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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



1502945049

Doc#: 1502945049 Fee: \$86.00

RHSP Fee: \$9.00 RPRF Fee: \$1.00

Karen A. Yarbrough

Cook County Recorder of Deeds

Date: 01/29/2015 01:01 PM Pg: 1 of 25

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 17-09-451-036-0000

**Address:**

**Street:** 108 N. State Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60602

**Lender:** PNC Bank, National Association

**Borrower:** North State Street Air Rights (Chicago) Owner, LLC

**Loan / Mortgage Amount:** \$110,000,000.00

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:** 549899FB-AD8E-4801-B7AF-CF89F78BB029

**Execution date:** 01/23/2015

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**This document prepared by  
and after recording return to:**

Mark Appelbaum, Esq.  
Jones Day  
555 California Street, 26<sup>th</sup> Floor  
San Francisco, California 94104

**Construction Mortgage,  
Assignment of Leases and Rents,  
Security Agreement and Fixture Filing  
(This Mortgage Secures Future Advances)**



*14535123W 7/14*

**THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Mortgage") is made as of the 23<sup>rd</sup> day of January, 2015, by **NORTH STATE STREET AIR RIGHTS (CHICAGO) OWNER, LLC**, a Delaware limited liability company ("Mortgagor"), with an address at c/o CIM Fund III, L.P., 4700 Wilshire Boulevard, Los Angeles, California 90010, Attention: General Counsel, in favor of **PNC BANK, NATIONAL ASSOCIATION**, as Administrative Agent for the benefit of Lenders (defined below) (in such capacity, "Mortgagee"), with an address at PNC Firstside Center, 500 First Avenue, 4th Fl (P7-PFSC-04-V), Pittsburgh, Pennsylvania 15219.

**WHEREAS**, Mortgagor is the owner of a certain tract or parcel of real property described in Exhibit A attached hereto and made a part hereof, together with the improvements now or hereafter erected thereon.

**WHEREAS**, Mortgagor has entered or will enter into a Construction Loan Agreement, dated the date hereof, with Mortgagee, as Administrative Agent, and the lenders from time to time party thereto ("**Lenders**") (as the same may be amended, supplemented or replaced from time to time, the "**Loan Agreement**"), pursuant to which Lenders have agreed to loan to Mortgagor and Mortgagor has agreed to borrow from Lenders an amount not to exceed One Hundred Ten Million Dollars (\$110,000,000) (the "**Loan**"), for the purposes of constructing and developing the Improvements (defined below). The Loan is evidenced by one or more

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promissory notes, each in favor of a Lender (as the same may be amended, supplemented or replaced from time to time, collectively, the “**Note**”). Capitalized terms used but not defined herein have the meanings given to them in the Loan Agreement.

**NOW, THEREFORE**, for the purpose of securing the payment and performance of the following obligations (collectively called the “**Obligations**”):

- (A) The Loan and the Note; and
- (B) Any sums advanced by Mortgagee or which may otherwise become due pursuant to the provisions of the Note or this Mortgage or pursuant to any of the other Loan Documents; and
- (C) Any PNC Provided Interest Rate Hedge Liabilities.

Mortgagor, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, hereby **MORTGAGES, CONVEYS, TRANSFERS, ASSIGNS AND WARRANTS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS, FOREVER, AND HEREBY GRANTS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN, TO, AND UNDER ALL OF THE FOLLOWING DESCRIBED PROPERTY, ALL ACCESSIONS AND ADDITIONS THERETO, ALL SUBSTITUTIONS THEREFOR AND REPLACEMENTS AND PROCEEDS THEREOF, AND ALL REVERSIONS AND REMAINDERS OF SUCH PROPERTY NOW OWNED OR HELD OR HEREAFTER ACQUIRED** (the “**Property**”), to wit:

- (a) All of Mortgagor’s estate in the premises described in Exhibit A, together with all of the easements, rights of way, privileges, liberties, hereditaments, gores, streets, alleys, passages, ways, waters, watercourses, rights and appurtenances thereunto belonging or appertaining including, without limitation all water rights and air rights, and all of Mortgagor’s estate, right, title, interest, claim and demand therein and in the public streets and ways adjacent thereto, either in law or in equity (the “**Land**”);
- (b) All of Mortgagor’s right, title and interest in the buildings, structures and improvements of every kind and description now or hereafter erected or placed on the Land, and all facilities, fixtures, machinery, apparatus, appliances, installations, machinery and equipment, including all building materials to be incorporated into such buildings, all electrical equipment necessary for the operation of such buildings and heating, air conditioning and plumbing equipment now or hereafter attached to, located in or used in connection with those buildings, structures or other improvements (the “**Improvements**”);
- (c) All rents, income, issues, and profits arising or issuing from the Land and the Improvements, and advantages and claims against guarantors of any Leases (defined below) (the “**Rents**”) including the Rents arising or issuing from all leases, licenses, subleases or any other use or occupancy agreement now or hereafter entered into covering all or any part of the Land and Improvements (the “**Leases**”), all of which Leases and Rents are hereby assigned to Mortgagee by Mortgagor. The foregoing assignment shall include, without limitation, cash or securities deposited under Leases to secure performance of lessees of their obligations

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thereunder, whether such cash or securities are to be held until the expiration of the terms of such Leases or applied to one or more installments of rent coming due prior to the expiration of such terms. The foregoing assignment extends to Rents arising both before and after the commencement by or against Mortgagor of any case or proceeding under any federal or state bankruptcy, insolvency or similar law, and is intended as an absolute assignment and not merely the granting of a security interest. Mortgagor, however, shall have a license to collect, retain and use the Rents so long as no Event of Default (defined below) shall have occurred and be continuing or shall exist. Mortgagor will execute and deliver to Mortgagee, on demand, such additional assignments and instruments as Mortgagee may require to implement, confirm, maintain and continue the assignment of Rents hereunder;

(d) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; and

(e) Without limiting any of the other provisions of this Mortgage, Mortgagor, as debtor, expressly grants unto Mortgagee, as secured party, a security interest in all personal property of Mortgagor, including the following, all whether now owned or hereafter acquired or arising and wherever located: (i) accounts (including health-care-insurance receivables and credit card receivables); (ii) securities entitlements, securities accounts, commodity accounts, commodity contracts and investment property; (iii) deposit accounts; (iv) instruments (including promissory notes); (v) documents (including warehouse receipts); (vi) chattel paper (including electronic chattel paper and tangible chattel paper); (vii) inventory, including raw materials, work in process, or materials used or consumed in Mortgagor's business, items held for sale or lease or furnished or to be furnished under contracts of service, sale or lease, goods that are returned, reclaimed or repossessed; (viii) goods of every nature, including stock-in-trade and goods on consignment; (ix) rental agreements, sales contracts, management contracts, franchise agreements, construction contracts, architects' contracts, technical services agreements and other contracts; (x) as-extracted collateral; (xi) letter of credit rights, (xii) general intangibles of every kind and description, including payment intangibles, software, computer information, source codes, object codes, records and data, choses in action claims (including claims for indemnification or breach of warranty), books, records, patents and patent applications, copyrights, trademarks, tradenames, tradestyles, trademark applications, goodwill, blueprints, drawings, designs and plans, trade secrets, licenses, license agreements, formulae, tax and any other types of refunds, returned and unearned insurance premiums, rights and claims under insurance policies; (xiii) all supporting obligations of all of the foregoing property; (xiv) all property of Mortgagor now or hereafter in Mortgagee's possession or in transit to or from, or under the custody or control of, Mortgagee or any affiliate thereof; (xv) all cash and cash equivalents thereof; (xvi) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, and all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property, including interest thereon, if any; (xvii) all plans, specifications, designs, drawings, permits, and licenses; (xviii) all contract rights, including, without limitation, the General Construction Contract, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Property, and any contract for management or any other provision of service in connection with the Property; (xix) all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money to Mortgagor under any Interest

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Rate Hedge; and (xx) all cash and noncash proceeds (including insurance proceeds (whether or not expressly required by Mortgagee to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any)) and interest thereon, of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof. Notwithstanding the foregoing provisions, such assignment and grant of security interest contained herein shall not extend to, and any such personal property which is now or hereafter held by Mortgagor as licensee, lessee, or otherwise, to the extent that (a) such personal property is not assignable or capable of being encumbered as a matter of law or under the terms of the license, lease, or other agreement applicable thereto (but solely to the extent that any such restriction shall be enforceable under applicable law), without the consent of the licensor or lessor thereof or other applicable party thereto, and (b) such consent has not been obtained. Mortgagor will execute and deliver to Mortgagee on demand such financing statements and other instruments, as Mortgagee may reasonably require in order to perfect, protect and maintain such security interest under the Uniform Commercial Code as in effect in the applicable state ("UCC") on the aforesaid collateral.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

Provided, however, that if Mortgagor pays to Mortgagee the Obligations, and if Mortgagor keeps and performs each of its other covenants, conditions and agreements set forth herein and in the other Loan Documents, then, upon the termination of all obligations, duties and commitments of Mortgagor under the Obligations and this Mortgage, and subject to the provisions of Section 24, the estate hereby granted and conveyed shall become null and void.

## **THIS MORTGAGE IS GRANTED TO SECURE FUTURE ADVANCES MADE PURSUANT TO THE NOTE AND OTHER LOAN DOCUMENTS.**

This Mortgage is given to secure, in part, future advances under the Note and the other Loan Documents, and shall secure not only any initial advance under the Note and the other Loan Documents, but also subsequent advances made pursuant to the Loan Documents, and any other advances, disbursements and other payments made under the Note and the other Loan Documents, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, and including advances under the Note and other Loan Documents as are made within twenty years from the date hereof, to the same extent as if all such advances were made at the time of execution of this Mortgage and although there may be no outstanding Obligations at the time any advance is made. The total amount of the Obligations may increase or decrease from time to time, but the total unpaid principal balance of the indebtedness hereby secured at any one time outstanding shall not exceed two (2) times the maximum principal amount of the Note, plus interest thereon, and any disbursements made for payment of taxes, special assessments or insurance on the Property, and interest on such disbursements. This Mortgage shall be valid and shall, to the fullest extent permitted by any applicable Legal Requirement (defined below), have priority over any and all liens and encumbrances arising after this Mortgage is recorded in the Recorder's office in the County in which the Land is located, including (to the extent permitted



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by applicable Legal Requirements) statutory liens except taxes and assessments levied on the Property.

1. **Representations and Warranties.** Mortgagor represents and warrants to Mortgagee that (a) Mortgagor has good and marketable title to an estate in fee simple absolute in the Land and Improvements and has all right, title and interest in all other property constituting a part of the Property, in each case free and clear of all liens and encumbrances, except for the matters shown on the title insurance policy accepted by Mortgagee in connection with this Mortgage and any other Permitted Encumbrances (“**Permitted Exceptions**”), and (b) its name, type of organization, jurisdiction of organization and chief executive office are true and complete as set forth in the heading of this Mortgage. This Mortgage is a valid and enforceable first lien on the Property and Mortgagee shall, subject to Mortgagor’s right of possession prior to the existence of an Event of Default, quietly enjoy and possess the Property. Mortgagor shall preserve such title as it warrants herein and the validity and priority of the lien hereof and shall forever warrant and defend the same to Mortgagee, except for any Permitted Exceptions, against the claims of all persons.

2. **Affirmative Covenants.** Until all of the Obligations shall have been fully paid, satisfied and discharged Mortgagor shall:

(a) **Legal Requirements.** Subject to the terms of the Loan Agreement (including any rights thereunder to contest Legal Requirements (defined below)), promptly comply with and conform to all present and future laws, statutes, codes, ordinances, orders and regulations and all covenants, restrictions and conditions which may be applicable to Mortgagor or to any of the Property (the “**Legal Requirements**”).

(b) **Impositions.** Subject to, and to the extent required by, the terms of the Loan Agreement (including any rights thereunder to contest Impositions (defined below)), before interest or penalties are due thereon and otherwise when due, Mortgagor shall pay or cause to be paid all taxes of every kind and nature, all charges for any easement or agreement maintained for the benefit of any of the Property, all general and special assessments (including any condominium or planned unit development assessments, if any), levies, permits, inspection and license fees, all water and sewer rents and charges, and all other charges and liens, whether of a like or different nature, imposed upon or assessed against Mortgagor or any of the Property (the “**Impositions**”). If requested by Mortgagee, within the later of thirty (30) days following such request and thirty (30) days after the payment of any Imposition, Mortgagor shall deliver to Mortgagee written evidence acceptable to Mortgagee of such payment. Mortgagor’s obligations to pay or cause to be paid the Impositions that relate to the period in time prior to Mortgagee taking title to (and possession of) the Property through foreclosure, deed-in-lieu or otherwise shall survive Mortgagee’s taking title to (and possession of) the Property through foreclosure, deed-in-lieu or otherwise, as well as the termination of the Mortgage including, without limitation, by merger into a deed.

(c) **Maintenance of Security.** Mortgagor shall maintain the Property as more fully set forth herein and in the Loan Agreement.

3. **Leases; Assignment of Leases.** Mortgagor shall not (a) execute an assignment or pledge of the Rents or the Leases other than in favor of Mortgagee; (b) accept any prepayment of

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an installment of any Rents more than thirty (30) days prior to the due date of such installment; or (c) enter into any Leases other than Approved Leases without Mortgagee's prior written consent. Any or all Leases of all or any part of the Property shall be subject in all respects to the terms and provisions of the Loan Agreement and this Mortgage, shall be subordinated to this Mortgage and to Mortgagee's rights. Mortgagor does hereby sell, assign, and transfer unto Mortgagee all of the Rents and Leases from the Property, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such Rents and Leases from and on the Property unto Mortgagee. Mortgagor does hereby appoint irrevocably Mortgagee its true and lawful attorney, in its name and stead, which appointment is coupled with an interest, to collect all of said Rents; provided that subject to the terms of the Loan Documents, Mortgagee grants Mortgagor the exclusive privilege to collect and retain such Rents unless and until an Event of Default has occurred and is continuing under this Mortgage.

4. **Due on Sale Clause; Mechanic's Liens.** Mortgagor shall not sell, convey or otherwise Transfer any interest in the Property (whether voluntarily or by operation of law), or agree to do so, unless expressly permitted by the Loan Agreement. Subject to Section 4.27 of the Loan Agreement, Mortgagor also will not permit any mechanics' or other construction lien under the laws of Illinois to be recorded against or attach to the Property or any part thereof. Any default under this Section shall cause an immediate acceleration of the Obligations without any demand by Mortgagee.

5. **Insurance.** Mortgagor shall keep the Property continuously insured pursuant to the terms of Section 4.7 of the Loan Agreement. Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1, *et seq.* ("**Collateral Protection Act**"), Mortgagor is hereby notified that unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage and each other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property or any other collateral for the Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the Obligations. 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 Mortgage and each other Loan Document. If Mortgagee purchases insurance for the Property or any other collateral for the Obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully 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 the total outstanding Obligations. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

6. **Rights of Mortgagee to Insurance Proceeds.**

(a) Subject to applicable law, and without regard to any requirement contained in Section 6(b), Mortgagee may at its discretion apply all or any of the proceeds it receives to its reasonable out-of-pocket expenses in settling, prosecuting or defending any claim and may apply the balance to the Obligations in such order and amounts as Mortgagee in its sole discretion may choose, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in,

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defend, or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided, however, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents. Each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact, which appointment is irrevocable and coupled with an interest, to endorse any draft therefor.

(b) Mortgagee shall permit insurance or condemnation proceeds held by Mortgagor to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor reasonably acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be reasonably acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence reasonably acceptable to Mortgagee (A) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (B) no Default or Event of Default has occurred which is continuing, and (C) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Notwithstanding anything to the contrary, the conditions to disbursement of insurance proceeds for payment of costs of repair and restoration shall be consistent with the conditions to disbursement of Loan proceeds for the purpose of paying construction costs, as contemplated in, and more specifically described in, the Loan Agreement. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within ninety (90) days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

(c) Notwithstanding anything to the contrary herein, the provisions of this Section 6 shall be subject to Section 8.4 of the Block 37 Declaration (as defined in the Loan Agreement).

7. **Installments for Insurance, Taxes and Other Charges.** Mortgagor shall deposit with Mortgagee the Monthly Tax Deposit and the Monthly Insurance Deposit as and when required pursuant to Section 6.8(c) of the Loan Agreement. Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, at its election, to apply any amount so held against the Obligations due and payable in such order as Mortgagee may deem fit, and Mortgagor hereby grants to Mortgagee a lien upon and security interest in such amounts for such purpose.

8. **Condemnation.** Mortgagor, promptly upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Property, shall notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and Mortgagor shall deliver to Mortgagee all instruments



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reasonably requested by it to permit such participation. Any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof, is hereby assigned to and shall be received and collected directly by Mortgagee, and any award or compensation shall be applied in accordance with Section 6(b).

9. **Inspection of Property.** Subject to the terms of the Loan Agreement (including, without limitation, Section 4.5 thereof), Mortgagee shall have the right to enter the Property at any reasonable hour for the purpose of inspecting the order, condition and repair of the buildings and improvements erected thereon, as well as the conduct of operations and activities on the Property. Subject to the terms of the Loan Agreement and the Environmental Indemnity Agreement (Secured), Mortgagee may enter the Property (and cause Mortgagee's employees, agents and consultants to enter the Property), upon prior written notice to Mortgagor, to conduct any and all environmental testing deemed appropriate by Mortgagee in its sole discretion. Subject to the terms of the Loan Agreement and the Environmental Indemnity Agreement (Secured), the environmental testing shall be accomplished by whatever means Mortgagee may deem appropriate, including the taking of soil samples and the installation of ground water monitoring wells or other intrusive environmental tests. Subject to the terms of the Loan Agreement and the Environmental Indemnity Agreement (Secured), Mortgagor shall provide Mortgagee (and Mortgagee's employees, agents and consultants) reasonable rights of access to the Property as well as such information about the Property and the past or present conduct of operations and activities thereon as Mortgagee shall reasonably request.

10. **Events of Default.** The occurrence of any one or more of the following events constitutes an "Event of Default" hereunder: (a) the occurrence of an Event of Default under the terms of the Loan Agreement; or (b) the failure of Mortgagor to perform any obligation hereunder, or the failure to be true of any material representation or warranty of Mortgagor contained herein and the continuance of such failure for ten (10) Business Days after notice, or within any longer grace period, if any, allowed in the Loan Agreement for such failure. As used herein, "Default" means any event, act, or condition that with notice or passage of time, or both, would constitute an Event of Default hereunder.

11. **Rights and Remedies of Mortgagee.** If an Event of Default occurs, Mortgagee may, at its option and without demand, notice or delay, do one or more of the following for so long as such Event of Default exists:

(a) Mortgagee may declare the entire unpaid principal balance of the Obligations, together with all interest thereon, to be due and payable immediately.

(b) Mortgagee may (i) institute and maintain an action on any instruments evidencing the Obligations or any portion thereof, and (ii) take such other action at law or in equity for the enforcement of any of the Loan Documents as the law may allow, and in each such action Mortgagee shall be entitled to all costs of suit and attorneys fees.

(c) Mortgagee shall have the right immediately or at any time thereafter to foreclose the lien of this Mortgage:

(1) Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Mortgagee, in Mortgagee's sole and

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absolute discretion, appoint Mortgagee as a mortgagee-in-possession or appoint a receiver of the Property (a "**Receiver**") pursuant to the Illinois Mortgage Foreclosure Law, as amended (735 ILCS 5/15-1101, *et seq.*)(the "**Mortgage Foreclosure Act**"). Such appointment may be made either before or after sale, without choice; without regard to the solvency or insolvency, at the time of application for each Receiver, of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee hereunder or any employee or agent thereof may be appointed as such Receiver. Such Receiver shall have all powers and duties prescribed by the Mortgage Foreclosure Act, including the power to take possession, control and care of the Property and to collect all Rents (including, but not limited to, any delinquent Rents) thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor, its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such Receiver, would be entitled to collect such Rents and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted under any applicable Legal Requirements, such Receiver may take any action permitted to be taken by Mortgagee pursuant to any other Loan Document, extend or modify any then existing Leases and make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons and other parties whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser or at any time thereafter.

(2) The court may, from time to time, authorize said Receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the Receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the Obligations, including without limitation the following, in such order of application as Mortgagee may, in its sole and absolute discretion, elect: (i) amounts due upon the Note and any other Loan Documents; (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage; (iii) costs and expenses incurred by Mortgagee, including costs and expenses of foreclosure and litigation upon the Property; (iv) insurance premiums, repairs, Impositions, and interest, penalties and costs, in connection with the Property; (v) any other encumbrance or lien upon the Property that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same; and (vi) all costs, expenses, and monies advanced by Mortgagee to cure or attempt to cure any default by Mortgagor in the performance of any obligation or condition contained in any of the other Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any of the other Loan Documents, with interest on such sums advanced at the Default Rate (as defined in the Loan Agreement). The excess of the proceeds of sale, if any, shall then be paid to Mortgagor (or such other person or party as is applicable in accordance with applicable Legal Requirements).

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(3) This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Property, as Mortgagee may elect, until all of the Property has been foreclosed against and sold. As part of the foreclosure, Mortgagee in its sole discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Property, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, parcels, or units, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable Legal Requirements. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers of the property so sold, in accordance with any applicable Legal Requirements, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, which appointment is coupled with an interest, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

(4) In the case of any sale of the Property pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security interest, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Mortgagor, with interest on such sums advanced at the Default Rate.

(d) Mortgagee may, in its sole and absolute discretion, whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale of the Property or during any period of redemption, without regard to waste, adequacy of the security or solvency of Mortgagor revoke the privilege granted Mortgagor hereunder to collect the Rents, and may, at its option, without notice: (i) enter and take actual possession of the Property, the Rents and the Leases or any part thereof personally, or by its agents or attorneys, and exclude Mortgagor therefrom; (ii) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto; (iii) as attorney-in-fact or agent of Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Property, the Rents, and the Leases and conduct the business, if any, thereof (including entering into new leases of the Property, or any part thereof, under such terms and conditions as Mortgagee, in its sole and absolute discretion, may elect) either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents and the Leases (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same; (v) elect to disaffirm any Lease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations,

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additions, betterments and improvements to the Property that, in its reasonable discretion, may seem appropriate; (vii) insure and reinsure the Property for all risks incidental to Mortgagee's possession, operation and management thereof; (viii) perform such other acts in connection with the management and operation of the Property, as Mortgagee in its sole discretion may deem necessary or desirable; (ix) collect any or all of the Rents, including any Rents past due and unpaid; (x) perform any obligation or exercise any right or remedy of Mortgagor under any Lease; or (xi) enforce any obligation of any tenant of any of the Property. Mortgagee may exercise any right under this Section 11(d), whether or not Mortgagee shall have entered into possession of any of the Property, and nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession," unless Mortgagee shall have entered into and shall continue to be in actual possession of the Property. Mortgagor hereby authorizes and directs each and every present and future tenant of any of the Property to pay all Rents directly to Mortgagee and to perform all other obligations of that tenant for the direct benefit of Mortgagee, as if Mortgagee were the landlord under the Lease with that tenant, immediately upon receipt of a demand by Mortgagee to make such payment or perform such obligations. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of Rents or performance of obligations to Mortgagee, and any such payment or performance to Mortgagee shall discharge the obligations of the tenant to make such payment or performance to Mortgagor.

(e) Mortgagor hereby grants Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein and in every other Loan Document, at any and all times during the continuance of any Event of Default without notice to Mortgagor or any other person or other party. Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may, in its sole and absolute discretion, determine: (i) to the payment of the operating expenses of the Property, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (ii) to the payment of Impositions, costs, expenses, and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property, and of placing the Property in such condition as will, in the judgment of Mortgagee, make it readily rentable or saleable; (iii) to the payment of any Obligations; and (iv) to the payment of any other cost or expense required or permitted hereunder.

(f) The exercise of any of Mortgagee's rights pursuant to this Section, the taking possession by Mortgagee as a mortgagee-in-possession, the appointment of a Receiver, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or waive, modify or affect notice of default hereunder or invalidate any act done pursuant to said notice, nor in any way operate to prevent Mortgagee from pursuing any remedy which now or hereafter it may have under the terms and conditions of this Mortgage, the other Loan Documents, or any other instruments securing the same. The rights and powers of Mortgagee hereunder shall remain in full force and effect both prior to and after any foreclosure of this Mortgage and any sale pursuant thereto and until expiration of the period of redemption



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for said sale. The purchaser at any foreclosure sale, including Mortgagee, shall have the right at any time and without limitation, to advance money to any Receiver to pay any part or all of the items which the Receiver would otherwise be authorized to pay if cash were available from the Property and the sum so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

(g) Mortgagee may exercise from time to time any rights, powers and remedies available to it under the applicable UCC and as may be provided in this Mortgage and any other Loan Document. Mortgagor shall, promptly upon request by Mortgagee, assemble the Property other than the Land and Improvements (“**Other Collateral**”) and make it available to Mortgagee at such place or places, as Mortgagee shall designate. Any notification of intended disposition required by any Legal Requirement or with respect to any Other Collateral shall be deemed reasonably and properly given if given at least ten (10) days before such disposition. Without limiting the generality of the preceding sentences of this Section 11(g), Mortgagee may, with respect to so much of the Other Collateral as is personal property under applicable Legal Requirements, to the fullest extent permitted by applicable Legal Requirements, without further notice, advertisement, hearing or process of law of any kind: (i) notify any person or other party obligated on the Other Collateral to perform directly for Mortgagee its obligations thereunder; (ii) enforce collection of any of the Other Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto; (iii) endorse any checks, drafts, or other writings in the name of Mortgagor to allow collection of the Other Collateral; (iv) take control of any proceeds of the Other Collateral; (v) enter upon any Property where any of the Other Collateral may be located and take possession of and remove such Other Collateral; (vi) sell any or all of the Other Collateral, free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and (vii) bid for and purchase any or all of the Other Collateral at any such sale. Any proceeds of any disposition by Mortgagee of any of the Other Collateral may be applied by Mortgagee to the payment of expenses in connection with the Other Collateral, including attorneys’ fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee toward the payment of such of the Obligations and in such order of application determined by Mortgagee, and any excess shall be paid to Mortgagor or other secured parties, as their interests may appear. Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and other Loan Documents and, to the fullest extent permitted by applicable Legal Requirements, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder. Mortgagor hereby appoints Mortgagee its attorney-in-fact with full power of substitution to take possession of the Other Collateral upon any Event of Default and, as Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Mortgagee to accomplish the disposition of the Other Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Obligations are outstanding.

(h) It is the intention of the parties that this Mortgage shall confer upon Mortgagee the fullest rights, remedies and benefits available under applicable Legal Requirements. **Mortgagee may take any of the actions referred to in this Section 11 irrespective of and without regard to the adequacy of the security for the Obligations.**



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(i) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Mortgage Foreclosure Act or common law, the provision of the Mortgage Foreclosure Act or common law, as applicable, shall take precedence over the provision 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 Mortgage Foreclosure Act or common law, as applicable. Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Mortgage Foreclosure Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Mortgage Foreclosure Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Mortgage Foreclosure Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Mortgage Foreclosure Act to the full extent permitted by the applicable Legal Requirements.

**12. Application of Proceeds.** Mortgagee shall apply the proceeds of any foreclosure sale of, or other disposition or realization upon, or Rents or profits from, the Property to satisfy the Obligations in accordance with Section 10.2(d) of the Loan Agreement, or at the election of Required Lenders, in such order of application as Required Lenders determine in their exclusive discretion.

**13. Mortgagee's Right to Protect Security.** Mortgagee is hereby authorized to do any one or more of the following, irrespective of whether an Event of Default has occurred: (a) appear in and defend any action or proceeding purporting to affect the security hereof or Mortgagee's rights or powers hereunder; (b) purchase such insurance policies covering the Property as it may elect if Mortgagor fails to maintain the insurance coverage required hereunder; and (c) take such action as Mortgagee may determine to pay, perform or comply with any Impositions or Legal Requirements, to cure any Events of Default and to protect its security in the Property.

**14. Appointment of Mortgagee as Attorney-in-Fact.** Mortgagee, or any of its officers, is hereby irrevocably appointed attorney-in-fact for Mortgagor (without requiring any of them to act as such), such appointment being coupled with an interest, to do any or all of the following: (a) collect the Rents during the continuance of an Event of Default; (b) settle for, collect and receive any awards payable under Section 8 from the authorities making the same; and (c) execute, deliver and file, at Mortgagor's sole cost and expense such financing, continuation or amendment statements and other instruments as Mortgagee may reasonably require in order to perfect, protect and maintain its security interest under the UCC on any portion of the Property.

**15. Certain Waivers.**

(a) Mortgagor hereby waives and releases all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment or any rights of marshalling in the event of any sale hereunder of the Property, and, unless specifically

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required herein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise of any option under this Mortgage or any other Loan Document.

(b) Mortgagor voluntarily and knowingly hereby acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate or residential real estate (each as defined in the Mortgage Foreclosure Act). Mortgagor, on behalf of itself and all persons or other parties now or hereafter interested in the Property or the Other Collateral, to the fullest extent permitted by applicable Legal Requirements hereby waives all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Obligations secured by this Mortgage, and Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the Property. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person or other party acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Without limiting the foregoing, Mortgagor, on its own behalf and on behalf of each and every person or other party acquiring any interest in or title to the Property subsequent to the date of this Mortgage, hereby irrevocably waives pursuant to 735 ILCS 5/15 1601 *et seq.* of the Mortgage Foreclosure Act any and all rights of reinstatement (including, without limitation, all rights of reinstatement provided for in 735 ILCS 5/15 1602) or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage (including, without limitation, all rights of redemption provided for in 735 ILCS 5/12 122 *et seq.* and 735 ILCS 5/15 1603) or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor 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 Obligations marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. Mortgagor further waives all of its rights under California Civil Code section 2822, which provides as follows: "(a) the acceptance, by a Lender, of anything in partial satisfaction of an obligation, reduces the obligation of a surety thereof, in the same measure as that of the principal, but does not otherwise affect it. However, if the surety is liable upon only a portion of an obligation and the principal provides partial satisfaction of the obligation, the principal may designate the portion of the obligation that is to be satisfied; and (b) for purposes of this Section and Section 2819, an agreement by a lender to accept from the principal debtor a sum less than the balance owed on the original obligation, without the prior consent of the surety and without any other change to the underlying agreement between the lender and principal debtor, shall not exonerate the surety for the lesser sum agreed upon by the lender and principal debtor."

**16. Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be given in accordance with the terms of the Loan Agreement to each party at its address as set forth above or to such other address as any party may give to the other for such purpose in accordance with the Loan Agreement.

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17. **Further Acts.** By its signature hereon, Mortgagor hereby irrevocably authorizes Mortgagee to execute (on behalf of Mortgagor) and file against Mortgagor one or more financing, continuation or amendment statements pursuant to the UCC in form satisfactory to Mortgagee, and Mortgagor will pay the cost of preparing and filing the same in all jurisdictions in which such filing is deemed by Mortgagee to be necessary or desirable in order to perfect, preserve and protect its security interests. If required by Mortgagee, Mortgagor will execute all documentation reasonably necessary for Mortgagee to obtain and maintain perfection of its security interests in the Property. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring or confirming unto Mortgagee the property and rights hereby mortgaged, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intent of or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee under the Note, this Mortgage, the other Loan Documents, at law or in equity, including, without limitation, the rights and remedies described in this Section. Notwithstanding anything to the contrary in the immediately preceding sentence, Mortgagee shall not execute any document as attorney-in-fact of Mortgagor unless (x) Mortgagor shall have failed or refused to execute the same within five (5) Business Days after Mortgagee's request therefor, or (y) in Mortgagee's good faith determination it would be materially prejudiced by the delay involved in making such a request. Mortgagee shall give prompt notice to Mortgagor of any exercise of the power of attorney as provided for in this Section 17, along with copies of all documents executed in connection therewith.

18. **Changes in the Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on Mortgagor or Mortgagee's interest in the Property, excluding, however, taxes imposed on Mortgagee's or any Lender's income and franchise or withholding taxes imposed on Agent or any Lender by the law or regulation of any Governmental Authority, Mortgagor will pay such tax, with interest and penalties thereon, if any. If Mortgagee reasonably determines that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, or that this provision would be unenforceable, then Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the entire Obligations immediately due and payable.

19. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

20. **Preservation of Rights.** No delay or omission on Mortgagee's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will Mortgagee's action or inaction impair any such right

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or power. Mortgagee's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Mortgagee may have under other agreements, at law or in equity.

21. **Illegality.** If any provision contained in this Mortgage should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Mortgage.

22. **Credit Agreements Act; Changes in Writing.** Mortgagor expressly agrees that for purposes of this Mortgage and the other Loan Documents: (i) this Mortgage and the other Loan Documents constitute a "credit agreement" under the Illinois Credit Agreements Act, 815 ILCS 160/1, *et seq.* (the "**Credit Agreement Act**"); (ii) the Credit Agreement Act applies to this transaction including, but not limited to, the execution of this Mortgage and the Note; and (iii) any action or in any way related to this Mortgage and each other Loan Document shall be governed by the Credit Agreement Act. No modification, amendment or waiver of, or consent to any departure by Mortgagor from, any provision of this Mortgage will be effective unless made in a writing signed by Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Mortgagor will entitle Mortgagor to any other or further notice or demand in the same, similar or other circumstance.

23. **Entire Agreement.** This Mortgage (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

24. **Survival; Successors and Assigns.** This Mortgage will be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective heirs, executors, administrators, successors and assigns; provided, however, that Mortgagor may not assign this Mortgage in whole or in part without Mortgagee's prior written consent and, subject to the terms of the Loan Agreement, Mortgagee at any time may assign this Mortgage in whole or in part; and provided, further, that the rights and benefits under Sections 9 and 26 will also inure to the benefit of any persons or entities who acquire title or ownership of the Property from or through Mortgagee or through action of Mortgagee (including a foreclosure, sheriff's or judicial sale). The provisions of Sections 9 and 26 will survive the termination, satisfaction or release of this Mortgage, the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure.

25. **Interpretation.** In this Mortgage, unless Mortgagee and Mortgagor otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "**or**" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Mortgage; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Mortgage. Section headings in this Mortgage are included for convenience of reference only and shall not constitute a part of this



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Mortgage for any other purpose. If this Mortgage is executed by more than one party as Mortgagor, the obligations of such persons or entities will be joint and several.

**26. Indemnity.** Mortgagor agrees to indemnify the Indemnitees, and to defend and hold each Indemnitee harmless from and against, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including Mortgagor or any other Loan Party) arising out of, in connection with, or as a result of (a) the execution or delivery of this Mortgage or any agreement or instrument contemplated thereby, the performance by the parties of their respective obligations thereunder or the consummation of the transactions contemplated thereby, (b) the Loan or the use or proposed use of the proceeds therefrom, or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity will not be available to the extent that such losses, claims, damages, liabilities or related expenses (i) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted solely from the gross negligence or willful misconduct of an Indemnitee, or (ii) result from a claim brought by Mortgagor or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if Mortgagor or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Notwithstanding the foregoing, Mortgagor shall not be liable to indemnify any Indemnitee from such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (A) in connection with the administration and interpretation of this Mortgage and other instruments and documents to be delivered hereunder, and/or internal costs and expenses relating to any amendments, waivers or consents pursuant to the provisions hereof, excepting, however, appraisal review fees, or (B) resulting from such Indemnitee's gross negligence or willful misconduct, or (C) if Mortgagor was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that Mortgagor shall remain liable to the extent such failure to give notice does not result in a loss to Mortgagor), or (D) resulting from a compromise or settlement agreement entered into without the consent of Mortgagor, which consent shall not be unreasonably withheld, conditioned or delayed. The indemnity agreement contained in this Section shall survive the termination of this Mortgage, payment of any Obligations and assignment of any rights hereunder. Mortgagor may participate at its expense in the defense of any such action or claim.

**27. No Merger.** It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should Mortgagee acquire an additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

**28. Fixture Filing.** This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the UCC, with Mortgagor, as debtor and



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Mortgagee, as secured party, as in effect in the state in which the Land is located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Land is located with respect to any and all fixtures included within the term “**Property**” as used herein and with respect to any equipment or other personal property that may now be or hereafter become such fixtures. The information required for a sufficient fixture filing financing statement pursuant to Section 9-502 of the UCC is as follows:

Debtor’s legal name: North State Street Air Rights (Chicago) Owner, LLC

Type of legal entity (Corp, LLC, etc.): Limited liability company

Mailing address: c/o CIM Fund III, L.P.  
4700 Wilshire Boulevard  
Los Angeles, California 90010  
Attention: General Counsel

Organizational identification number: 5214438

State of Organization of Debtor(s): Delaware

Name of Secured Party: PNC Bank, National Association

Mailing address: PNC Firstside Center  
500 First Avenue, 4th Fl (P7-PFSC-04-V)  
Pittsburgh, PA 15219

Description of the collateral: All “Property” defined in this Mortgage

Description of real estate to which the collateral is attached or upon which it is or will be located: The Land described on Exhibit A hereto

**29. Governing Law and Jurisdiction.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of Illinois, it being understood that, except as expressly set forth above in this paragraph and to the fullest extent permitted by the laws of Illinois, the laws of California shall govern any and all matters, claims, controversies or disputes arising under or related to this Mortgage, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Mortgage, the Loan Agreement and the other Loan Documents and all of the indebtedness or obligations arising thereunder or hereunder. Each of Mortgagor and Mortgagee hereby irrevocably consents to the non-exclusive jurisdiction of any state or federal court in Los Angeles County, California, and waives personal service of any and all process upon it and agrees that all such service of process be made by certified or registered mail

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directed to such party at the address set forth for such party in the Loan Agreement and service so made shall be deemed to be completed upon actual receipt thereof. Each party hereto waives any objection to jurisdiction and venue of any action instituted against it as provided herein and agrees not to assert any defense based on lack of jurisdiction or venue. In addition, Mortgagor hereby consents to the jurisdiction of any federal or state court within Illinois having proper venue with respect to actions to appoint a receiver or enforce foreclosure remedies.

30. **Change in Name or Locations.** Mortgagor hereby agrees that if Mortgagor changes its name, its type of organization, its state of organization or its chief executive office, or establishes a name in which it may do business that is not the current name of Mortgagor, Mortgagor will immediately notify Mortgagee in writing of the additions or changes.

31. **WAIVER OF JURY TRIAL.** MORTGAGOR AND, BY ITS RESPECTIVE ACCEPTANCE HEREOF, MORTGAGEE AND EACH LENDER HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). MORTGAGOR AND, BY ITS RESPECTIVE ACCEPTANCE HEREOF, MORTGAGEE AND EACH LENDER (A) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGE THAT MORTGAGOR HAS BEEN INDUCED TO ENTER INTO AND MORTGAGEE AND EACH LENDER HAVE BEEN INDUCED TO ACCEPT THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

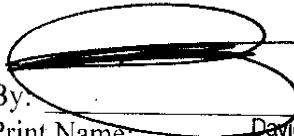
Mortgagor acknowledges that it has read and understood all the provisions of this Mortgage, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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WITNESS the due execution hereof as a document as of the date first written above, with the intent to be legally bound hereby.

**NORTH STATE STREET AIR RIGHTS  
(CHICAGO) OWNER, LLC,**  
a Delaware limited liability company

  
By: \_\_\_\_\_  
Print Name: David Thompson  
Title: Vice President  
and  
Chief Financial Officer

Property of Cook County Clerk's Office

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## ACKNOWLEDGEMENT

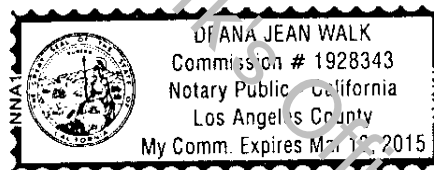
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles ) ss.

On 1/22/2015 before me, Deana Jean Walk, Notary Public, personally appeared DAVID THOMPSON (insert name(s) of signer(s)) who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~~~they~~ executed the same in his/~~her~~~~their~~ authorized capacity~~(ies)~~, and that by his/~~her~~~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Deana Jean Walk* (Seal)

Deana Jean Walk, Notary Public

**UNOFFICIAL COPY****EXHIBIT A**

## Legal Description

All that certain real property situated in Cook County, Illinois, described as follows:

**PARCEL 1:**

(PART BETWEEN +92.50 C.C.D. TO +689.50 C.C.D.)

THAT PART OF VACATED WEST RANDOLPH STREET TOGETHER WITH THAT PART OF VACATED NORTH STATE STREET TOGETHER WITH THAT PART OF A TRACT OF LAND CONSISTING OF ALL LOTS, STREETS AND ALLEYS WITHIN BLOCK 37 OF ORIGINAL TOWN OF CHICAGO IN THE EAST PART OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A STRIP OF LAND LYING EAST OF AND ADJOINING SAID BLOCK 37 AND WEST OF THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, APPROVED MARCH 3, 1845, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +689.50 FEET CHICAGO CITY DATUM AND ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +92.50 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WESTERLY LINE OF THAT PART OF VACATED WEST RANDOLPH STREET, AFORESAID, 5.00 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 89°08'58" EAST, ALONG THE NORTHERLY LINE OF THAT PART OF VACATED WEST RANDOLPH STREET, AFORESAID, 329.63 FEET TO THE EASTERLY LINE OF THAT PART OF VACATED NORTH STATE STREET, AFORESAID; THENCE SOUTH 00°00'00" WEST, ALONG THE EASTERLY LINE OF THAT PART OF VACATED NORTH STATE STREET, AFORESAID, 89.12 FEET; THENCE NORTH 90°00'00" WEST, 229.85 FEET; THENCE SOUTH 12°36'25" WEST, 46.74 FEET; THENCE SOUTH 15°39'45" WEST, 41.34 FEET; THENCE NORTH 90°00'00" WEST, 78.44 FEET TO THE WEST LINE OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WEST LINE OF BLOCK 37, AFORESAID 174.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

(PART ABOVE +689.50 C.C.D.)

THAT PART OF A TRACT OF LAND CONSISTING OF ALL LOTS, STREETS AND ALLEYS WITHIN BLOCK 37 OF ORIGINAL TOWN OF CHICAGO IN THE EAST PART OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A STRIP OF LAND LYING EAST OF AND ADJOINING SAID BLOCK 37 AND WEST OF THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, APPROVED MARCH 3, 1845, ALL TAKEN AS A TRACT, LYING



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ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +689.50 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF BLOCK 37, AFORESAID; THENCE SOUTH 89°08'58" EAST, ALONG THE NORTH LINE OF SAID BLOCK 37 AND THE EASTERLY EXTENSION THEREOF, 324.63 FEET TO THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, AFORESAID; THENCE SOUTH 00°00'00" WEST, ALONG SAID WEST LINE, 84.19 FEET; THENCE NORTH 90°00'00" WEST, 224.85 FEET; THENCE SOUTH 12°36'25" WEST, 46.74 FEET; THENCE SOUTH 15 39'45" WEST, 41.34 FEET; THENCE NORTH 90°00'00" WEST, 78.44 FEET TO THE WEST LINE OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WEST LINE OF BLOCK 37, AFORESAID 174.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

NON-EXCLUSIVE EASEMENT IN FAVOR OF PARCELS 1 AND 2 AS CREATED BY DECLARATION OF EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS, DATED NOVEMBER 10, 2005 AND RECORDED NOVEMBER 14, 2005 AS DOCUMENT NUMBER 0531834084, MADE BY CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, 108 NORTH STATE STREET II, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, BLOCK 37, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY AND BLOCK 37 OFFICE, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY; FOR THE FOLLOWING PURPOSES:

(A) INGRESS, EGRESS AND ACCESS TO AND FROM THE BLOCK 37 PARCEL OVER, UNDER, ACROSS AND THROUGH THE PORTION OF THE DEVELOPMENT SITE FOR THE PURPOSE OF DEVELOPMENT AND CONSTRUCTION OF THE DEVELOPMENT PROJECT AND THE CTA PROJECT, INCLUDING WITHOUT LIMITATION, CONSTRUCTION AND COMPLETION BY 108 NORTH STATE STREET II, L.L.C. OF THE MILLS PORTION OF THE CTA PROJECT PURSUANT TO THE DEVELOPMENT AGREEMENT (SUCH EASEMENT TO INCLUDE, WITHOUT LIMITATION, NECESSARY EXCAVATION, TUNNELING, CONSTRUCTION, MATERIAL STORAGE AND ALL OTHER RELATED CONSTRUCTION ACTIVITY BY CONTRACTORS, SUBCONTRACTORS, REPRESENTATIVES, SURVEYORS, CONSULTANTS, EMPLOYEES AND AGENTS FROM TIME TO TIME OF BLOCK 37, L.L.C., 108 NORTH STATE STREET II, L.L.C., BLOCK 37 OFFICE, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY AND CHICAGO TRANSIT AUTHORITY, AS THE CASE MAY BE) (DEFINED THEREIN AS THE "CONSTRUCTION ACCESS EASEMENTS"); (B) SUPPORT IN AND TO ALL STRUCTURAL MEMBERS, SLABS, CAISSONS, BEAMS, FOUNDATIONS, COLUMNS AND OTHER FACILITIES LOCATED WITHIN THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "SUPPORT EASEMENTS"); (C) INSTALLATION, USE AND MAINTENANCE OF UTILITY LINES AND FACILITIES, INCLUDING THE RIGHT TO INSTALL, LAY, MAINTAIN, REPAIR, REPLACE LINES, WIRES, CONDUITS AND EQUIPMENT FOR UTILITY SERVICE REQUIRED FOR THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "UTILITY EASEMENTS"); (D)

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CONSTRUCTION, USE AND MAINTENANCE OF COMMON WALLS, FLOORS, CEILINGS AND ENCLOSURES ALONG ANY COMMON PROPERTY LINES AND BOUNDARIES, INCLUDING THE RIGHT TO MAINTAIN UNINTENTIONAL ENCROACHMENTS RESULTING FROM CONSTRUCTION OF THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "COMMON EASEMENTS"); (E) SUCH EASEMENTS AS SHALL BE REASONABLY NECESSARY FOR THE CONSTRUCTION, REPAIR, REPLACEMENT, MAINTENANCE AND OPERATION OF THE DEVELOPMENT PROJECT (DEFINED THEREIN AS "MISCELLANEOUS EASEMENT"); AND (F) INGRESS, EGRESS AND ACCESS OVER, ACROSS AND THROUGH THE CTA PARCEL AND THE EXISTING CTA FACILITIES AS SHALL BE REQUIRED TO ENABLE 108 NORTH STATE STREET II, L.L.C. TO EXERCISE THE "MILLS SELF-HELP RIGHT" AS PROVIDED IN THE DEVELOPMENT AGREEMENT (DEFINED THEREIN AS THE "MILLS SELF-HELP RIGHT EASEMENT").

## PARCEL 4:

EASEMENTS (INCLUDING FOR PEDESTRIAN ACCESS, TEMPORARY CONSTRUCTION, UTILITIES, COMMON AREAS AND MAINTENANCE AND REPAIR), AFFORDED TO THE "AIR RIGHTS PARCEL" AS DEFINED IN, AND AS ARE SET FORTH AND MORE PARTICULARLY DESCRIBED IN, THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RECIPROCAL EASEMENTS (BLOCK 37 AIR RIGHTS) DATED NOVEMBER 21, 2013, RECORDED \_\_\_\_\_, 20\_\_ AS DOCUMENT NUMBER \_\_\_\_\_, AS AMENDED BY THE FIRST AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RECIPROCAL EASEMENTS (BLOCK 37 AIR RIGHTS) DATED \_\_\_\_\_, 20\_\_ AND, RECORDED \_\_\_\_\_, 20\_\_ AS DOCUMENT NUMBER \_\_\_\_\_.

Pin No. 17-09-451-036-0000

Pin No. 17-09-451-037-0000

Pin No. 17-09-451-038-0000

Note for information: Being commonly known as Air Rights Parcel at 108 North State Street, in the City of Chicago, Cook County, Illinois.

SFI-870127v4