges, deposits, option payments, lease termination fees, and other money and benefits paid or payable by Tenants or arising in connection with any Lease or Lease Guaranty (collectively, the "**Rents**"); (j) Borrower's interest in all other agreements (written or oral, now or at any time in effect), including construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, and all permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Collateral (collectively, the "**Property Documents**"); (k) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Borrower in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, now existing or hereafter arising; (l) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof; (m) all insurance policies, unearned premiums therefor and proceeds from such policies insuring the Collateral now or hereafter acquired by Borrower; (n) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Collateral; and (o) all of Borrower's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, the Improvements, the Fixtures or the Personal Property. As used in this Mortgage, the term "Collateral" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

"**Loan**" means the loan in the aggregate principal amount of Sixty Million and 00/100 Dollars (\$60,000,000.00) to be made by Lender to Borrower pursuant to the Loan Agreement and evidenced by the Note.

"**Loan Documents**" has the meaning ascribed to it in the Term Loan Agreement of even date herewith executed by Borrower and Lender (the "**Loan Agreement**").

"**Note**" means the Promissory Note of even date herewith, executed by Borrower, payable to the order of Lender, in the stated principal amount of \$60,000,000 and any additional promissory notes hereafter executed to amend, replace, restate, split or consolidate such Promissory Note, and all amendments, modifications, renewals, restatements, extensions, substitutions and replacements of any of the foregoing.

"**Obligations**" means: (a) all principal and all interest, fees, expenses, charges, reimbursements, and other amounts due under or secured by the Loan Documents; (b) all principal, interest and other amounts which may hereafter be loaned by Lender, its successors or assigns, to or for the benefit of Borrower, when evidenced by a promissory note or other instrument which, by its terms, is governed or secured by the Loan Documents; and (c) all other indebtedness, obligations, covenants, and liabilities, now or hereafter existing, of any kind of Borrower to Lender under documents which recite that they are intended to be secured by this Mortgage.

"**Permitted Encumbrances**" means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the

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lien of this Mortgage, together with the liens and security interests in favor of Lender created by the Loan Documents.

“**Property**” means the Land, the Improvements, and the Fixtures.

“**UCC**” means the Uniform Commercial Code of the State of Illinois or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State of Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

(b) Capitalized terms not otherwise defined in this Mortgage shall have the meanings ascribed to such terms in the Loan Agreement.

**Section 1.2 General Construction.** Unless otherwise noted, all “Article” and “Section” references shall be to Articles or Sections of this Mortgage. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. All references to the Loan Documents shall mean such document as it is constituted as of the date hereof, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

## ARTICLE 2

### GRANT

**Section 2.1 Grant.** To secure the full and timely payment and performance of the Obligations the Obligations, Grantor does HEREBY MORTGAGE AND CONVEY unto Grantee the Collateral (subject, however, to the Permitted Encumbrances), TO HAVE AND TO HOLD, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Collateral unto Grantee, subject to the Permitted Encumbrances.

## ARTICLE 3

### WARRANTIES, REPRESENTATIONS AND COVENANTS

Borrower warrants, represents and covenants to Lender as follows:

**Section 3.1 Title to Collateral and Lien of this Instrument.** As of the date hereof, Borrower owns the Collateral free and clear of any liens, claims or interests, except the Permitted Encumbrances and, in the case of the Plans and the Property Documents, the rights of others thereto and any restrictions or limitations on the rights of Borrower therein. As of the date hereof, this Mortgage creates valid, enforceable first priority liens and security interests against the Collateral.

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**Section 3.2 First Lien Status.** Borrower shall preserve and protect the first priority lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Collateral, Borrower shall promptly, and at its expense, give Lender a detailed written notice of such lien or security interest (including origin, amount and such other information as Lender may request), and shall either (i) pay the underlying claim in full or take such other action so as to cause it to be released, or (ii) contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Lender).

**Section 3.3 Payment and Performance.** Borrower shall pay and perform the Obligations in full when they are required to be performed.

**Section 3.4 Replacement of Fixtures and Personal Property.** Borrower shall not, without the prior written consent of Lender (which may be granted or withheld in Lender's sole and absolute discretion), permit any of the Fixtures or Personal Property to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrower subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Lender prior to acquisition by Borrower.

**Section 3.5 Maintenance of Rights of Way, Easements and Licenses.** Borrower shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements, and franchises necessary for the use of the Collateral and will not, without the prior consent of Lender (which may be granted or withheld in Lender's sole and absolute discretion), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Collateral. Borrower shall comply in all material respects with all restrictive covenants affecting the Collateral, and all Legal Requirements, including zoning ordinances, environmental laws and other public or private restrictions as to the use of the Collateral.

**Section 3.6 Inspection.** Borrower shall permit Lender and its agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Collateral and conduct such environmental and engineering studies, in accordance with the terms of the Loan Agreement, as Lender may reasonably require, provided that such inspections and studies shall not materially interfere with the use and operation of the Collateral.

**Section 3.7 Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article 3 shall be covenants running with the Collateral. The covenants set forth in the Loan Agreement include, among other provisions: (a) except as otherwise permitted under the Loan Agreement, the prohibition against the further sale, transfer or encumbering of any of the Collateral, (b) the obligation to pay when due all taxes on the Collateral or assessed against Lender with respect to the Loan, (c) the right of Lender to inspect the Collateral, (d) the obligation to keep the Collateral insured in accordance with the Loan Agreement, (e) the obligation to comply with all legal requirements (including environmental laws), (f) the obligation to maintain the Collateral in

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good condition, and promptly repair any damage or casualty, and (g) except as otherwise permitted under the Loan Agreement, the obligation of Borrower to obtain Lender's written consent prior to entering into, modifying or taking other actions with respect to Leases. Borrower shall not claim or demand or be entitled to any credit on account of the Obligations secured hereby for any part of any taxes paid with respect to the Property or part thereof, and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Mortgage. Further, in the event of the passage of any law of the United States or of the State of Illinois providing for the taxation of any mortgages or debts secured by mortgage, for federal, state or local purposes, so as to affect this Mortgage, Borrower shall pay when due, or reimburse Lender within the Demand Period for the payment of, such tax.

## **Section 3.8      Condemnation Awards and Insurance Proceeds.**

(a) Borrower assigns to Lender all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, and authorizes Lender to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, in accordance with the terms of the Loan Agreement.

(b) Borrower assigns to Lender all proceeds of any insurance policies insuring against loss or damage to the Collateral. Borrower authorizes Lender to collect and receive such proceeds, to give proper receipts and acquittances therefor, and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly, in accordance with the terms of the Loan Agreement.

## **ARTICLE 4**

### **DEFAULT AND FORECLOSURE**

**Section 4.1    Remedies.** If an Event of Default exists, Lender may exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower), whereupon the same shall become immediately due and payable and, thereafter, interest shall accrue on the outstanding principal balance of the Note at the Default Rate.

(b) **Entry on Collateral.** Enter the Collateral and take exclusive possession thereof and of all books, records and accounts relating thereto. If Borrower remains in possession of the Collateral after an Event of Default and without Lender's written consent (which may be granted or withheld in Lender's sole and absolute discretion), Lender may invoke any legal remedies to dispossess Borrower.

(c) **Operation of Collateral.** Hold, lease, develop, manage, operate or otherwise use the Collateral upon such terms and conditions as Lender may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and

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taking other actions, from time to time, as Lender deems necessary or desirable), and apply all Rents and other amounts collected by Lender in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Sale.** To the greatest extent permitted by law, commence an action to foreclose this Mortgage in the manner provided by law and sell or offer for sale the Collateral in such portions, order and parcels as Lender may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. Such sale shall be made in accordance with the laws of the state in which the Property is located relating to the sale of real estate or by Article 9 of the UCC relating to the sale of collateral after default by a debtor (as such laws now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same. With respect to any notices required or permitted under the UCC, Borrower agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale (i) whether made under the power herein contained, the UCC, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Lender to be physically present at or to have constructive possession of the Collateral (Borrower shall deliver to Lender any portion of the Collateral not actually or constructively possessed by Lender immediately upon demand by Lender), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if Lender had been actually present and delivered to purchaser at such sale, (ii) each instrument of conveyance executed by Lender shall contain a general warranty of title binding upon Borrower, (iii) each recital contained in any instrument of conveyance made by Lender shall conclusively establish the truth and accuracy of the matters recited therein, including nonpayment of the Obligations, and advertisement and conduct of such sale in the manner provided herein and otherwise by law, (iv) any prerequisites to the validity of such sale shall be conclusively presumed to have been performed, (v) the receipt of Lender or other party making the sale shall be a sufficient discharge to the purchaser or purchasers for its or their purchase money and no such purchaser or purchasers or its or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof, and (vi) to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Borrower, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Borrower. Lender may be a purchaser at such sale and if Lender is the highest bidder, may credit the portion of the purchase price that would be distributed to Lender against the Obligations in lieu of paying cash.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Borrower or regard to the adequacy of the Collateral for the repayment of the Obligations, the appointment of a receiver of the Collateral, and Borrower irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Collateral upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7. Borrower hereby consents to the foregoing and waives any right to object to such appointment.



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(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or, subject to any applicable limitations set forth in the Loan Documents, otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Mortgage).

**Section 4.2 Separate Sales.** The Collateral may be sold in one or more parcels and in such manner and order as Lender, in its sole and absolute discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 4.3 Remedies Cumulative, Concurrent and Nonexclusive.** Lender shall have all rights, remedies and recourses granted hereunder and in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note and the other Loan Documents, or against the Collateral, or against any one or more of them, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Lender in the enforcement of any rights, remedies or recourses hereunder, under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default. To the extent permitted by law, Borrower hereby waives and releases all procedural errors, defects and imperfections in any proceedings instituted by Lender under the terms of this Mortgage, the Note and the other Loan Documents.

**Section 4.4 Release of and Resort to Collateral.** Lender, at Lender's election, may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Collateral, any part of the Collateral without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Collateral. For payment of the Obligations, Lender may resort to any other security in such order and manner as Lender may elect.

**Section 4.5 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Borrower by virtue of any present or future statute of limitations or law or judicial decision exempting the Collateral from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Lender's election to exercise or its actual exercise of any right, remedy or recourse provided for at law or in equity (unless expressly set forth in the Loan Documents), and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 4.6 Discontinuance of Proceedings.** If Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with

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respect to the Obligations, the Loan Documents, the Collateral and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 4.7 Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, operating, insuring, leasing, management, operation or other use of the Collateral, shall be applied by Lender (or a receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Collateral and of holding, using, leasing, repairing, improving and selling the same, including (1) trustee's and receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses to the extent provided for in Section 8.4(c) hereof, (4) costs of advertisement, and (5) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments, or other charges subject to which the Collateral shall have been sold;

(b) to the payment of all amounts (including, to the extent provided for herein, interest at the Default Rate), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Lender under the Loan Documents;

(c) to the payment and performance of the remainder of the Obligations in such manner and order of preference as Lender in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

**Section 4.8 Occupancy After Foreclosure.** The purchaser at any sale pursuant to Section 4.1(d) shall become the legal owner of the Collateral. All occupants of the Collateral shall, at the option of such purchaser, become tenants of the purchaser at the sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Collateral other than the statutory action of forcible detainer in any court having jurisdiction over the Collateral.

**Section 4.9 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents and such failure constitutes an Event of Default, then without notice to or demand upon Borrower or any other Person, and without waiving or releasing any other right, remedy or recourse Lender may have because of such Event of Default, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, provided that any such action by or on behalf of Lender of such non-performance or breach shall not be deemed to cure any such Event of Default. All sums advanced and expenses incurred at any time by Lender under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the expiration of the Demand Period, to and including the date of

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reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Prior to the expiration of the applicable Demand Period, Borrower shall pay or at Lender's option, reimburse Lender for, all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage and the other Loan Documents, or for defending or asserting the rights and claims of Lender in respect thereof, by litigation or otherwise.

**Section 4.10 No Mortgagee-in-Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Leases and Rents under Article 5, the security interests under Article 6, nor any other remedies afforded to Lender under the Loan Documents, at law or in equity shall cause Lender to be deemed or construed to be a mortgagee-in-possession of the Collateral, to obligate Lender to lease the Collateral or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

## ARTICLE 5

### ASSIGNMENT OF LEASES AND RENTS

**Section 5.1 Assignment.** Borrower acknowledges and confirms that it has executed and delivered to Lender an Assignment of Leases and Rents of even date (the "**Assignment of Leases and Rents**"), intending that such instrument create a present, absolute assignment to Lender of, among other things, the Leases, Lease Guaranties and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Leases and Rents, Borrower hereby assigns to Lender, as further security for the Obligations, the Leases, Lease Guaranties and Rents. Upon the occurrence and during the continuance of any Event of Default, Lender shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and Rents and in Article 4 hereof, including the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of Leases, Lease Guaranties and Rents in this Mortgage and the absolute assignment of Leases, Lease Guaranties and Rents in the Assignment of Leases and Rents, the terms of the Assignment of Leases and Rents shall control.

**Section 5.2 No Merger of Estates.** So long as any part of the Obligations remain unpaid and undischarged, the fee and leasehold estates to the Collateral shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Borrower, Lender, any lessee or any third party by purchase or otherwise.

## ARTICLE 6

### SECURITY AGREEMENT

**Section 6.1 Security Agreement.** This Mortgage shall constitute a security agreement under Article 9 of the UCC in each applicable jurisdiction with respect to the Personal Property, which shall be deemed to include any and all fixtures and personal property included in the

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description of the Personal Property, now owned or hereafter acquired by Borrower, which might otherwise be deemed "personal property" and all accessions thereto and the proceeds thereof. Borrower has granted and does hereby grant Lender a security interest in the Personal Property and in all additions and accessions thereto, renewals and replacements thereof and all substitutions therefor and proceeds thereof for the purpose of securing all Obligations now or hereafter secured by this Mortgage. The following provisions relate to such security interest:

(a) The Personal Property includes all now existing or hereafter acquired or arising equipment, inventory, accounts, chattel paper, instruments, documents, deposit accounts, investment property, letter-of-credit rights, commercial tort claims, supporting obligations and general intangibles now or hereafter used or procured for use in the Collateral or otherwise relating to the Collateral. If Borrower shall at any time acquire a commercial tort claim relating to the Collateral, Borrower shall promptly notify Lender in a writing signed by Borrower of the brief details thereof and grant to Lender a security interest therein and in the proceeds thereof.

(b) Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any filing office in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the collateral as "all assets used or procured for use or otherwise relating to" the Collateral or words of similar effect, or as being of equal or lesser scope or in greater detail, and to indicate the Collateral as defined, or in a manner consistent with the term as defined, in this Mortgage and (b) contain any other information required by part 5 of Article 9 of the UCC of any such filing office for the sufficiency or filing office acceptance of any initial financing statement or amendment, including whether Borrower is an organization, the type of organization and any organizational identification number issued to Borrower. Borrower agrees to provide any such information to Lender promptly upon request. Borrower also ratifies its authorization for Lender to have filed in any filing office in any UCC jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof. Borrower shall pay to Lender from time to time, within the Demand Period, any and all out-of-pocket costs and expenses incurred by Lender in connection with the filing of any such initial financing statements and amendments, including reasonable attorneys' fees to the extent permitted in Section 8.4(c) hereof and all disbursements. Such costs and expenses shall bear interest at the Default Rate from the expiration of the Demand Period until the date repaid by Borrower, and such costs and expenses, together with such interest, shall be part of the Obligations and shall be secured by this Mortgage.

(c) Borrower shall at any time and from time to time after the occurrence and during the continuance of an Event of Default take such steps as Lender may reasonably request for Lender to obtain "control" of any Personal Property for which control is a permitted or required method to perfect, or to insure priority of, the security interest in such Personal Property granted herein.

(d) Upon the occurrence of an Event of Default, Lender shall have the rights and remedies of a secured party under the UCC as well as all other rights and remedies available at law or in equity or under this Mortgage.

(e) It is intended by Borrower and Lender that this Mortgage be effective as a financing statement filed with the applicable real estate records as a fixture filing covering the

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Collateral. A description of the Land which relates to the Personal Property is set forth in Exhibit A attached hereto. The Borrower is the record owner of the Land.

(f) Terms defined in the UCC and not otherwise defined in this Mortgage shall have the same meanings in this Article as are set forth in the UCC. In the event that a term is used in Article 9 of the UCC and also in another Article of the UCC, the term used in this Article is that used in Article 9. The term "control," as used in this Article, has the meaning given in Sections 9-104, 9-105, 9-106 or 9-107 of Article 9, as applicable.

**Section 6.2** **Fixture Filing.** This Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Code with respect to any and all fixtures included within the foregoing description and definition of the Collateral that may now be or hereafter become "fixtures" within the meaning of the Code. In that regard, the following information is provided:

Name of Debtor: 35 W. Wacker Owner, LLC

Address of Debtor: 10 State House Square, 15<sup>th</sup> Floor  
Hartford, Connecticut 06103-3604

Type of Organization: Limited liability company

State: Delaware

Organizational Identification Number of Debtor: 36-4194340

Name of Secured Party: Hartford Life Insurance Company

Address of Secured Party: c/o Hartford Investment Management Company, One Hartford Plaza, NP5, Hartford, Connecticut 06155

## ARTICLE 7

### MISCELLANEOUS

**Section 7.1** **Notices.** Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered, (b) on the first Business Day after deposit with an overnight air courier service, if such deposit is timely and appropriate in accordance with the requirements of such courier service for next business day delivery, or (c) upon receipt, if deposited in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Lender or Borrower, as the case may be. Any party may

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designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

**Section 7.2 Covenants Running with the Collateral.** All Obligations contained in this Mortgage are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Collateral. As used herein, "Borrower" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Collateral (without in any way implying that Lender has or will consent to any such conveyance or transfer of the Collateral). All persons or entities who may have or acquire an interest in the Collateral shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Lender (which may be issued or withheld in Lender's sole and absolute discretion).

**Section 7.3 Attorney-in-Fact.** Borrower hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Lender reasonably deems appropriate to protect Lender's interest, if Borrower shall fail to do so within ten (10) days after written request by Lender, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personal Property, and Fixtures in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the collateral, and (d) upon the occurrence and during the continuance of an Event of Default, to perform any obligation of Borrower hereunder or under any of the other Loan Documents; however: (1) Lender shall not under any circumstances be obligated to perform any obligation of Borrower; (2) any sums advanced by Lender in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate from the expiration of the applicable Demand Period until paid by Borrower; (3) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (4) Lender shall not be liable to Borrower or any other person or entity for any failure to take any action which it is empowered to take under this Section 7.3.

**Section 7.4 Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Lender and Borrower and their respective successors and assigns provided that Borrower shall not, without the prior written consent of Lender (which may be granted or withheld in Lender's sole and absolute discretion), assign any rights, duties or obligations hereunder.

**Section 7.5 No Waiver.** Any failure by Lender to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Lender shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

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**Section 7.6**      **Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Collateral, then Lender shall be subrogated to all of the rights, liens and interests existing against the Collateral and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Lender.

**Section 7.7**      **Loan Agreement.** If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

**Section 7.8**      **Release or Reconveyance.** Upon the full, final and indefeasible payment and performance of the Obligations, Lender, at Borrower's expense, shall release the liens and security interests created by this Mortgage or reconvey the Collateral to Borrower.

**Section 7.9**      **Waiver of Stay, Moratorium and Similar Rights.** Borrower agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Borrower and Lender or any rights or remedies of Lender.

**Section 7.10**     **Limitation on Liability.** Borrower's liability hereunder is subject to the limitation on liability provisions of Article 10 of the Loan Agreement.

**Section 7.11**     **Obligations of Borrower, Joint and Several.** If more than one person or entity has executed this Mortgage as "Borrower," the obligations of all such persons or entities hereunder shall be joint and several.

**Section 7.12**     **Governing Law.** This Mortgage shall be governed by the laws of the State of Illinois without giving effect to the conflict of law principles thereof other than 735 ILCS Section 105/5-5 *et. seq.*

**Section 7.13**     **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 7.14**     **Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Lender and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

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## ARTICLE 8.

### STATE-SPECIFIC PROVISIONS

**Section 8.1. Inconsistencies.** In the event of any inconsistencies between the terms and conditions of this Article and the other provisions of this instrument, the terms and conditions of this Article shall control and be binding.

**Section 8.2. Illinois Mortgage Foreclosure Act.** Notwithstanding the provisions of Article 4 of this Mortgage, any foreclosure of all or any portion of the lien of this Mortgage shall be in accordance with the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as from time to time amended (the "Act").

**Section 8.3. Waiver of Right of Redemption.** Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1210 of the Act), and to the fullest extent permitted by law, Borrower on its own behalf and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium law, under any state or federal law.

**Section 8.4. Compliance With Mortgage Foreclosure Law.**

(a) If any provision of this Mortgage is inconsistent with any applicable provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

(b) Without in any way limiting or restricting any of Lender's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, Lender shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Lender any rights, remedies, powers or authorities upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure and shall be a lien as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded, pursuant to Section 5/15-1302(b) of the Act.



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(d) Borrower waives, to the extent permitted by law, for itself and for any other "Owner of Redemption" (as defined in Section 5/15-1212 of the Act), (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, (ii) all rights of reinstatement, redemption, valuation, appraisal, homestead, moratorium, exemption, extension, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the liens hereby created, (iii) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other Obligation, and (v) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. Borrower, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. Subject to Section 4.7 hereof, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein.

**Section 8.5. Business Loan.** Borrower stipulates, represents, warrants, affirms and agrees that each of the loans and other credit obligations secured hereby are constitute a "business loan" within the meaning of Sections 205/4(a) or (c) of Paragraph I of Chapter 815 of the Illinois Compiled Statutes, as amended.

**Section 8.6. Maximum Indebtedness.** Notwithstanding anything herein to the contrary, although the amount of the Obligations may increase or decrease from time to time, the maximum principal amount of the indebtedness secured by this Mortgage shall not exceed \$120,000,000, plus all costs of enforcement and collection, together with interest on all of the foregoing as provided in the Loan Documents.

**Section 8.7. Insurance.** The following notice is provided pursuant to paragraph (3) of Section 180/10 of Chapter 815 of Illinois Compiled Statutes. As used herein "you" means Borrower and "we" and "us" means Lender: Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection 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 your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

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IN WITNESS WHEREOF, this Mortgage has been executed by Borrower and is effective as of the day and year first above written.

**BORROWER:**

**35 W. WACKER OWNER, LLC,**  
a Delaware limited liability company

By: 35 W. Wacker Venture, L.P.  
a Delaware limited partnership  
Its sole member

By: 35 West Wacker Holdings LP  
a Delaware limited partnership  
Its General Partner

By: 35 West Wacker Investors LLC  
a Delaware limited liability company  
Its General Partner

By: TPF Equity REIT Operating Partnership LP,  
a Delaware limited partnership,  
Its sole member

By: TPF Equity REIT Operating Partnership GP LLC,  
a Delaware limited liability company,  
Its general partner

By: \_\_\_\_\_  
Name: Stephen Adams  
Title: Exec. Director

Gmc

By: Nolan D. Henry  
Name: Nolan D. Henry  
Title: Director

Gmc

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STATE OF CONNECTICUT )  
 )  
COUNTY OF Hartford ) SS

I, Patricia B. Reidy, a notary public in and for said County, in the State aforesaid, do hereby certify that Stephen Olstein as Executive Director and Nolan Denny as Director of TPF Equity REIT Operating Partnership GP LLC, a Delaware limited liability company, general partner of TPF Equity REIT Operating Partnership LP, a Delaware limited partnership, the sole member of 35 West Wacker Investors LLC, a Delaware limited liability company, general partner of 35 West Wacker Holdings LP, a Delaware limited partnership, general partner of 35 W. Wacker Venture, L.P., a Delaware limited partnership, sole member of 35 W. Wacker Owner, LLC, a Delaware limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Executive Director and Director, appeared before me this day in person and acknowledged he/she signed and delivered said instrument as his/her free and voluntary act, and as the free and voluntary act of such limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of December 2013.

Patricia B. Reidy  
Notary Public

PATRICIA B. REIDY  
NOTARY PUBLIC  
My Commission Expires:  
April 30, 2014

My commission expires: \_\_\_\_\_

Notary Public's Office

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## EXHIBIT A

[Legal Description]

Parcel 1:

Lots 1, 3 and 4 in the Leo Burnett Resubdivision of a tract of land in the east ½ of the southeast ¼ of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, according to the Plat thereof recorded March 15, 1990 as Document 90117294, all in Cook County, Illinois.

Parcel 2:

A non-exclusive easement for the benefit of Parcel 1 as created by the Reciprocal Cross-Access Easement Agreement dated December 15, 1997 and recorded February 3, 1998 as Document 98090502 by and among 35 W. Wacker Venture L.L.C., a Delaware limited liability company, Cole Taylor Bank, as successor trustee to Harris Trust and Savings Bank, as trustee under Trust Agreement dated September 24, 1936 and known as Trust Number 43770 and Leo Burnett Company, Inc. for the purpose of an easement to pass on, over, or through the hotel easement area for the purpose of passage between the Hotel Property and the Office Property as defined in said document.

P.I.N #s 17-09-426-030-0000  
17-09-426-032-0000  
17-09-426-033-0000