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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1504439064 Fee: \$100.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/13/2015 11:10 AM Pg: 1 of 32

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 17-09-408-012-0000

Address:

Street: 353 North Clark Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60654

Lender: The Northwestern Mutual Life Insurance Company, a Wisconsin corporation

Borrower: Hart 353 North Clark LLC, a Delaware limited liability company

Loan / Mortgage Amount: \$286,000,000.00

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: AF6DC341-7D8E-4EEF-A952-610BE9F9A782

Execution date: 02/06/2015

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Illinois

Loan No. 340526

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument was prepared by Beth A. Jacobs, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Ave., Milwaukee, WI 53202.

MORTGAGE and SECURITY AGREEMENT

THIS MORTGAGE and SECURITY AGREEMENT is made as of the 6th day of February, 2015 between HART 353 NORTH CLARK LLC, a Delaware limited liability company, whose mailing address is c/o Heitman Capital Management LLC, 191 North Wacker Drive, Suite 2500, Chicago, IL 60606, Attn: Asset Manager, herein (whether one or more in number) called "Mortgagor", and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called "Mortgagee":

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

- A. The land in the County of Cook, State of Illinois, described in Exhibit "A" attached hereto and incorporated herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments belonging to or benefiting the Land, including but not limited to all waters, water rights, water courses, all ways, trees, rights, liberties and privileges;
- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of



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every description belonging to Mortgagor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto; and

- D. Mortgagor's interest in all articles of personal property of every kind and nature whatsoever, including, but not limited to all easily removable equipment and fixtures, furniture, dehumidification equipment, cranes, truck scales, rails scales, now or hereafter located upon the Land or in or on the buildings and improvements; and now owned or leased or hereafter acquired or leased by Mortgagor.

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

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

- E. cash and other funds now or at any time hereafter deposited by or for Mortgagor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Mortgagee or a third party, or otherwise deposited with, or in the possession of, Mortgagee pursuant to the Loan Documents; and
- F. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and

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- G. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Mortgagor, in each case, to the extent associated with or arising from the ownership, development, operation, use or disposition of any portion of the property and, including, without limitation, all fees, charges, accounts or other payments for parking in or on the property, including all products and proceeds thereof; and
- H. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Mortgagor on account of the Property or any of the foregoing personal property.

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

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

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

(a) Payment to the order of Mortgagee of the indebtedness evidenced by a promissory note of even date herewith (and any restatement, extension or renewal thereof and any amendments thereto) executed by Mortgagor for the principal sum of TWO HUNDRED EIGHTY-SIX MILLION DOLLARS, with final maturity no later than February 15, 2025 and with interest as therein expressed (which promissory note, as such instrument may be amended, restated, renewed and extended, is hereinafter referred to as the "Note"), it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract; and

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

"Loan Documents" means this instrument, the Note, that certain Absolute Assignment of Leases and Rents of even date herewith between Mortgagor and Mortgagee

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(the "Absolute Assignment"), that certain Certification of Borrower of even date herewith, that certain Limited Liability Company Supplement dated contemporaneously herewith, any other supplements and authorizations required by Mortgagee and any other agreement entered into or document executed by Mortgagor and delivered to Mortgagee in connection with the indebtedness evidenced by the Note, except for that certain Environmental Indemnity Agreement of even date herewith given by Mortgagor to Mortgagee (the "Environmental Indemnity Agreement"), as any of the foregoing may be amended from time to time.

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

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

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

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

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

Business Restriction Representation and Warranty. Mortgagor represents and warrants that each of Mortgagor, all persons and entities owning (directly or indirectly) an ownership interest in Mortgagor (other than (x) direct or indirect holders of any cooperative membership interest in Norinchukin (as such term is hereinafter defined), (y) any beneficiary of a pension fund, and (z) holders of common stock or other securities of a corporation or other entity that is traded on a nationally or internationally recognized securities exchange or a nationally or an internationally recognized over-the-counter securities market, and each instance located within the following countries: Australia,

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Canada, European Union member states, Hong Kong, Iceland, Japan, New Zealand, Norway, Singapore, South Africa, Switzerland and the United States), all guarantors of all or any portion of the Indebtedness, and all persons and entities executing any separate indemnity agreement in favor of Mortgagee in connection with the Indebtedness: (i) is not, and shall not become, a person or entity with whom Mortgagee is restricted from doing business with under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) is not, and shall not become, a person or entity with whom Mortgagee is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (iii) is not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) or (ii) above.

Insurance. Mortgagor agrees to keep the Property insured for the protection of Mortgagee and Mortgagee's wholly owned subsidiaries and agents and shall provide Mortgagee with evidence of insurance acceptable to Mortgagee and shall maintain the following types of insurance in such amounts and form and in such companies all satisfactory to Mortgagee:

(A) All risk or special causes of loss property insurance with a deductible of not greater than \$100,000.00, including law and ordinance coverage equal to a minimum of 10% of the estimated replacement cost, with an Agreed Amount Endorsement for the estimated replacement cost of the improvements. If such all risk or special causes of loss property insurance policy contains terrorism exclusion, then Mortgagor shall purchase a separate insurance policy acceptable to Mortgagee for such terrorism coverage, which separate insurance policy shall include the insurance coverage specified in subparagraph (C), below. Notwithstanding the foregoing, (i) Mortgagor shall only be required to carry terrorism coverage in an amount equal to the lesser of (a) the outstanding principal balance of the Loan, or (b) the amount of terrorism coverage that Mortgagor can purchase for an amount equal to 1/2 of the premium that Mortgagor is currently paying on the all risk or special causes of loss property insurance required herein with a terrorism exclusion; and (ii) Mortgagor shall only be required to maintain such terrorism coverage on renewals of such coverage occurring after the Loan Closing Date (as hereinafter defined) if such coverage is available either through Mortgagor's all risk or special causes of loss property insurance policy or a separate policy (provided, however, for purposes of both clause (i) and clause (ii), above, the deductible applicable to such terrorism coverage shall, subject to Mortgagee's prior written approval, be increased as necessary to permit Mortgagor to carry terrorism coverage in the amount specified in item (i)(a), above). All insurance coverages specified in this subparagraph shall be provided on a replacement cost, agreed amount basis with no coinsurance provision;

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(B) Boiler and machinery or equipment breakdown insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery (excluding elevators and escalators), and other similar equipment installed in the improvements, in an amount equal to the estimated replacement cost of the improvements and with a deductible of not greater than \$100,000.00;

(C) Rental income insurance equal to 12 months rent or business income insurance for 100% of the annual gross earnings from business derived from the Property;

(D) Flood insurance, if the Property is located in a Special Flood Hazard Area (as that term is used in the National Flood Insurance Program), in an amount not less than 25% of the estimated replacement cost;

(E) Mortgagor's own commercial general liability insurance policy with Mortgagee, and Mortgagee's wholly owned subsidiaries and agents, named as additional insureds for their interests in the Property; and

(F) Other insurance as required by Mortgagee from time to time provided such insurance is commonly required by other institutional lenders for similar properties.

All property insurance policies required above or placed by Mortgagor in connection with the Property shall include a standard mortgagee endorsement in favor of Mortgagee. Mortgagor agrees to provide evidence of insurance acceptable to Mortgagee evidencing coverages required above. Such evidence shall reflect at least thirty (30) days notice of cancellation to Mortgagee and shall list Mortgagee as the certificate holder or as a similar additional interest with Mortgagee's correct mailing address and the loan number assigned to the loan (**340526**); if Mortgagor requests Mortgagee to accept a different form of evidence, Mortgagee shall not unreasonably withhold its consent to the provision of such different form of evidence, provided, a copy of a standard mortgagee endorsement in favor of Mortgagee stating that the insurer shall provide at least thirty (30) days notice of cancellation to Mortgagee accompanies such evidence. Mortgagor shall furnish Mortgagee with renewals of all applicable insurance evidence no later than the actual insurance expiration date.

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt written notice thereof to Mortgagee. Following the occurrence of a casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the improvements on the Property to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. All insurance loss proceeds (less expenses of collection) shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be

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released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Mortgagee elects to apply the insurance loss proceeds on the Indebtedness, no prepayment fee shall be due thereon.

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

- (a) There is no existing Event of Default at the time of casualty.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds to Mortgagor as a result of any act, neglect, use or occupancy of the Property by Mortgagor or any tenant of the Property.
- (c) Mortgagee shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Mortgagor, shall be sufficient to complete the restoration of the Property. If there is no default under the Loan Documents, any remaining insurance loss proceeds after the restoration has been completed as required by the Loan Documents shall be released to Mortgagor. If there is a default under the Loan Documents, then, at the option of Mortgagee, any remaining insurance loss proceeds after the restoration shall be applied on the Indebtedness, whether or not due, or be released to Mortgagor.
- (d) If required by Mortgagee, Mortgagee shall be furnished a satisfactory report addressed to Mortgagee from an environmental engineer or other qualified professional satisfactory to Mortgagee to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Mortgagee shall release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Loan Documents and no Non-Monetary Default with respect to which Mortgagee shall have given Mortgagor notice pursuant to the "**Notice of Default**" provision herein. If a Monetary Default shall occur or Mortgagee shall give Mortgagor notice of a Non-Monetary Default, Mortgagee shall have no further obligation to release insurance loss proceeds hereunder unless such default is cured within the cure period set forth in the "**Notice of Default**" provision contained herein. If the estimated cost of restoration exceeds \$500,000.00, (i) the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the

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restoration, and (ii) Mortgagee shall receive an administration fee equal to one percent (1%) of the cost of restoration.

- (f) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring Mortgagee's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Mortgagee.
- (g) Mortgagor shall pay all costs and expenses incurred by Mortgagee, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Mortgagee.
- (h) All reciprocal easement and parking agreements with adjacent landowners benefiting the Property ("REAs"), if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Mortgagee shall be satisfied that Projected Debt Service Coverage of at least 1.71 will be produced from the leasing of space to tenants under Approved Leases (as hereinafter defined).
- (j) All leases in effect at the time of the casualty with tenants who have entered into a non-disturbance and attornment agreement or similar agreement with Mortgagee shall remain in full force and Mortgagee shall be satisfied that restoration can be completed within a timeframe such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or a portion thereof shall not be used and occupied by such tenant as a result of the casualty).
- (k) Mortgagee shall be satisfied that the Property shall be able to be restored to the condition that existed immediately prior to the casualty no later than the Maturity Date (as defined in the Note).

"Loan Closing Date" means the earlier of the date on which (i) this instrument securing the Indebtedness is recorded or (ii) escrow closes and the title company is committed to issue a title policy (ALTA Loan Policy 2006, or an updated ALTA form of policy acceptable to Mortgagee) for the full amount of the Indebtedness to Mortgagee insuring the interest of Mortgagee to be a first and valid lien on the Property and which contains an endorsement insuring to Mortgagee's satisfaction that the Property and the use thereof comply with applicable zoning laws.

"Approved Leases" means leases to (i) existing tenants with a remaining term of at least three (3) years or (ii) approved new tenants with leases satisfactory to Mortgagee for

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terms of at least five (5) years, to commence not later than thirty (30) days following completion of restoration.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over thirty (30) years (whether or not amortization is actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) the following:
 - (i) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$2.85 per square foot in the Property per annum;
 - (ii) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 92% of the gross leasable area in the Property;
 - (iii) the amount, if any, by which the actual management fee is less than 2.20% of gross revenue during such fiscal period;
 - (iv) the amount, if any, by which the actual real estate taxes are less than \$14.46 per square foot per annum; and
 - (v) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$6.93 per square foot per annum.

All projections referenced above shall be calculated in a manner satisfactory to Mortgagee in its reasonable discretion.

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Condemnation. Mortgagor hereby assigns to Mortgagee (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); if the Condemnation Proceeds are less than the unpaid principal balance of the Note and such damage or Taking occurs prior to the last year of the term of the Note, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "**Insurance**" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Mortgagee's option, be applied on the Indebtedness, whether due or not, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents.

Taxes and Special Assessments. Mortgagor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Mortgagee in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Mortgagee within 30 days after Mortgagee shall have given a written request to Mortgagor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee or a bond, satisfactory to Mortgagee, has been posted.

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

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

(b) Except as otherwise provided above, Mortgagor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Mortgagee.

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

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

Other Liens. Mortgagor agrees to keep the Property and any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument. The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby (other than liens for: (a) securing the Indebtedness, (b) non-delinquent taxes and/or assessments, (c) mechanics liens or other liens being contested in accordance with the Loan Documents and for which an escrow (in a form satisfactory to Mortgagee) has been established, or (d) matters shown on title evidence accepted by Mortgagee (including, without limitation, the policy of title insurance accepted by Mortgagee in connection with the Indebtedness), (ii) the assignment or pledge by Mortgagor of its revocable license to collect, use and enjoy rents and profits from the Property, or (iii) the granting or permitting of a security interest in or other encumbrance on the direct or indirect ownership interests in Mortgagor (other than (a) direct or indirect interests in the limited partnership interests in Heitman America Real Estate Trust, L.P. ("HART") and Heitman America Real Estate Trust (PF #1), L.P. ("PF #1"), (b) the direct or indirect ownership interests in The Norinchukin Bank, a Japanese cooperative bank ("Norinchukin") provided that Norinchukin shall own less than a 25% interest in Lake Michigan Partners I, L.P., a Delaware limited partnership ("Parent Entity") (excluding any limited partnership interests in HART and PF #1 that may be held directly or indirectly by Norinchukin) at all times during the term of the Note, and (c) direct or indirect ownership interests in Heitman LLC (each, a "Permitted Lien")), shall constitute a default under the terms of this instrument; except that upon written notice to Mortgagee, Mortgagor may proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Mortgagee. Notwithstanding the foregoing or anything else

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herein to the contrary, Mortgagor shall be permitted to obtain equipment financing or equipment leasing in an aggregate amount not to exceed \$500,000.00. Notwithstanding any other language contained herein, liens on any property owned by tenants shall not be covered by this provision. Additionally, Mortgagee shall have the right to declare the Indebtedness due and payable if at any time during the term of the loan any Permitted Lien shall cause a violation of the provision hereof entitled "**Prohibition on Transfer/One-Time Transfer**".

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

Failure of Mortgagor to Act. If Mortgagor fails to make any payment or do any act as herein provided, Mortgagee may, without obligation to do so, without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof: (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended and all losses, liabilities, claims, damages, costs and expenses required to be reimbursed by Mortgagor to Mortgagee hereunder shall be payable by Mortgagor immediately upon demand with interest from date of expenditure or demand, as the case may be, at the Default Rate (as defined in the Note).

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All sums so expended or demanded by Mortgagee and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument. In no event shall the maximum amount secured hereby exceed two hundred percent (200%) of the principal amount of the Note.

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

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

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

Any other default under the Note or under any other Loan Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Non-Monetary Default to Mortgagor and Mortgagor shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Mortgagee shall have given such notice of default to Mortgagor (or, if the Non-Monetary Default is not curable within such 30-day period, Mortgagor shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Mortgagee (to the extent such Non-Monetary Default can be reasonably monetized, as reasonably determined by Mortgagee)).

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

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

Foreclosure. Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Mortgagee, become immediately due and payable for all purposes without any notice or demand, except as required by law, (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Mortgagee may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Mortgagee may, to the extent permitted by applicable law, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Mortgagee may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Mortgagee is hereby further authorized and empowered, to the extent permitted by applicable law, as agent or attorney in fact, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Mortgagee may think best), and all the right, title and interest of Mortgagor therein, by advertisement or in any manner provided by applicable law, (MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE, TO THE EXTENT PERMITTED BY APPLICABLE LAW), and to issue, execute and deliver a deed of conveyance, all as then may be provided by applicable law; and Mortgagee, to the extent permitted by applicable law, shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, apply such proceeds to the Indebtedness, including all sums advanced or expended by Mortgagee or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a

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perpetual bar, both in law and equity, against Mortgagor, the heirs, successors and assigns of Mortgagor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Mortgagor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

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

Prohibition on Transfer/One-Time Transfer. The present ownership and management of the Property is a material consideration to Mortgagee in making the loan secured by this instrument, and Mortgagor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Mortgagor. Any such conveyance, entering into a Contract to Convey or Change in the Proportionate Ownership of Mortgagor shall constitute a default under the terms of this instrument.

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

Notwithstanding the foregoing, the following transfers (each a "Permitted Transfer") shall not constitute a Change in the Proportionate Ownership and shall not require Mortgagee's consent (provided Mortgagor shall notify Mortgagee in writing not less than 30 days (i) in advance of any such transfer described in clauses (a) and (f) below, and (ii)

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after any such transfer described in clause (h) below, and in each instance provide Mortgagee with reasonable evidence that the requirements below (if any) have been met):

(a) Norinchukin may transfer all or any portion of its interests in Parent Entity, whether held directly or indirectly, to Heitman America Real Estate Holding, LP, a Delaware limited partnership ("Holding LP") (or to an entity that is at least 51% owned and controlled by HART (directly or indirectly) or to any other Qualified Transferee (as defined below) provided that immediately prior to each such transfer Holding LP shall own greater than a 75% interest in Parent Entity), provided that after each such transfer (i) all of the HART Transfer Requirements (as defined below) have been met, and (ii) each such transferee shall be a Qualified Transferee and (iii) there is no Event of Default under the Loan Documents.

(b) Any transfer or a series of transfers of direct or indirect ownership interests in Norinchukin provided that immediately prior to each such transfer, Norinchukin shall own less than a 25% interest in the Parent Entity (excluding any limited partnership interests in HART and PF #1) and after each such transfer (i) all of the HART Transfer Requirements have been met, and (ii) each such transferee shall be a Qualified Transferee.

(c) Any transfer or a series of transfers of membership interests in Mortgagor to "accommodation shareholders" reasonably necessary to enable Mortgagor to qualify as a real estate investment trust under applicable law (or among such persons or any other person who may become such an "accommodation shareholder"), provided that all membership interests transferred to or owned by such "accommodation shareholders" shall not, in the aggregate, exceed 1% of the ownership interests in Mortgagor, and after each such transfer (i) all of the HART Transfer Requirements have been met, and (ii) each such transferee shall be a Qualified Transferee.

(d) Any transfer or a series of transfers of membership interests in Heitman America Real Estate REIT, LLC ("Heitman REIT"), a Delaware limited liability company, reasonably necessary to enable Heitman REIT to continue to qualify as a real estate investment trust for tax purposes under applicable law (or among such persons or any other person who may become such an "accommodation shareholder"), provided that all membership interests transferred to or owned by such "accommodation shareholders" shall not, in the aggregate, exceed 1% of the ownership interests in Heitman REIT and after each such transfer (i) all of the HART Transfer Requirements have been met and (ii) each such transferee shall be a Qualified Transferee.

(e) Any transfer or a series of transfers of limited partnership interests in HART or PF #1 provided that after each such transfer (i) the HART Transfer Requirements have been met, and (ii) each such transferee shall be a Qualified Transferee.

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(f) The replacement of Trust LLC (as defined below) as the general partner of HART and PF #1 and/or Lake Michigan Partners GP, LLC as the general partner of the Parent Entity, by a Qualified General Partner (as defined below) provided that Trust LLC and Lake Michigan Partners GP, LLC, shall not be removed as general partner absent insolvency, gross negligence, fraud, willful misconduct or other commercially reasonable "for cause" events.

(g) Any transfer or a series of transfers of direct or indirect ownership interests in Heitman LLC, provided that after each such transfer (i) all of the HART Transfer Requirements have been met, and (ii) each such transferee shall be a Qualified Transferee.

(h) One-time transfer of all the membership interests in Heitman Capital Management LLC (or substantially all of the assets of Heitman Capital Management LLC, including the general partnership interest in HART and PF #1) to a Successor Entity provided that such Successor Entity shall be a Qualified Transferee.

For the purpose of this instrument, "Successor Entity" means any entity acquiring the membership interests or substantially all of the assets of Heitman Capital Management LLC, whether such acquisition occurs by purchase, merger or otherwise.

For the purpose of this instrument, "Qualified General Partner" means any entity that is controlled (directly or indirectly) by a nationally-recognized separate account or commingled fund investment manager that shall (a) be a Qualified Transferee, and (b) have (i) at least \$5,000,000,000.00 in real estate assets under management (expressly excluding any real estate assets in which HART and PF #1 hold a direct or indirect ownership interest), and (ii) experience in the ownership and management of at least 2 million square feet of CBD office properties (expressly excluding any real estate assets in which HART and PF #1 hold a direct or indirect ownership interest).

For the purpose of this instrument, "Qualified Transferee" means any transferee and all persons and entities owning (directly or indirectly) an interest in such transferee (a) shall meet the criteria set forth in the covenant hereof entitled "**Business Restriction Representation and Warranty**", and (b) are not (and shall never have been) (i) subject to any bankruptcy, reorganization, or insolvency proceedings or any criminal charges or proceedings, or (ii) a litigant, plaintiff, or defendant in any suit brought against or by Mortgagee. Notwithstanding the foregoing, the provisions of (a) above shall not apply to any transferee and all persons and entities owning (directly or indirectly) an interest in such transferee owning (directly or indirectly, in the aggregate) less than a 10% interest in Mortgagor. Further, the provisions of (b) above shall not apply to any transferee and all persons and entities owning (directly or indirectly) an interest in such transferee owning (directly or indirectly, in the aggregate) less than a 20% interest in Mortgagor.

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For the purpose of this instrument, the "HART Transfer Requirements" shall be (1) HART and PF #1 shall (a) own, in the aggregate, directly or indirectly, free and clear of any security interest, not less than 51% of the ownership interests in Mortgagor, and (b) each remain comingled, open-ended core funds, (2) the general partner of HART and PF #1 shall be Heitman America Real Estate Trust, LLC, a Delaware limited liability company ("Trust LLC"), or a Qualified General Partner (to the extent Trust LLC has been replaced as the general partner of HART and PF #1 in accordance with clause (f) above), (3) if Trust LLC is then the general partner of HART and PF #1, then Heitman LLC or a Successor Entity shall own, directly or indirectly, free and clear of any security interest, all of the membership interests in Trust LLC and shall control Trust LLC, (4) the general partner of the Parent Entity shall be Lake Michigan Partners GP, LLC, a Delaware limited liability company, or a Qualified General Partner (to the extent Lake Michigan Partners GP, LLC has been replaced as the general partner of Parent Entity in accordance with clause (f) above), and (5) if Lake Michigan Partners GP, LLC is then the general partner of the Parent Entity, then Heitman LLC or a Successor Entity shall own, directly or indirectly, free and clear of any security interest, all of the membership interests in Lake Michigan Partners GP, LLC and shall control Lake Michigan Partners GP, LLC.

For the purpose of this instrument, "control" (including, with correlative meanings, the terms "controlled by" or "under common control with") means the possession by any person or entity, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise.

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

- (i) the Property shall have achieved Debt Service Coverage (as hereinafter defined) of at least 2.69x for the last full fiscal year and there are no junior liens on the Property;
- (ii) the transferee or an owner of the transferee (the "Creditworthy Party") has a net worth, determined in accordance with generally accepted accounting principles, of at least \$1,450,000,000.00; with cash and cash equivalents of at least \$100,000,000.00 after funding the equity needed to close the purchase and a minimum overall real estate portfolio debt service coverage ratio of 1.30 for the prior twelve (12) month period. In the event that transferee shall satisfy the financial requirements set forth in this subsection (ii), all references to Creditworthy Party in subsections (iii) through (vi) hereafter shall be deemed deleted;

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- (iii) the transferee or the Creditworthy Party is experienced in the ownership and management of at least 2 million square feet of CBD office properties;
- (iv) the transferee, the Creditworthy Party and all persons and entities owning (directly or indirectly) a 10% or greater ownership interest in the transferee or the Creditworthy Party (other than holders of common stock or other securities of a corporation or other entity that is traded on a nationally or internationally recognized securities exchange or a nationally or an internationally recognized over-the-counter securities market, and each instance located within the following countries: Australia, Canada, European Union member states, Hong Kong, Iceland, Japan, New Zealand, Norway, Singapore, South Africa, Switzerland and the United States) are not (and have never been) (a) subject to any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings, or (b) a litigant, plaintiff or defendant in any suit brought against or by Mortgagee (or any Co-Lender);
- (v) pursuant to written documentation prepared by and satisfactory to Mortgagee, the transferee assumes and the Creditworthy Party guarantees, all of the obligations and liabilities of Mortgagor under the Loan Documents, whether arising prior to or after the date of the transfer of the Property, and Mortgagee receives a satisfactory enforceability opinion with respect thereto from counsel reasonably approved by Mortgagee; provided, however, that a non-consolidation opinion shall not be required;
- (vi) the Creditworthy Party executes Mortgagee's then current forms of Guarantee and Guarantee of Recourse Obligations, the Creditworthy Party and the transferee execute Mortgagee's then current form of Environmental Indemnity Agreement in substantially the same form as the Environmental Indemnity Agreement executed by Mortgagor, and Mortgagee receives a satisfactory enforceability opinion with respect to the foregoing from counsel approved by Mortgagee;
- (vii) an environmental report on the Property which meets Mortgagee's then current requirements and is updated to no earlier than ninety (90) days prior to the date of transfer, is provided to Mortgagee at least thirty (30) days prior to the date of transfer and said report shall be satisfactory to Mortgagee at the time of transfer;
- (viii) Mortgagor (a) shall remain liable under the Environmental Indemnity Agreement dated of even date herewith, except for acts or occurrences after the date of transfer of the Property and (b) shall, except as provided in (a) above, be released from all obligations and liabilities under the Loan Documents;

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- (ix) Mortgagee receives an endorsement to its policy of title insurance (or a new policy of title insurance), satisfactory to Mortgagee insuring Mortgagee's lien on the Property as a first and valid lien subject only to liens and encumbrances theretofore approved by Mortgagee;
- (x) pursuant to written documentation prepared by and satisfactory to Mortgagee, the transferee (a) acknowledges that, in furtherance and not in limitation of clause (v) above, it shall be bound by the representation and warranty contained in the covenant entitled "**Business Restriction Representation and Warranty**" set forth in this instrument, and (b) certifies that such representation and warranty is true and correct as of the date of transfer and shall remain true and correct at all times during the term of the Note; and
- (xi) the outstanding balance of the Note at the time of the transfer is not more than 45% of the gross purchase price of the Property.

If Mortgagor shall make a one-time transfer pursuant to the above conditions, Mortgagee shall be paid a fee equal to one-half of one percent (0.50%) of the then outstanding balance of the Note at the time of transfer. The fee shall be paid on or before the closing date of such one-time transfer. At the time of such transfer, no modification of the interest rate or repayment terms of the Note will be required.

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

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

"Net Income Available for Debt Service" means net income (prior to giving effect to any capital gains or losses and any extraordinary items) from the Property, determined

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in accordance with generally accepted accounting principles, for a fiscal period, plus (to the extent deducted in determining net income from the Property):

- A) interest on indebtedness secured by any portion of the Property for such fiscal period;
- B) depreciation, if any, of fixed assets at or constituting the Property for such fiscal period;
- C) amortization, if any, of standard tenant finish expenditures at the Property (but specifically **excluding** the amortization of tenant finish expenditures by Mortgagor in excess of \$60.00 per square foot for new tenants and \$20.00 per square foot for renewal tenants (i.e., above standard tenant finishes)); and
- D) amortization of costs incurred in connection with any indebtedness secured by any portion of the Property and leasing commissions which have been prepaid;

less:

- E) an amount (positive or negative) to offset any rent averaging adjustment resulting from adherence to FASB-13;
- F) the amortization of free rent and any other tenant concessions and promotional items not deducted in the calculation of net income above;
- G) a replacement reserve for future tenant improvements, leasing commissions and structural items based on not less than \$2.85 per square feet per annum;
- H) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 92% of the gross leasable area in the Property;
- I) the amount, if any, by which the actual management fee is less than 2.20% of gross revenue during such fiscal period;
- J) the amount, if any, by which the actual real estate taxes are less than \$14.46 per square foot per annum; and
- K) the amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$6.93 per square foot per annum.

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

Financial Statements. Mortgagor agrees to furnish to Mortgagee:

(A) the following financial statements for the Property within 90 days after the close of each fiscal year of the Mortgagor (the "Property Financial Statements Due Date"):

- (i) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between, leasing commissions, tenant improvements, capital maintenance, common area renovation, and expansion;
- (ii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, percentage rent, expense reimbursements, and any other recovery items;
- (iii) an operating budget for the current fiscal year;
- (iv) a sales report for such fiscal year identifying monthly and yearly sales by all tenants required under their leases to report sales; and

(B) Mortgagor shall furnish to Mortgagee the following financial statements that Mortgagee may, in Mortgagee's sole discretion, require from time to time within twenty (20) days after receipt of a written request from Mortgagee, but in no event more than two (2) times per year except during an Event of Default (the "Requested Financial Statements Due Date")

- (i) an unaudited balance sheet for the Property as of the last day of Mortgagor's most recently closed fiscal year; and
- (ii) an unaudited balance sheet for Mortgagor as of the last day of Mortgagor's most recently closed fiscal year; and
- (iii) an unaudited statement of cash flows for the Property as of the last day of Mortgagor's most recently closed fiscal year; and
- (iv) an unaudited statement of cash flows for the Mortgagor as of the last day of Mortgagor's most recently closed fiscal year; and
- (v) Combined financial statements for HART and PF #1, which will include an audited balance sheet as of the last day of such fiscal year and an audited statement of cash flows as of the last day of such fiscal year.

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Furthermore, Mortgagor shall furnish to Mortgagee within twenty (20) days after receipt of a written request from Mortgagee, which requests shall be limited to no more than three (3) times per year except during an Event of Default, such reasonable financial and management information (provided the same is not proprietary or confidential) in the possession of, or accessible to, Mortgagor which Mortgagee determines to be useful in Mortgagee's monitoring of the value and condition of the Property or Mortgagor.

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

Notwithstanding the foregoing, in no event shall a Financial Statements Due Date for a particular financial statement be prior to the 90th day following the close of the fiscal year covered by such financial statement.

If audited, the financial statements identified in (B)(v) above, shall be prepared in accordance with generally accepted accounting principles by a certified public accountant satisfactory to Mortgagee. All unaudited statements shall contain a certification by an authorized senior officer of Mortgagor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct in all material respects. The expense of preparing all of the financial statements required in (A) and (B) above, shall be borne by Mortgagor.

Mortgagor acknowledges that Mortgagee requires the financial statements and information required herein to record accurately the value of the Property for financial and regulatory reporting. Additionally, Mortgagor shall furnish an annual certification to Mortgagee by the Financial Statements Due Date by an authorized senior officer of Mortgagor stating that any change in the direct or indirect ownership interests of Mortgagor (including any Permitted Transfer) since the date hereof or the date of the immediately preceding annual certification provided by Mortgagor, as applicable, has occurred in accordance with and does not constitute a breach of the terms of the provision hereof entitled "**Prohibition on Transfer/One-Time Transfer**".

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

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

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

The amount of the payments due under the Note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to reflect the payment of interest at the Increased Rate. Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the date (the "Receipt Date") on which all of the financial statements, additional information and proof of payment of property taxes and assessments (as requested by Mortgagee) shall be furnished to or made available to Mortgagee as required. Commencing on the Receipt Date, interest on the unpaid principal balance of the Note shall again accrue at the Interest Rate and the payments due thereafter shall be changed to an amount which is sufficient to reflect the payment of interest on the Note at the Interest Rate. Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit of property related books and records only at its own expense at any time.

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

Property Management. The management company for the Property shall be reasonably satisfactory to Mortgagee. Any change in the management company without the prior written consent of Mortgagee shall constitute a default under this instrument. Notwithstanding the foregoing, CBRE shall be deemed a satisfactory management company. Additionally, Mortgagee shall not unreasonably withhold its consent to a change in the management company provided such management company has at least ten (10) years' experience in the management of at least two million square feet in the aggregate of CBD Class A office buildings in the United States.

Deposits by Mortgagor. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), if Debt Service Coverage becomes less than 1.30, upon the occurrence of an Event of Default, Mortgagee shall thence forth have the option to require Mortgagor to deposit funds with Mortgagee or in an escrow account satisfactory to Mortgagee, in monthly or other periodic installments in amounts estimated by Mortgagee from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Mortgagee (in an escrow other account satisfactory to Mortgagee), shall be insufficient to pay any of said expenses, Mortgagor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Mortgagee to be applied to the payment of such real

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estate taxes and special assessments and, at the option of Mortgagee after an Event of Default, the Indebtedness.

REAs. Mortgagor shall observe and comply with all of the covenants, terms and provisions of any REA (and any bylaws or rules related thereto) and shall not consent to or approve an amendment, modification or termination of any REA (or any bylaws or rules related thereto) without the prior written consent of Mortgagee (such consent not to be unreasonably withheld, conditioned or delayed by Mortgagee).

Post Closing Requests and Modifications. If, after the Loan Closing Date, Mortgagor requests that Mortgagee review, approve or execute any agreement or modification of the loan not otherwise contained in the Loan Documents, then, upon written request from Mortgagor, and provided there is no default under the Loan Documents, Mortgagor's request shall be reviewed subject to the following:

- A. Mortgagor must submit to Mortgagee with its written request a non-refundable service fee in an amount to be reasonably determined by Mortgagee (with the Non-Disturbance and Attornment Agreement ("NDA") review fee to be based on the following: \$1,000.00 review fee for a NDA on Mortgagee's standard form; \$1,500.00 review fee for a NDA on Mortgagee's standard form with minor changes; and \$1,500.00 plus the cost of outside legal fees review fee(s) for a non-standard NDA form);
- B. Such request and all documentation submitted to Mortgagee must be satisfactory to Mortgagee in Mortgagee's sole but reasonable discretion;
- C. Mortgagor shall pay all costs and expenses incurred by Mortgagor or otherwise associated with its request including, but not limited to, outside legal fees, title insurance costs and the cost associated with any reports or inspections deemed necessary by Mortgagee;

In no event shall Mortgagee be obligated to approve any request submitted pursuant to this provision.

Notices. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered personally or sent by certified mail with postage prepaid or by reputable courier service with charges prepaid. Any notice or demand sent to Mortgagor by certified mail or reputable courier service shall be addressed to Mortgagor at c/o Heitman Capital Management LLC, 191 North Wacker Drive, Suite 2500, Chicago, IL 60606, Attn: Asset Manager, or such other address in the United States of America as Mortgagor shall designate in a notice to Mortgagee given in the manner described herein. Any notice sent to Mortgagee by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720

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

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

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

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

Legal Enforceability. No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

Assignment. Mortgagee may assign all or any part of the loan to a subsidiary or affiliate of Mortgagee, or to another mortgagee, at no cost or expense to Mortgagor. In the event of a proposed assignment of the loan to another mortgagee, said mortgagee shall have the right

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to enter the Property upon reasonable prior notice to Mortgagor for additional environmental review or testing as said mortgagee may deem necessary.

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

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

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

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

Governing Law. This instrument, the interpretation hereof and the rights, obligations, duties and liabilities hereunder shall be governed and controlled by the laws of the state in which the Property is located.

*[Remainder of page intentionally left blank;
signature of Mortgagor on following page]*

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EXHIBIT "A" (Description of Property)

PARCEL 1:

THAT PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS;

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE WEST LINE OF LOT 5 IN SAID BLOCK 2) AND THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5 THRU 8, BOTH INCLUSIVE, IN SAID BLOCK 2); THENCE EAST ALONG THE SOUTH LINE OF SAID WEST KINZIE STREET A DISTANCE OF 321.47 FEET TO THE WEST LINE OF NORTH DEARBORN STREET; THENCE SOUTH ALONG THE WEST LINE OF SAID NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOT 8 IN SAID BLOCK 2) A DISTANCE OF 178.60 FEET TO A POINT 311.60 FEET NORTH (AS MEASURED ALONG SAID WEST LINE OF NORTH DEARBORN STREET) OF THE CHICAGO RIVER, AS OCCUPIED; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 321.47 FEET TO A POINT ON THE EAST LINE OF SAID NORTH CLARK STREET 300.43 FEET NORTH (AS MEASURED ALONG SAID EAST LINE OF NORTH CLARK STREET) OF SAID CHICAGO RIVER, AS OCCUPIED; THENCE NORTH ALONG THE EAST LINE OF SAID NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY FIRST AMENDMENT TO EASEMENT AND OPERATING AGREEMENT DATED AUGUST 23, 1988 AND RECORDED AUGUST 24, 1988 AS DOCUMENT NUMBER 88384561 FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS ON, OVER, THROUGH AND ACROSS THE "HOTEL ROAD EASEMENT AREA" AND THE "PROJECT ROAD EASEMENT AREA" DESCRIBED AS FOLLOWS:

HOTEL ROAD EASEMENT AREA:

PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5, 6, 7 AND 8 IN SAID BLOCK 2) AND THE EAST

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LINE OF NORTH CLARK STREET (ALSO BEING THE EAST LINE OF LOTS 4 AND 5 IN SAID BLOCK 2); THENCE SOUTH 0 DEGREES WEST ALONG SAID EAST LINE OF NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO AN INTERSECTION WITH THE NORTH LINE OF TRACTS I AND II IN SAID BLOCK 2; THENCE SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 134.10 FEET TO AN INTERSECTION WITH THE LINE BETWEEN PARCELS 1 (BELOW +50.00 FEET CHICAGO CITY DATUM) OF SAID TRACTS I AND II AND THE POINT OF BEGINNING, THENCE CONTINUING SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 187.57 FEET TO A POINT IN THE WEST LINE OF NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOTS I AND 8 IN SAID BLOCK 2) SAID POINT BEING 178.60 FEET SOUTH OF SAID SOUTH LINE OF WEST KINZIE STREET AS MEASURED ALONG THE WEST LINE OF NORTH DEARBORN STREET; THENCE SOUTH 0 DEGREES WEST ALONG SAID WEST LINE OF NORTH DEARBORN STREET A DISTANCE OF 26.32 FEET TO THE BACK OF A CURB OF AN ELEVATED DRIVEWAY; THENCE SOUTH 89 DEGREES 59 MINUTES 22 SECONDS WEST ALONG SAID BACK OF CURB A DISTANCE OF 68.78 FEET; THENCE NORTH 89 DEGREES 34 MINUTES 27 SECONDS WEST A DISTANCE OF 47.20 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 22 SECONDS WEST A DISTANCE OF 29.31 FEET; THENCE NORTH 75 DEGREES 07 MINUTES 03 SECONDS WEST A DISTANCE OF 43.45 FEET TO A POINT WHERE THE SAID LINE BETWEEN PARCEL 1 INTERSECTS THE BACK OF CURB OF SAID ELEVATED DRIVEWAY; THENCE NORTH 0 DEGREES EAST ALONG SAID LINE BETWEEN PARCEL I A DISTANCE OF 14.83 FEET TO THE POINT OF BEGINNING.

PROJECT ROAD EASEMENT AREA:

PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST KINZIE STREET (ALSO BEING THE NORTH LINE OF LOTS 5, 6, 7 AND 8 IS SAID BLOCK 2) AND THE EAST LINE OF NORTH CLARK STREET (ALSO BEING THE WEST LINE OF LOTS 4 AND 5 IN SAID BLOCK 2); THENCE SOUTH 0 DEGREES WEST ALONG THE EAST LINE OF NORTH CLARK STREET A DISTANCE OF 177.86 FEET TO AN INTERSECTION WITH THE NORTH LINE OF TRACTS I AND II IN SAID BLOCK 2 AND THE POINT OF BEGINNING; THENCE SOUTH 90 DEGREES EAST ALONG SAID NORTH LINE OF TRACTS I AND II A DISTANCE OF 134.10 FEET TO AN INTERSECTION WITH THE LINE BETWEEN PARCEL 1 (BELOW +50.00 FEET CHICAGO CITY DATUM) OF SAID TRACT I AND II; THENCE SOUTH 0 DEGREES WEST ALONG SAID LINE BETWEEN PARCEL 1 A DISTANCE OF 14.83 FEET TO A POINT OF INTERSECTION, NOT TANGENT WITH A CURVED LINE, SAID CURVED LINE BEING THE BACK OF A CURB OF AN ELEVATED

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DRIVEWAY; THENCE WESTERLY ALONG THE BACK OF CURB OF SAID DRIVEWAY BEING THE ARC OF A CIRCLE CONVEX NORTHERLY AND HAVING A RADIUS OF 15.00 FEET A DISTANCE OF 5.08 FEET TO A POINT OF TANGENCY; THENCE SOUTH 89 DEGREES 59 MINUTES 39 SECONDS WEST ALONG THE BACK OF CURB OF SAID DRIVEWAY AND TANGENT TO THE LAST DESCRIBED CURVED LINE A DISTANCE OF 129.11 FEET TO SAID EAST LINE OF NORTH CLARK STREET; THENCE NORTH 0 DEGREES EAST ALONG SAID EAST LINE OF NORTH CLARK STREET A DISTANCE OF 13.99 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AMENDMENT TO GRANT OF AUTOMOBILE ACCESS DATED MAY 18, 2009 AND RECORDED JULY 27, 2009 AS DOCUMENT NUMBER 0920833001 (THE AMENDMENT TO GRANT OF AUTOMOBILE ACCESS EASEMENT) FOR VEHICULAR INGRESS AND EGRESS ON, OVER, THROUGH AND ACROSS THE "LOWER CARROLL EASEMENT AREA" (AS DEFINED IN THE AMENDMENT TO GRANT OF AUTOMOBILE ACCESS EASEMENT AND AS DEPICTED ON EXHIBIT C ATTACHED THERETO).

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AMENDMENT TO PARKING AGREEMENT DATED MAY 18, 2009 AND RECORDED JULY 27, 2009 AS DOCUMENT NUMBER 0920833002 (THE AMENDMENT TO PARKING AGREEMENT) FOR USE OF THE LOWER CARROLL PARKING SPACES AREA (AS DEFINED IN THE AMENDMENT TO PARKING AGREEMENT AND AS DEPICTED ON EXHIBIT C ATTACHED THERETO AND AS SHOWN ON THE SURVEY) IN CONNECTION WITH THE REPAIR AND MAINTENANCE OF THE BUILDING LOCATED ON PARCEL 1.

353 North Clark Street
Chicago, IL 60654

17-09-408-012-0000; 17-09-408-013-0000; 17-09-408-014-0000; 17-09-408-015-0000;
17-09-408-016-0000