

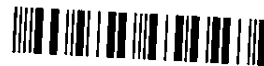
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Cook County Recorder 131.50



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**USE AGREEMENT**

**20119836**

**AMONG**

**MELK DEVELOPMENT/MCL SCOTT SEDGWICK, L.P.,  
OLD TOWN SQUARE RESIDENTIAL, L.L.C.,  
OLD TOWN VILLAGE EAST CONDOMINIUM ASSOCIATION,  
OLD TOWN SQUARE UNIT ONE CONDOMINIUM ASSOCIATION, AND  
THE CONDOMINIUMS OF OLD TOWN SQUARE II CONDOMINIUM ASSOCIATION**

**DATED AS OF DECEMBER 1, 2001**

**RETURN TO BOX 408  
ATTN: S. SICKLES**

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Property of Cook County Clerk's Office

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## USE AGREEMENT

This Use Agreement ("**Agreement**") is dated as of December 1, 2001, and is among MELK DEVELOPMENT/MCL SCOTT SEDGWICK, L.P., an Illinois limited partnership ("**Melk/MCL**") and its successors and assigns, OLD TOWN SQUARE RESIDENTIAL, L.L.C., an Illinois limited liability company and its successors in title and assigns ("**OTSR**"), OLD TOWN VILLAGE EAST CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation or any other entity to which user rights may be assigned by Melk/MCL ("**OTVE**"), OLD TOWN SQUARE UNIT ONE CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation ("**OTS I**"), and THE CONDOMINIUMS OF OLD TOWN SQUARE II CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation ("**OTS II**").

### RECITALS:

A. Melk/MCL and The Chicago Transit Authority (the "**CTA**") are parties to that certain Ground Lease made as of October 16, 1997, a copy of which is attached hereto as Exhibit A (the "**Ground Lease**").

B. Under the Ground Lease, Melk/MCL leases the property legally described therein (the "**Leased Property**") and enjoys certain benefits and is obligated to various responsibilities with respect to the Leased Property.

C. OTS I is the condominium association vested with the authority to govern the affairs of the Old Town Square Unit One Condominium located on the property legally described on Schedule A hereto.

D. OTS II is the condominium association vested with the authority to govern the affairs of The Condominiums of Old Town Square II located on the property legally described on Schedule B hereto.

E. OTSR is the owner of the property legally described on Schedule C hereto, upon which it is contemplated that a forty-eight (48) unit condominium may be constructed known as The Old Town Village East Condominiums. OTVE is the condominium association that will be vested with the authority to govern the affairs of The Old Town Village East Condominiums. The defined term "OTVE" as used herein refers to either the proposed Old Town Village East Condominium Association or, in the alternative, any entity so designated by OTSR if the Old Town Village East Condominiums are not built.

F. OTS I, OTS II, OTVE, and OTSR until such time as the OTVE Declaration of Condominium is recorded (collectively, "**Users**" and each individually, a "**User**") each have requested and Melk/MCL has agreed, on the terms and conditions set forth in this Agreement, to grant the right to use a portion of the Leased Property to each User solely for Approved Activities (as defined herein).

Accordingly, it is agreed by Melk/MCL and Users as follows:

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## ARTICLE 1

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### Use; Duration of Agreement; Initial Work to Be Done By Melk/MCL

1.1 **Use; Duration.** In consideration of the payments to be made and the covenants and conditions to be performed and observed by Users as herein provided, Melk/MCL has to this date permitted, and hereby agrees to continue to permit, Users and their respective members to use, and each respective User acknowledges that it has to this date used and hereby agrees to continue to use, those portions of the Leased Property described on Schedule D attached hereto as the "Separate Space" and the "Shared Space". Such permitted use shall continue for that period of time ("Use Period"), which commenced on November 1, 1997, and ends on the expiration of the Ground Lease unless sooner terminated pursuant to the Ground Lease or this Agreement; provided, however that the obligation of Users to make any payments or other amounts due under Article 2 or Article 3 of this Agreement shall commence as of January 1, 2002, and shall not be retroactive to November 1, 1997. If at least two (2) of OTSI, OTSII, and OTVE direct Melk/MCL or its successors or assigns to extend the Ground Lease and reimburse Melk/MCL for the Ground Lease Security Deposit (as hereinafter defined), Melk/MCL or its successors or assigns shall (a) exercise the option to extend, (b) assign its right to the Ground Lease Security Deposit to such directing Users, and (c) the terms of this Agreement shall remain in full force and effect until the Ground Lease, as so extended, terminates.

1.2 **Condition of Leased Property, Shared Space and Separate Space.** Users acknowledge that they are each familiar with the physical condition of the Leased Property, and that except for the obligations Melk/MCL has agreed to undertake in this Agreement, Melk/MCL has made no representations as to the condition thereof. Users' use and possession of the Separate Space and the use of Shared Space or any portion thereof shall be conclusive evidence the same were in good order and satisfactory condition and that all work done by Melk/MCL on the Leased Property pursuant to the terms of this Agreement, if any, has been completed to Users' satisfaction. No promise of Melk/MCL to alter, remove, improve or maintain the Leased Property or any part thereof or the land appurtenant thereto and no representation respecting the condition of the Leased Property or any part thereof or the land appurtenant thereto have been made by Melk/MCL to Users, unless the same is expressly stated herein or made a part hereof.

## ARTICLE 2

### Payments

2.1 **Net Annual Rent Ground Lease Payment.** Since commencement of the Ground Lease, Melk/MCL has made all payments due thereunder. From and after the date hereof, OTVE, or any entity so designated by OTSR, shall be responsible for payment to the CTA of all Net Annual Rent (as defined in the Ground Lease) due the CTA under the terms of the Ground Lease. Any refund of the security deposit made under the terms of the Ground Lease (the "Ground Lease Security Deposit"), shall forever be and remain the sole property of Melk/MCL, or any party to whom it expressly assigns such right. In consideration for such payment, neither Melk/MCL, OTVE, nor OTSR shall be responsible for any portion of any Maintenance Payments or Insurance Payments (as such terms are defined in Sections 2.2 and 2.3 respectively).

2.2 **Payment of Maintenance Costs and Expenses.** From and after the date hereof, OTS I shall undertake and pay for all maintenance (including, but not limited to upkeep and repair of the Initial

Work, snow removal, resurfacing, restriping and cleaning) and improvements to the Leased Property (i) required by the terms of Article 8 of the Ground Lease, (ii) reasonably requested in writing by OTS II or OTVE, or (iii) necessary for the safety and welfare of Users, and shall set aside appropriate reserve contributions. All such required expenditures and reserve contributions hereinafter referred to as the "Maintenance Payments".

**2.3 Payment of Insurance Premiums.** From and after the date hereof, OTS II shall procure and pay for all insurance required to be carried pursuant to the terms of Articles 5 and 10 of the Ground Lease (the "Insurance Policies") and as reasonably requested in writing by Melk/MCL (the "Insurance Payments"). OTS II shall provide Melk/MCL with copies of all Insurance Policies in effect and name the Melk/MCL Parties (as defined in Section 9.1 below), OTS I, OTS II and OTVE as insureds thereunder and otherwise comply with the Ground Lease. OTS II shall not permit any Insurance Policies to be canceled or modified without sixty (60) days prior written notice to the other parties hereto.

**2.4 Reimbursement.** Within thirty (30) days after the end of each calendar quarter, (i) OTS I shall provide OTS II with an invoice enumerating all Maintenance Payments made by OTS I pursuant to the terms of this Agreement during such quarter, and OTS II shall reimburse OTS I for 45.5% of the Maintenance Payments (the "Maintenance Reimbursement"), and (ii) OTS II shall provide OTS I with an invoice for all Insurance Payments made by OTS II pursuant to the terms of this Agreement during such quarter, and OTS I shall reimburse OTS II for 54.5% of the Insurance Payments (the "Insurance Reimbursement"). If for any quarter the Maintenance Reimbursement is less than the Insurance Reimbursement, OTS I shall pay to OTS II the difference between such amounts, and if the Maintenance Reimbursement is more than the Insurance Reimbursement, OTS II shall pay to OTS I the difference between such amounts. Payments due from one party to the other shall be due and payable not later than thirty (30) days after delivery of the invoice enumerating the quarterly Maintenance Payments or Insurance Payments, whichever is first delivered.

**2.5 Interest on Late Payments.** All sums required by this Agreement to be paid shall bear interest from the date due at the Late Payment Rate (as defined in Section 15.1 below) until paid.

### ARTICLE 3

#### Taxes and Assessments

In the event that Melk/MCL (or its successor or assign) is required to pay any Taxes (as defined in the Ground Lease) or other use or occupancy taxes relating to the Ground Lease, Users shall within thirty (30) days of delivery of an invoice, reimburse OTSII for each of their respective pro rata shares (based on the relative number of spaces assigned to each of them) of any such Taxes, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof and OTSII shall pay the bill. If fewer than all of the Users pay in time to permit timely payment, OTSII may make partial payment and all penalties and interest shall be paid by the late Users or OTSII may pay the entire bill and OTSII shall be paid by the late Users, in addition to their shares of the Taxes, interest and penalties in the amount that would have been due Cook County if the late amounts had not been advanced.

ARTICLE 4

Permitted Uses

Each User shall use their respective Separate Space solely for parking by persons designated by the condominium instruments and/or rules of each User, and the Shared Space solely for ingress and egress to each respective User's Separate Space (collectively, the "Approved Activities"). No User shall, without the prior written consent of a Majority of Users (as defined in Section 14.12 below), permit the Separate Space or the Shared Space to be used for any purpose other than ingress, egress and, where specifically designated, for assigned parking. Users acknowledge that the Melk/MCL Parties (as defined in Section 9.1 below) shall at all times prior to the earlier to occur of (a) final construction of The Old Town Village East Condominiums or (b) December 31, 2003, maintain unrestricted access to all portions of the Leased Property subject to Article 10 and exclusive use of any portion of the Leased Property which does not constitute Shared Space or Separate Space. Users also acknowledge that the Melk/MCL Parties specifically reserve the right for Melk/MCL or any of its companies, vendors, agents, employees or contractors to enter upon, cross over with construction vehicles, stage construction, or engage in any activities on the Leased Property which Melk/MCL in its sole discretion deems necessary to develop and construct the OTVE development or the Midrise at Old Town Square, provided such use does not unreasonably interfere with access to or use of Separate Space by Users.

ARTICLE 5

Compliance with Laws; Maintenance and Repair

**5.1 No Law Violations or Nuisance.** No User shall permit any use of the Leased Property, or any part thereof, in violation of the Ground Lease or any applicable statute, ordinance, regulation or other requirement of any governmental authority, or which constitutes a nuisance, public or private, or in any manner which may render void or voidable any insurance then carried by Melk/MCL or any User pursuant to this Agreement.

**5.2 Compliance With Laws.** In addition to complying with the terms of this Agreement, each User shall conduct all of its Approved Activities within the Separate Space and the Shared Space in a manner conforming to the requirements, ordinary and extraordinary, whether or not now foreseen or foreseeable, of the Ground Lease and all applicable statutes, ordinances, regulations and other requirements of any governmental authority, the regulations or other requirements of any national or local fire marshal, board of fire underwriters or any other body exercising similar functions and the requirements of all policies of insurance maintained in force on or with respect to the Leased Property.

**5.3 Clean Condition and In Good Order.** Each User shall use its best efforts to keep its Separate Space and together shall keep the Shared Space, as well as the exterior walkways and other areas appurtenant to the Leased Property, in a clean and orderly condition, free of accumulations of dirt, rubbish and unlawful obstructions.



Negative Covenants

6.1 **No Liens.** Users shall not suffer or permit any vendor's, mechanic's, laborer's or materialman's statutory or similar lien or agreement to be filed against the Leased Property or any interest of Melk/MCL or Users therein by reason of labor, services or materials supplied or claimed to have been supplied to Users or anyone holding or using the Leased Property, or any part thereof, through or under Users (including labor, services or materials supplied in connection with any repairs or maintenance provided by Users under Section 1.3 or Article 5 above). If any such lien or agreement shall at any time be filed against the Leased Property, Users shall, within twenty (20) days after notice of the filing thereof, cause the same to be released and discharged.

6.2 **No Assignment and Subletting.** Neither this Agreement nor Users' interest hereunder shall under any circumstances, whether voluntary or involuntary, or by operation of law, be assigned or transferred by Users except as permitted under Article 4.

6.3 **Covenant Against Waste.** Each User covenants not to do or suffer any waste or damage to, or impairment of, the value of the Leased Property.

ARTICLE 7

Condemnation; Damage and Destruction

7.1 **Condemnation.** If while this Agreement is in effect, the entire Leased Property or any portion thereof or other land appurtenant thereto shall be taken as a result of the exercise of the power of eminent domain or the CTA's termination of the Ground Lease, rights of use under this Agreement shall terminate with regard to the portion of the Leased Property taken on the date of vesting of title in condemnor under such eminent domain proceedings or on the Ground Lease termination date with the Proportionate Share thereafter adjusting to reflect the relative number of spaces allocated to OTSI and OTSII. Notwithstanding any judicial allocation of any award, the entire award shall be paid to Melk/MCL (or to the CTA, if required pursuant to the terms of the Ground Lease), and Users shall not have any right to any apportionment of or share in the award. If, during the term of this Agreement, the CTA temporarily suspends Melk/MCL's possession of the Leased Property or any portion thereof, Users may be dispossessed of their right to use any Shared Space or Separate Space without such dispossession constituting a termination of this Agreement. Melk/MCL shall not bear any responsibility for any direct or consequential damages incurred by Users or their members as a result thereof, and Users agree to hold Melk/MCL and the Melk/MCL Parties harmless in connection therewith.

7.2 **Damage and Destruction.** In the event any portion of the Leased Property is damaged or destroyed, regardless of the cause or amount of the loss, the Users acting together shall, in each instance, have the right to settle all insurance claims under the Insurance Policies and shall promptly restore the damaged Improvements if the insurance proceeds will cover the cost of restoration. If the insurance proceeds are not sufficient to cover such loss, the Users acting together shall have the right, but not the obligation, to use the insurance award to restore such damage or portion thereof as it may elect. All insurance proceeds on account of any loss shall be paid to the Users jointly. Subject to availability of insurance proceeds,

restoration shall be promptly commenced and diligently pursued to completion, due allowance being made for time needed to adjust insurance and for repairs. The performance by each User of its other obligations under this Agreement shall continue notwithstanding any such loss, except for temporary suspension of performance rendered impossible by such damage or destruction. If the Users acting together elect not to restore such damage to the Separate Space, this Agreement shall be terminated effective as of the date set forth in the written notice from any one of the Users to the other Users that the User giving notice does not intend to restore such damage, unless the remaining Users agree in writing to fund any restoration costs in excess of the insurance awarded. If the remaining Users agree to fund such shortfall, they shall pay all anticipated costs of restoration into an escrow to secure the payment therefor.

7.3 **Not Liable for Interruption of Approved Activities.** In no event shall Melk/MCL be liable to Users for loss of revenue, or indirect, special or consequential damages arising out of the partial or total destruction or damage to the Leased Property or any portion thereof by reason of a fire or other casualty, unless caused by Melk/MCL's gross negligence or willful misconduct.

## **ARTICLE 8**

### **Changes and Alterations**

8.1 **By Users.** No User shall make any changes or alterations, structural or otherwise, to the Leased Property without Melk/MCL's prior written consent, which consent may be withheld for any reason. If Melk/MCL does so consent, Users shall procure and pay for all required permits and authorizations of the various governmental authorities having jurisdiction.

8.2 **Standards; Timing; Insurance.** If Melk/MCL consents to any change or alteration, all work done in connection therewith shall be done promptly and in a good and workmanlike manner and in compliance with the building and zoning laws of all Federal, state and municipal governments, departments and commissions. Any alteration or change so consented to shall be promptly commenced and diligently pursued to completion. Users shall procure and pay for commercial general liability, builder's risk and such other insurance as may be necessary or required in the discretion of Melk/MCL, in connection with such change or alteration, and shall provide Melk/MCL and the other Users with copies of the same. All such insurance policies shall name the Melk/MCL Parties, OTS I, OTS II and OTVE as additional insureds thereunder.

8.3 **Part of Leased Property.** All improvements and alterations made or installed by Users in or on the Leased Property immediately upon completion or installation thereof shall be and become a part of the Leased Property and subject as such to the terms of this Agreement. Users may not remove any improvements or alterations made to the Leased Property at any time after the installation thereof.

8.4 **Melk/MCL Not Responsible.** Melk/MCL, by approving or inspecting any design, plans, drawings or specifications or any contract for work or materials or the method of performing any work by Users or its employees, agents, contractors or subcontractors, does not assume any responsibility or liability as to the safety, adequacy, sufficiency, legality or otherwise of what is approved or inspected, which responsibility or liability shall be and remain with Users.

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## ARTICLE 9

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### Waiver of Claims; Indemnification

**9.1 Waiver and Release.** Each User hereby waives and releases Melk/MCL, its successors and assigns, including without limitation Melk/MCL's partners and their respective officers, directors, members and managers, and the contractors, agents and employees of any of them (collectively referred to as the "Melk/MCL Parties" or individually as a "Melk/MCL Party"), from all claims for damage to person or property sustained by Users and not caused by the gross negligence or intentional act of a Melk/MCL Party relating to: (i) the Leased Property or the land appurtenant thereto or any part thereof or any equipment or appurtenance therein or thereon becoming out of repair; (ii) any accident in or about the Leased Property or the land appurtenant thereto; and (iii) any act, directly or indirectly, of any invitees, licensees, visitors or any tenants, of any Melk/MCL Party.

**9.2 Rights to Cure or Repair.** (i) If any damage to the Leased Property, or to the driveways, parking areas and other areas adjoining the Leased Property, or to any equipment or appurtenance thereto or to any part thereof, or to Melk/MCL or any Melk/MCL Party, results from any act, omission or negligence of any User or any agent's employees, unit owners or invitees of any User, Melk/MCL may, at Melk/MCL's option, repair such damage and User or Users, as the case may be, shall, upon demand by Melk/MCL, reimburse Melk/MCL for the total cost of such repairs in excess of the amount, if any, paid to Melk/MCL under insurance, if any, covering such damages.

(ii) If OTVE fails to timely pay any installment of Net Annual Rent, OTS I or OTS II may pay such installment and OTVE shall within thirty (30) days of demand reimburse such paying party for the amount of any such installment, plus interest at the Default Rate (as defined in the Ground Lease).

**9.3 Risk of Loss.** All property (including but not limited to automobiles) situated in the Leased Property shall be situated there at the risk of the owners thereof, and the Melk/MCL Parties shall not be liable for damage thereto or theft, misappropriation or loss thereof.

**9.4 Indemnification Against Claims.** Each User agrees separately to hold harmless and indemnify the Melk/MCL Parties from and against all claims, liability and costs (including, but not limited to, reasonable attorneys' fees and costs) for injuries to persons and damage to property, arising from occurrences in or about the Leased Property or the land appurtenant thereto caused in whole or in part by any act, omission or negligence of that particular User or its respective agents, unit owners, contractors, employees and visitors. Each User also agrees to indemnify Melk/MCL or its assignee against any deduction from the Ground Lease Security Deposit which is made on or after January 1, 2002 due to the act or omission of such User, and the responsible User shall within thirty (30) days after demand reimburse Melk/MCL or its assignee for the amount of such deduction from the Ground Lease Security Deposit.

**9.5 Indemnification Against Costs.** Each responsible user agrees to pay, and to indemnify the Melk/MCL Parties against, all legal costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the following: (i) obtaining possession of any portion of the Leased Property after a default by any User and its or their failure to cure such default within the time provided in this Agreement; (ii) that particular User's default in surrendering possession upon the expiration or earlier termination of this Agreement or in enforcing any covenant or agreement of Users herein contained; or (iii)

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in any suit or proceeding affecting the Leased Property or this Agreement to which any Melk/MCL Party is joined as a party by reason of that particular User's use of the Leased Property under this Agreement.

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## ARTICLE 10

### Inspection of Separate Space and Shared Space by Melk/MCL

**Entry for Repairs and Other Purposes.** Each User hereby agrees to permit Melk/MCL and the authorized representatives of Melk/MCL to enter the Separate Space and Shared Space at all reasonable times for the purposes of: (i) inspecting the same, and (ii) making any necessary repairs to the Leased Property and performing any work therein that may be necessary by reason of a default by any User under the terms of this Agreement. Nothing herein shall imply any duty upon the part of Melk/MCL to do any such work which under any provision of this Agreement Users may be required to perform, and the performance thereof by Melk/MCL shall not constitute a waiver of any User's default in failing to perform the same. Melk/MCL may, during the progress of any such work in the Separate Space and Shared Space, keep and store upon the Separate Space and Shared Space all necessary materials, tools and equipment. Melk/MCL shall not in any event be liable for inconvenience, annoyance, disturbance or damage resulting from interim loss of use to Users, or any agents, employees, unit owners or invitees of Users, by reason of making such repairs or the performance of any such work to the Leased Property, or on account of bringing materials, supplies and equipment into or through the Leased Property during the course thereof, and the obligations of Users under this Agreement shall not thereby be affected in any manner whatsoever, provided such use does not unreasonably interfere with access to or use of Separate Space by Users.

## ARTICLE 11

### Additional Remedies

**11.1 Possession of Separate Space.** If (i) Users, individually or collectively, shall default in the payment of any amounts due hereunder or in the maintenance of insurance or shall suffer any lien to attach to the Leased Property or its interest in this Agreement, and such default shall continue for ten (10) days after notice thereof given by Melk/MCL to said defaulting User; or (ii) if Users, collectively or individually, shall default in the performance of any non-monetary obligation under this Agreement, and such default shall continue for thirty (30) days after notice thereof given by Melk/MCL to said defaulting User; or (iii) if any User abandons the Separate Space, and such abandonment continues for ten (10) days after notice thereof given by Melk/MCL to such User; then, in each instance, the party giving notice of default may, at its option and without further notice, elect to terminate the defaulting party's rights to use the Separate Space and Shared Space, and in such event, the party giving notice of such default may immediately or at any time thereafter re-enter the portion of the Separate Space exclusively occupied by the defaulting party and remove all persons and all or any property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable for damages therefor, and repossess and enjoy the Separate Space and Shared Space together with all additions, alterations and improvements thereto.

**11.2 Rights to Cure or Perform.** If any User shall default in the payment of any amounts due under this Agreement, or in the maintenance of insurance or in the repair or restoration of the Leased Property, or shall allow any lien arising on account of any act or omission of such party to attach to the

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Leased Property, or shall fail to perform any other act, agreement, covenant or obligation under this Agreement, any other party may cure any such default, and the cost thereof, together with interest at the Late Payment Rate, shall be an additional amount due from said defaulting User upon demand made therefor.

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## ARTICLE 12

### Surrender of Space

Each User shall, upon termination of this Agreement, immediately surrender or cause to be surrendered the Separate Space and Shared Space to Melk/MCL or the CTA, as the case may be, in good order, condition and repair, except for reasonable wear and tear and for damage that User is not required under the terms of this Agreement to restore or repair.

## ARTICLE 13

### Notices

Each notice, request, demand, approval or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when (i) delivered personally at the address last designated hereunder for the intended party during normal business hours at such address, or (ii) when sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Melk/MCL, to: Melk Development/MCL Scott Sedgwick, L.P.  
455 East Illinois Street, Suite 565  
Chicago, Illinois 60611  
Attention: Marilyn Walsh

With a Copy to: Schiff Hardin & Waite  
6600 Sears Tower  
Chicago, Illinois 60606  
Attention: David A. Grossberg

If to Users to:

OTS I: At the office of OTS I's then  
Registered Agent as listed with  
the Illinois Secretary of State

OTS II: At the office of OTS II's then  
Registered Agent as listed with  
the Illinois Secretary of State

OTVE: At the office of OTVE's  
then Registered Agent as listed with  
the Illinois Secretary of State

If to OTSR: Old Town Square Residential, L.L.C.  
c/o MCL Companies  
455 East Illinois Street, Suite 565  
Chicago, Illinois 60611  
Attention: Marilyn Walsh

With a Copy to: Schiff Hardin & Waite  
6600 Sears Tower  
Chicago, Illinois 60606  
Attention: David A. Grossberg

Alternatively, in either of the foregoing cases notices shall be given to such other addressee or address, or both, as the particular party may from time to time designate by written notice to the other party aforesaid, provided, however, that the designation of an addressee or address, or both, by notice hereunder shall not be effective until the third day after notice thereof is given. Each said notice, request or demand which is sent by mail in accordance with this Section shall be deemed given as of the date of deposit thereof for mailing in a duly constituted United States post office or branch thereof.

## ARTICLE 14

### Miscellaneous

**14.1 Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**14.2 Remedies Cumulative.** The specific remedies to which a party may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by any other party of any provision of this Agreement. The failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment in the future of such covenant or option. A receipt by a party of a payment with knowledge of the breach of any covenant or agreement hereof shall not be deemed a waiver of a breach by the any other party, and no waiver, change, modification or discharge by any party of this Agreement or of any provision in this Agreement, or surrender by any User of its Separate Space, shall be deemed to have been made or shall be effective unless expressed in writing and signed by Melk/MCL and Users. In addition to the other remedies in this Agreement provided, Melk/MCL and Users shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this Agreement, or to a decree compelling performance of any of such covenants, conditions or provisions.

14.3 **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.

14.4 **Table of Contents.** The table of contents preceding this Agreement is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental thereto or amendatory thereof.

14.5 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same indenture which shall be sufficiently evidenced by any such executed counterpart.

14.6 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

14.7 **Amendments.** No agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Agreement in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

14.8 **Binding Effect.** The covenants and agreements herein contained shall run with the land and shall, subject to the provisions of this Agreement, bind and inure to the benefit of the successors and assigns of the parties hereto.

14.9 **No Partnership Intended.** Notwithstanding any provision of this Agreement, Melk/MCL and Users shall not be deemed to be partners, joint venturers or in any way associated in the conduct by Users of its Approved Activities or the conduct by Melk/MCL of its activities, and neither shall be liable or in any way responsible for the acts or omissions of the other arising, related to or occurring in connection with their respective use of the Leased Property for their own separate activities or otherwise.

14.10 **Ground Lease Provisions.** All of the articles, sections or other terms or provisions of the Ground Lease which are specifically enumerated or referenced in this Agreement shall be incorporated herein as if fully set forth in this Agreement.

14.11 **Termination of Melk/MCL's Participation.** Effective as of the delivery of written notice by Melk/MCL to the other parties hereto (the "Notice Date"), except with respect to the refund of the Ground Lease Security Deposit which shall in all events remain the sole property of Melk/MCL or its assignee, Melk/MCL may, at its sole discretion, cease to participate in and be a party to this Agreement. From and after the Notice Date, any and all consents, covenants, decisions, elections, options, obligations, requests and rights which were accorded or granted to Melk/MCL in this Agreement shall be and become, from and after the Notice Date, the consents, covenants, decisions, elections, options, obligations, requests and rights of a "Majority of Users". As used herein, a "Majority of Users" shall mean the concurrence of two (2) of OTSI, OTSII, and OTVE to this Agreement regarding any matter arising out of or from this Agreement, as decided in accordance with each User's condominium association declaration and bylaws, if any.

14.12 **Survival.** Any and all indemnifications of Melk/MCL or the Melk/MCL Parties made by any User in this Agreement shall survive the expiration or termination of this Agreement, or Melk/MCL's

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participation as a party hereto, whether on or before the Notice Date, or by assignment, succession, operation of law or otherwise, and such indemnifications shall also continue with respect to any such assignee or successor of Melk/MCL or any Melk/MCL Party.

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## ARTICLE 15

### Definitions

**15.1 Late Payment Rate.** Whenever in this Agreement the term "Late Payment Rate" is used it shall mean 10% per annum or 2.5% over the prime rate then announced to be in effect by LaSalle Bank FSB on ninety (90) day unsecured commercial loans, whichever is higher, unless prohibited by law, in which case the "Late Payment Rate" shall mean the maximum contract rate permitted by law.

**15.2 Proportionate Share.** As used in this Agreement, the term "Proportionate Share" shall mean, in the case of OTS I, 54.5%, and in the case of OTS II, 45.5%.

WITNESS the due execution hereof as of the day and year first above written.

#### Melk/MCL:

Melk Development/MCL Scott Sedgwick, L.P., an Illinois limited partnership

By: MCL Companies of Chicago, Inc., its General Partner

By: [Signature]  
Title: President

#### OTS I:

Old Town Square Unit One Condominium Association, an Illinois not-for-profit corporation

By: [Signature]  
Title: President

#### OTSR:

Old Town Square Residential, L.L.C., an Illinois limited liability company

By: Old Town Square Shopping Center, Inc., its manager

By: [Signature]  
Title: President

#### OTS II:

The Condominiums of Old Town Square II Condominium Association, an Illinois not-for-profit corporation

By: [Signature]  
Title: President

#### OTVE:

Old Town Village East Condominium Association, an Illinois not-for-profit corporation

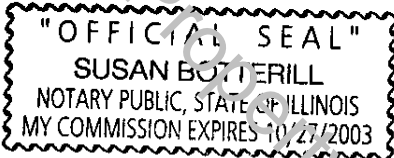
By: [Signature]  
Title: President



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, SUSAN BOTTERILL, a Notary Public in and for said County and State, do hereby certify that DANIEL E. McLEAN is the PRESIDENT of MCL Companies of Chicago, Inc., the general partner of Melk Development/MCL Scott Sedgwick, L.P., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of JANUARY, 2001.

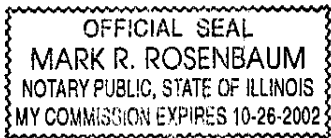


Susan Botterill  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, MARK R. ROSENBAUM, a Notary Public in and for said County and State, do hereby certify that Katherine McMahon is the President of Old Town Square Unit One Condominium Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of Jan, 2002



Mark R Rosenbaum  
Notary Public

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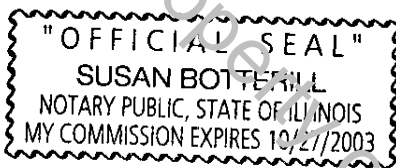
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STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK )

I, SUSAN BOTTERILL, a Notary Public in and for said County and State, do hereby certify that DANIEL E. McLEAN is the PRESIDENT of Old Town Square Shopping Center, Inc., the manager of Old Town Square Residential, L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of JANUARY, 2001.

Susan Botterill  
Notary Public



STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK )

I, SUSAN BOTTERILL, a Notary Public in and for said County and State, do hereby certify that DANIEL E. McLEAN is the PRESIDENT of The Condominiums of Old Town Square II Condominium Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of JANUARY, 2001.

Susan Botterill  
Notary Public



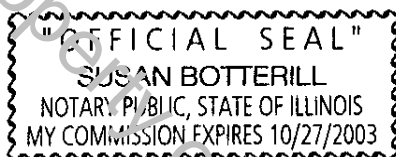
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, SUSAN BOTTERILL, a Notary Public in and for said County and State, do hereby certify that DANIEL E. McLEAN is the PRESIDENT of Old Town Village East Condominium Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of JANUARY, 2001.



Property of Cook County Clerk's Office

GROUND LEASE

BETWEEN

CHICAGO TRANSIT AUTHORITY  
a municipal corporation

AS LANDLORD

AND

Melk Development/MCL Scott Sedgwick, L.P.,  
An Illinois Limited Partnership

AS TENANT

FOR

"That portion of the Chicago Transit Authority Property  
at ground level lying between West Division Street  
on the south and West Goethe Street on the north

Chicago, Illinois.

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## GROUND LEASE

This GROUND LEASE (the "Lease") made as of this 16<sup>TH</sup> day of OCTOBER, 1997, between Chicago Transit Authority, a municipal corporation ("Landlord"), and Melk Development/MCL Scott Sedgwick, L.P., an Illinois Limited Partnership for that portion of the Chicago Transit Authority Property at ground level lying between West Division Street on the south and West Goethe on the north.

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### PRELIMINARY STATEMENT

WHEREAS, Landlord owns certain property situated in the City of Chicago between West Division Street on the South and West Goethe Street on the north, which property is legally described in Exhibit "A" and cross-hatched on the site plan labeled Exhibit "B", attached hereto and made a part hereof.

WHEREAS, Tenant desires to lease such property (hereinafter referred to as the "Premises") from the Landlord for thirty (30) years, with one (1) additional and successive option term of twenty (20) years, and Landlord desires to lease the same to tenant.

NOW THEREFORE, in consideration of the foregoing and the mutual promises herein contained, Landlord and Tenant agree as follows:

#### ARTICLE 1 - BASIC LEASE PROVISIONS

- A. PREMISES: That portion of the Chicago Transit Authority Property at ground level lying between West Division Street on the south and West Goethe Street on the north, Chicago, Illinois, as set forth in Exhibits A&B attached hereto.
- B. LANDLORD: Chicago Transit Authority, a municipal corporation (CTA)
- C. LANDLORD'S ADDRESS: General Manager  
Property & Administrative Services  
Chicago Transit Authority  
P.O. Box 3555  
Suite 7-112 A.C.  
Chicago, Illinois 60654
- D. TENANT: Melk Development/MCL Scott Sedgwick L.P.,  
An Illinois Limited Partnership
- E. TENANT'S ADDRESS: 1337 W. Fullerton  
Chicago IL 60614

- F. PURPOSE OF TENANT'S BUSINESS: To allow the ingress and egress of motor vehicles and for the parking of forty-eight automobiles in designated parking spaces.
- G. TENANT'S PREMISES: (e.g., store no. apt. no.) N/A
- H. NET RENTABLE AREA: 34,548 square feet
- I. DATE OF LEASE: (to be completed by Authority) OCTOBER 16, 1997
- J. COMMENCEMENT DATE: November 1, 1997
- K. LEASE TERMINATION DATE: October 30, 2027
- L. TERM OF LEASE: 30 years beginning on the Lease Commencement Date and ending on the Lease Termination Date (unless extended or terminated pursuant to the Lease).
- M. OPTIONS: 1 20 year options  
(number of options) (Years of each option)  
(Option shall be exercised between March 1, 2027 and May 31, 2027).
- N. FIRST YEAR'S RENT: \$24,800.00
- O. MONTHLY FIXED RENT (YEAR 1): N/A
- P. YEARLY RENTAL INCREASE: As noted in Article Four (4),
- Q. SECURITY DEPOSIT: Equal to one year's rent paid in advance.
- R. UTILITIES TO BE PAID BY LESSEE: Electric
- S. UTILITIES TO BE PAID BY LANDLORD: None
- T. COST OF TENANT IMPROVEMENTS: \$50,000 estimated.
- U. TENANT IMPROVEMENTS: Installation of a fire safety canopy, sewer/drainage facilities, asphalt paving, bumper guards, lighting, and fencing.

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- V. EXHIBITS: Exhibit A - Legal Description  
Exhibit B - Site Plan  
Exhibit C - Under "EI" canopy and drip pan specification.
- W. ADVANCED PAYMENT OF RENT. As noted in Article Four (4).
- X. INSURANCE: As noted in Article Five (5)
- Y. ASSIGNMENT: As noted in Article Seven (7)
- Z. ADDITIONAL PROVISIONS: \_\_\_\_\_

NOTE: LEASE MUST BE SIGNED BY TENANT(S). SEE WHERE INDICATED FOLLOWING ARTICLE 23.

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## ARTICLE 2 - DEFINITIONS

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Section 2.01 Definitions. The following items shall the meanings indicated:

Adjacent Facilities - any sidewalks, grounds, areas, vaults, basements, chutes, sidewalk hoists, railings, gutters, water and sewer connections, streets, alleys and curbs, parking areas, malls, passageways and any other property in from of, adjacent to or appurtenant to the Premises.

Claims - any and all actions, proceedings, claims, damages, demands, penalties, loss, costs and expenses, including reasonable attorneys', witnesses' and consultants' fees, arising out of or in connection with a specified matter.

Commencement Date - as defined Subsection 3.01.1.

CPI - The Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for Chicago-Gary-Lake County, IL-IN-WI, All Items (1982-84=100).

CTA - Chicago Transit Authority, a municipal corporation, its successors and assigns.

CTA Improvements - the elevated rail structures and track and appurtenances now located on the Land, as they may be reduced, supplemented, expanded or altered from time to time.

Default Rate - as defined in Section 23.02.

Environmental Laws - as defined in Section 22.01.

Event of Default - as defined in Section 16.

Hazardous Material - as defined in Section 22.02.

Indemnitee - a collective term for the partners, shareholders, directors and officers, representatives, employees and agents of a designated party (or each designated party, as the case may be), and the shareholders, directors, officers, employees and agents of any such partner.

Land - the parcel of land legally described in Exhibit A, and cross-hatched in Exhibit B attached hereto.

Lien - as defined in Section 11.01.

Net Annual Rent - as stated in Article Four 4.

Notice - as defined in Section 21.01.

Notice of Intent to Terminate - as defined in Section 16.02.

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Operating Expenses - all costs, expenses and disbursements of every kind and nature in connection with the ownership, management, operation, maintenance, replacement and repair of the Land and Improvements and of the personal property owned by Tenant located thereon or used in connection therewith, including insurance and utility expenses.

Premises - as defined in Section 3.01.

Related Entity - any parent, subsidiary, or successor of the tenant.

Rental - as defined in Article Four 4.

Requirements of Public Authorities and Insurance Underwriters and Policies - as defined in Section 10.01.

Taxes - all federal, state and local governmental taxes, assessments, and charged of every kind or nature, whether general, special, ordinary or extraordinary, payable in connection with the ownership, management, operation, maintenance, replacement and repair of the Land and Improvements or of the personal property owned by the Tenant located thereon or used in connection therewith (including any rental or similar taxes levied in lieu of or in addition to general and/or personal property taxes), but excluding the CTA improvement. Taxes shall not include any federal or state inheritance, general income, franchise, gift or estate taxes of Landlord.

Tenant's Improvements - all improvements constructed or placed on the Land by or on behalf of Tenant .

Term - as defined in Subsection 3.01.

Transportation purposes - where operational needs (repairs, etc.) of CTA right of way requires use of land.

Unavoidable Delays - delays due to strikes, lockouts, acts of God, inability to obtain labor or materials due to strikes and lockouts, enemy action, civil commotion, fire unavoidable casualty or other similar or dissimilar causes beyond the control of Tenant.

**Section 2.02 References.** Except as otherwise specifically indicated, all references to Article, Section and Subsection numbers refer to Articles, Section and Subsections of this Lease and all references to Exhibits refer to the Exhibits attached hereto. The words "herein", "hereof", "hereunder", "hereinafter" and words of similar import refer to this Lease as a whole and not to any particular Article, Section or Subsection hereof. Unless expressly stated to the contrary, reference to any Article includes all of the Sections contained therein, and reference to any Article includes all of the Sections contained therein and reference to any Section includes the Subsections contained therein. The terms "include" and "including" shall be construed as if followed by the phrase "without being limited to."

## ARTICLE 3 - PREMISES, TERM, USE & CONDITION OF PREMISES

**Section 3.01 Premises & Term.** Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, that certain Land (collectively, the "Premises") stated in Article 1(A). The term of the Lease shall be for the period stated in Article 1(L) (the "Term"), which term shall begin on the date stated in Article 1(J) (the "Commencement Date"). The Term shall end on the date stated in Article 1(K) of the Lease unless the Term shall be sooner terminated as hereinafter provided.

**Section 3.02 Use.** Tenant shall use the Premises only for the purpose stated in Article 1(F) of the Lease and for no other purpose whatsoever without the prior written consent of the Landlord; provided that Tenant shall not use the premises for parking until the completion of the Tenant's Improvements. Tenant represents and warrants that the Premises shall only be used for lawful purposes, that Tenant shall obtain all licenses and permits necessary for the conduct of any business conducted on the Premises and that Tenant shall not display or sell any merchandise on the Premises.

**Section 3.03 Condition of the Land.** Landlord has made the Land available for Tenant's inspection and Tenant has heretofore inspected the Premises to the extent Tenant deemed necessary. Landlord warrants and represents that there are no hidden defects on the Land, and in consideration of such warranty and representation, Tenant shall be conclusively deemed to have accepted the Land "as is" and in the condition existing on the Commencement Date, and to have waived all claims related to the condition of the Land. No agreement of Landlord to alter, remodel, decorate, clean or improve the Land or any improvements located thereon has been made by or on behalf of Landlord to Tenant, except as stated in this Lease.

**Section 3.04 Option to Extend Term.** Provided Tenant is not then in default under the Lease, Tenant shall have the option to extend the Lease. The number of option periods and the years of each option period shall be as stated in Article 1(M) of the Lease. Said option(s) shall be exercised by written notice from Tenant to Landlord not later than (6) months prior to the expiration of the Term.

**Section 3.05 Landlord's Right to Suspend.** Landlord shall have the right to temporarily suspend Tenant's possession of all or any portion of the Premises upon prior written Notice to Tenant if the Premises are needed for emergency operational purposes. The suspension of Tenant's possession of the Premises shall only be as long as reasonably necessary to accomplish Landlord's emergency operational purposes. The suspension of Tenant's possession shall only involve that portion of the Premises as reasonably necessary to accomplish Landlord's emergency operational purposes. Rent shall abate during the period that Tenant's possession of the premises is suspended. Landlord retains the right to condemn all or a portion of the Premises in accordance with applicable State or local laws, statutes or ordinances.

## ARTICLE 4 - RENT AND SECURITY DEPOSIT

### Section 4.01 Net Annual Rent

**Section 4.01.1 How Paid.** Tenant shall pay to Landlord at the place specified for

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Notices to Landlord, or such other place, or to such other person, firm or corporation and at such other place as shall be designated from time to time by Notice from Landlord, a net annual rent (the "Net Annual Rent") determined as hereinafter provided. The Net Annual Rent shall be paid in one year in advance, on the anniversary of the commencement date. The amount of Net Annual Rent is stipulated or calculated, as the case may be, in the following Subsections of this Section 4.01.

Section 4.01.2 First Year of Term. The amount of the Net Annual Rent shall be the amount stated in Article 1(N) of the Lease.

Section 4.01.3 Subsequent Periods - Amount. Effective on November 1, 1998 and each anniversary date of the commencement date of the lease during years three (3) through year (10), the Net Annual Rent shall be adjusted in proportion to the increase in the CPI for the latest available month from the same month in the preceding year.

The Landlord shall obtain an independent real estate appraisal to determine the fair market value of the Premises for Lease year eleven (11). This report shall be performed by a MAI appraiser. Effective on November 1, 2007, the Net Annual Rent shall be eight per cent (8%) of the fair market value of the Premises, but shall never be less than the Net Annual Rent stated in Article 1(N) of the Lease.

Effective on November 1, 2008, and each anniversary date of the commencement date of the Lease during years thirteen (13) through twenty (20), the Net Annual Rent shall be adjusted in proportion to the increase in the CPI for the latest available month from the same month in the preceding year.

The Landlord shall obtain an independent real estate appraisal to determine the fair market value of the Premises for Lease year twenty-one (21). This report shall be performed by a MAI appraiser. Effective on November 1, 2017, the Net Annual Rent shall be 8.0% of the fair market value of the Premises, but shall never be less than the Net Annual Rent stated in Article 1(N) of the Lease. Effective on November 1, 2018 and each anniversary date of the commencement date of the Lease during years twenty-three (23) through thirty (30), the net Annual Rent shall be adjusted in proportion to the increase in the CPI for the latest available month from the same month in the preceding year.

If Tenant exercises its option to extend the Lease as stated in Article 1(M) of the Lease, the Landlord shall obtain an independent real estate appraisal to determine the fair market value of the Premises for Lease year thirty-one (31). This report shall be performed by an MAI appraiser. Effective on November 1, 2027, the net Annual Rent shall be eight per cent (8.0%) of the fair market value of the Premises, but shall never be less than the Net Annual Rent stated in Article 1(N) of the Lease.

Effective November 1, 2028, and each anniversary date of the commencement date of the Lease during years thirty-three (33) through forty (40), the Net Annual Rent shall be adjusted in proportion to the increase in the CPI for the latest available month from the same month in the preceding year.

The Landlord shall obtain an independent real estate appraisal to determine the fair

market value of the Premises for Lease year forty-one (41). This report shall be performed by a MAI appraiser. Effective on November 1, 2037, the Net Annual Rent shall be eight per cent (8.0%) of the fair market value of the Premises, but shall never be less than the Net Annual Rent stated in Article 1(N) of the Lease.

Effective November 1, 2038, and each anniversary date of the commencement date of the Lease during years forty-three (43) through fifty (50), the Net Annual Rent shall be adjusted in proportion to the increase in the CPI for the latest available month from the same month in the preceding year. in the preceding year.

Section 4.01.4 Initial Rent Payment. Tenant's obligation to pay rent shall commence on the commencement date as specified under Article 1(J) of the lease.

Section 4.02 Form of Payment. Net Annual Rent shall be paid in such United States of America coin or currency as at the time of payment shall be legal tender for the payment of public and private debts.

Section 4.03 Security Deposit. To secure the faithful performance by Tenant of all covenants, conditions and agreements in this lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed including, but without limiting the generality of the foregoing, such covenants, conditions and agreements in the Lease which become applicable upon termination of the same by re-entry or otherwise, Tenant shall deposit with Landlord the Security Deposit stated in Article 1(Q) of the Lease in the form of a Certified or Cashier's Check made payable to the Landlord. Said Security Deposit may be applied to the curing of any default that then may exist, without prejudice to any other remedy or remedies which the Landlord may have on account thereof. Upon such application of the Security Deposit, Tenant shall within five (5) days after notice pay Landlord the amount so applied which shall be added to the remaining portion of the Security Deposit so the same may be restored to its original amount. Landlord, or its successor, shall not be obligated to hold said Security Deposit as a separate fund and may commingle the sum with its other funds. In the event the Tenant shall faithfully fulfill, keep, perform and observe all of the covenants, conditions and agreements in the Lease set forth and contained on the part of the Tenant to be fulfilled, kept, performed and observed, the sum deposited or the remaining part or portion thereof not previously applied, shall be returned to Tenant without interest no later than thirty (30) days after the expiration of the Term of the Lease or any renewal or extension thereof, provided Tenant has vacated the Premises and surrendered possession thereof to the Landlord at the expiration of said Term or any extension or renewal thereof as provided herein.

Section 4.04 Other Sums. Tenant shall also pay all sums, costs, expenses and payments which Tenant in any of the provisions of this Lease assumes or agrees to pay, and, upon any nonpayment of any said items, and in addition to all other rights and remedies, Landlord shall have all the rights and remedies provided for herein or by law in the case of non-payment of rent.

Section 4.05 Absolutely Net. It is the purpose and intent of Landlord and Tenant that the Net Annual Rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the Net Annual Rent and that all costs and expenses and obligations of every kind and nature whatsoever relating to the Premises, whether now existing or hereafter arising or

whether beyond the contemplation of the parties, including Taxes and Operating Expenses, shall be paid on a timely basis by Tenant.

**Section 4.06 No Offset.** All of the amounts payable by Tenant pursuant to this Article 4 including Net Annual rent, Taxes and Operating Expenses, and all other sums, costs, expenses, charges, payments and deposits which Tenant, pursuant to any other provision of this Lease, assumes or agrees to pay shall constitute rent under this Lease, and are collectively called "Rental". All Rental shall be paid as provided herein, without notice or demand, and without abatement, deduction, counterclaim or set-off.

**Section 4.07 Late Charges.** If any payment of any Rent shall become overdue beyond the date on which it is due and payable, taking into account applicable cure periods, if any, the amount thereof shall bear interest at the Default Rate until paid, payable by Tenant on demand.

## ARTICLE 5 - INSURANCE

**Section 5.01 Required Insurance.** Tenant, at its sole cost and expense, shall maintain at all times during the term of this Lease, policies of insurance for the mutual benefit of Landlord and tenant as follows:

- (a) **Commercial General Liability insurance**, with coverage limits of \$2,000,000 per occurrence and in the aggregate against claims for bodily injury, death and property damage occurring on and about the Premises, Land or Adjacent Facilities, to include an endorsement (ISO Form CG2010-85) that names the Chicago Transit Authority as an additional insured.
- (b) **Workers' Compensation insurance** to the extent of statutory requirements. Employee's liability limits of no less than \$500,000.00, including bodily injury caused by disease.
- (c) **Garage Keepers Legal Liability Policy**, which shall provide a physical damage limit in an amount of no less than Two Million (\$2,000,000.00) Dollars for the automobiles and other vehicles that are parked on and upon the Landlord's property. The policy must state that "All Bodily Injury and Property Damage arising out of a continuous or repeated exposure to substantially the same general conditions is to be considered as arising out of one occurrence." The Chicago Transit Authority shall be named as an additional insured.
- (d) Such other insurance in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards that are at the time commonly insured against in the case of real property similarly situated.

**Section 5.02.** All policies of insurance under Section 5.01 shall be written by companies satisfactory to Landlord and licensed to do business in the State of Illinois and shall name Landlord as an additional insured and have a financial rating of at least B+ as rated in the most recent edition of Best's Insurance Reports. Prior to the Commencement of the Term, Tenant shall deliver to Landlord insurance certificates and policies together with receipts or other evidence that the premiums thereon have been paid for the Term of this

Lease. Each policy of insurance under Section 5.01 shall bear an endorsement that such policy shall not be canceled or modified without at least sixty (60) days prior written notice to Landlord and shall contain a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant shall deliver to Landlord any renewal or replacement policy at least sixty (60) days before the expiration or other termination of an existing policy.

Section 5.03. Tenant shall not carry separate insurance concurrent in form or contributing in the event of loss with that required by this Lease unless Landlord is included therein as an insured with loss payable as provided in this Lease.

Section 5.04. Tenant shall perform and satisfy all requirements of the companies writing any insurance policies referred to in this Lease so that at all times companies of good standing reasonably satisfactory to Landlord shall be willing to write such insurance.

Section 5.05. Whenever (a) any loss, cost, damage or expense resulting from fire or other casualty or occurrence is incurred by either of the parties to this Lease, or anyone claiming by, through or under it, in connection with the Land or Premises, and (b) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, that the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case when the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the cause of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereupon keeping such release and waiver in full force and effect).

Section 5.06. If Tenant fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Landlord with the required evidence that the insurance has been procured and is in full force and the premiums paid for, Landlord shall have the right, at Landlord's election and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as additional Rent due from tenant with interest at the rate of twenty percent (20%) per annum or the maximum rate permitted by law, to be paid on the first date of the month following the date on which the premiums were paid.

Section 5.07. Prior to commencing activities on the premises, Tenant's Contractors shall obtain and maintain in full force and effect throughout the construction process, the following insurance policies and furnish the Authority with certified copies thereof:

(a) Workers Compensation - insurance to the extent of statutory requirements. Employee's liability limits of up to One Million (\$1,000,000) Dollars per occurrence; per employee for disease; and, in the aggregate for disease. An accord certificate, evidencing coverage, must be submitted prior to commencement of work.

(b) Commercial General Liability written on the 1986 ISO Form with coverage limits of

\$3,000,000 per occurrence and \$3,000,000 general aggregate limit for bodily injury, death and property damage occurring on and about the Premises, Land or Adjacent Facilities. The Landlord must be named as an additional insured by endorsement ISO form CG2010-93 or its equivalent. The insurance carrier must have a B+ or better rating in the current A.M. Best Guide.

(c) Automobile Liability - with coverage limits of \$1,000,000.00 combined single limits (CSL). The insurance carrier must have a B+ or better rating in the Current A.M. Best Guide.

(d) Railroad Protective Liability with coverage limits of \$2,000,000 per occurrence and \$6,000,000 aggregate limits for bodily injury or property damage. The Landlord shall be listed as a named insured on this policy. This insurance coverage is for construction within 50 feet of the railroad. The insurance carrier must have a B+ or better rating in the current A.M. Best Guide.

Section 5.08. Tenant agrees to comply with, and to require any and all of Tenant's contractors to comply with, all requirements of the Landlord's insurance carriers and policies.

Section 5.09 Premiums; Certificates. Tenant shall pay or cause to be paid all premiums on policies referred to herein one year in advance. Certificates of insurance and insurance policies shall be delivered to Landlord and Landlord shall be named as an additional insured in the policies described in Section 5.01 (a) and (c) above. Each policy of insurance required under this Article 5 shall have attached thereto an endorsement that such policy shall not canceled or materially modified without at least sixty (60) days prior written notice to Landlord and, if required, to any Leasehold Mortgagee. Each such policy shall contain a provision that no act or omission of Tenant shall affect or limit the obligation of the insurer to pay the amount of any loss sustained up to the limit of coverage provided.

Submission of certificates of insurance and certified copies of each such policy shall be delivered to Landlord and the addresses set forth below (or any other further addresses designated by the Landlord pursuant to written notice):

General Manager  
Property & Administrative Services  
Chicago Transit Authority  
Post Office Box 3555  
Suite 7-112 A.C.  
Chicago, Illinois 60654

and

General Manager  
Benefit Services  
Chicago Transit Authority  
Post Office Box 3555  
Suite 750 M.M.  
Chicago, Illinois 60654



Section 5.10 Blanket Insurance. Any insurance provided for in this Article 5 may be effected by a policy or policies of blanket or umbrella insurance; provided, however, that the amount of the total insurance allocated to the Premises shall be sufficient as to furnish in protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects, any such policy or policies shall comply with the other provisions of the Lease.

Section 5.11 Waiver of Subrogation. Each policy of insurance provided for in the Article 5 shall contain, to the extent appropriate and available without additional premium, a waiver of subrogation reflecting the following provisions of this Section 5.11. Tenant hereby expressly waives all rights of recovery which it might otherwise have against Landlord and its Indemnitee for loss or damage to person, property or business to the extent that such loss or damage is covered by valid and collectible insurance policies, notwithstanding that such loss or damage may be caused by the negligent act or omission of any of the parties described in the Section 5.11 other than tenant.

#### ARTICLE 6 - DAMAGE BY FIRE OR OTHER CASUALTY

Section 6.01 Damage or Destruction. If all or any portion of the CTA Improvements or the Tenant's Improvements are damaged or destroyed by fire or other casualty, Tenant shall be obligated to restore the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction, and may use all available proceeds of insurance for such purpose. Any insurance proceeds in excess of the cost of restoration shall be the property of Tenant.

Section 6.02 No Abatement. No destruction or damage to the CTA Improvements or the Tenant's Improvements shall permit Tenant to surrender this Lease, or shall relieve Tenant from its liability to pay the full Rental due under this Lease, provided such damage or destruction does not result from CTA's improvements and/or the operation of the CTA.

#### ARTICLE 7 - ASSIGNMENT, SUBLEASING

Section 7.01 Assignments and Subleases. Tenant shall not assign this Lease or its interest in the Premises, or make effect any sublease respecting the Premises to a non-related party, without the prior written consent of Landlord which consent shall not be unreasonably withheld. Any transfer or transfers of shares or interests that in the aggregate comprise a majority or controlling number of the outstanding shares or interests of Tenant, or that result in a transfer of the controlling interest in Tenant, shall be deemed an assignment by Tenant of this Lease. Tenant shall not allow or permit any transfer of this Lease or any interest under this Lease by operation of law or convey, mortgage, pledge or encumber this Lease or any interest under this Lease. Any attempted action by Tenant in violation of the provisions of this Article 7 shall be void.

Section 7.01.1 Release of Liability. No assignment or transfer of this Lease by Tenant consented to by Landlord shall be effective, unless the assignee or transferee shall, at the time of such assignment or transfer, assume all the terms, covenants and conditions of this Lease thereafter to be performed by Tenant and shall agree to be bound thereby. Notwithstanding such assignment or transfer or the acceptance by Landlord from such assignee of any rent

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or other monies or other performance of the obligations of Tenant hereunder, Tenant shall remain liable and obligated as a principal (and not as a surety or guarantor) to perform all the terms, conditions, obligations and covenants, including the payment of rental and other monies, herein provided to be performed by Tenant.

## ARTICLE 8 - TENANT'S MAINTENANCE

During the Term, Tenant, at its sole cost and expense, shall keep and maintain the Premises, including the driveways, drip pans and canopies in good order, condition and repair and in accordance with all Requirements, and shall promptly and adequately repair all damages to any of the foregoing. If Tenant fails to perform any of its obligations set forth in this Article 8, Landlord shall have the right but not the obligation to perform the same in accordance with Article 14.

## ARTICLE 9 - CHANGES AND ALTERATIONS

Section 9.01 Conditions to Alterations. Tenant shall not demolish, replace or materially alter the Premises or any part thereof, whether voluntarily or in connection with a repair or restoration required by this Lease, unless Tenant shall comply with the following requirements:

Unless agreed to in writing by Landlord tenants improvements are limited to those improvements set forth in Article 1(U) of this agreement.

(a) No Tenant Improvement shall be undertaken until Tenant has procured and paid for, so far as the same may be required from time to time, all permits, licenses and authorizations pursuant to Requirements. Landlord, if required, shall join in the application for any such permit, license or authorization. Tenant shall deliver copies of all required permits, licenses and authorizations to Landlord prior to the commencement of work on any Tenant Improvement. Any Tenant Improvement shall comply with any and all applicable Requirements and Environmental Laws.

(b) Any Tenant Improvement shall be made promptly (Unavoidable Delays excepted) and in a good and workmanlike manner and in compliance, in all material respects, with applicable Requirements.

(c) The cost of any Tenant Improvement shall be paid by Tenant in cash or its equivalent, or pursuant to valid and effective waivers of lien so that at all times the Premises shall be free of Liens. Notwithstanding anything to the contrary contained in this clause (c), Tenant shall have the right to have any such claim for Lien discharged by deposit, bond proceedings or obtaining title insurance over such Lien as provided in Section 11.02.

(d) No Tenant Improvement shall be undertaken until Tenant shall have delivered to Landlord Insurance certificates and policies therefor issued by responsible Insurers, for workers compensation Insurance in statutory amounts, and covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Landlord, Tenant or the Premises, and unless the

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liability insurance then in effect with respect to the insurance expressly covering the additional hazards resulting from the Tenant Improvement and work thereon with limits not less than those, and otherwise subject to the same conditions and requirements, set forth in Article 5.

(e) No Tenant Improvements shall be undertaken until Tenant shall have delivered to Landlord Tenant's plans and specifications therefor for Landlord's review and approval, which shall not be unreasonably withheld or delayed. Any material change to such plans and specifications shall first be submitted to Landlord for review and approval, which shall not be unreasonably withheld.

(f) Tenant's Improvements shall at all times include access lanes for fire trucks and other emergency vehicles in accordance with all applicable Requirements, including, without limitation, the requirements of the Chicago Fire Department.

(g) Tenant's Improvements shall include adequate site lighting for which Tenant shall furnish electricity at no cost to Landlord, and the erection of bumper guards for every column and structural support for Landlord's elevated rail structure on the Land.

(h) Unless otherwise noted in this lease all Tenant Improvements shall remain the property of the Tenant until the termination of this lease.

Tenant covenants to install in the Premises the Tenant Improvements specified in Article 1 (U) of the Lease and represents that the cost of the installation of such improvements (materials and labor) shall be equal to or greater than the amount stated in Article 1 (T). Tenant agrees to provide Landlord with copies of all bills and receipts in connection with the purchase and installation of such improvements. Tenant shall commence work on the above Tenant Improvements within sixty (60) days of the Commencement Date and shall complete said improvements no later than one hundred twenty (120) days from the Commencement Date.

**Section 9.01.1 Canopy or Drip Pan System.** Tenant shall furnish and install at Tenant's expense a self-supporting canopy or drip pan system on the Land in accordance with specifications noted in Exhibit C. Based upon such specifications, Tenant shall prepare plans for the self-supporting canopy or drip pan system, which plans shall be approved by Landlord. Such work shall be completed on or before the date which is the later of the following time period: (i) ninety (90) days after the Commencement Date (subject to Unavoidable Delays), (ii) ninety (90) days after Landlord approved such plans (subject to Unavoidable Delays) or (iii) the time period reasonably necessary for Tenant to complete such work. Tenant shall give Landlord Notice of substantial completion of such work, which work shall be deemed to be accepted by Landlord subject only to completion or correction of items of which Landlord gives Tenant Notice within 30 days after receipt of Tenant's Notice of substantial completion. Tenant shall promptly commence and diligently pursue to completion or correction of each such items, whereupon Tenant shall give Landlord Notice of final completion of such work, subject only to completion or correction of any such items of which Landlord gives Tenant Notice within 10 days after receipt of Tenant's Notice of final completion, which terms shall be completed or corrected as aforesaid. The foregoing procedure shall be repeated as necessary until all such items are so completed or corrected. Upon final completion, such work shall be the property of Landlord and shall be a part of the CTA Improvements; provided, however, that

Tenant shall at its own expense maintain and repair said canopy or drip pan system during the term of this lease.

## ARTICLE 10 - PUBLIC AUTHORITY AND INSURANCE REQUIREMENTS

Section 10.01 Compliance. During the Term, Tenant at its own cost and expense, promptly shall comply in all material respects with:

(A) any and all present and future laws (including the common law), rules orders, ordinances, regulations, judgments statutes and requirements, irrespective of the nature of the work required to be done, extraordinary as well as ordinary, of federal, state, local, city, county, or other governmental, public or quasi-public authorities now existing or hereafter created, and of any and all of their departments and bureaus, and of any applicable Fire Rating Bureau, or other body exercising similar functions, to or affecting the Land or the Tenant's Improvements or the condition, equipment, maintenance, use of occupation of the Land or the Tenant's Improvements, whether or not the same involve or require any change or additions in or to the Land or the Tenant's Improvements, and irrespective of whether or not such changes or additions be required on account of any particular use to which the Land or the Tenant's Improvements, or any part thereof, may be put, and;

(B) any and all provisions and requirements of any fire, liability or other insurance policy carried by Tenant under the provisions of this Lease.

(The provisions of subsections (A) and (B), above, collectively are referred to in the Lease as the "Requirements".) During the term of the Lease, Tenant shall have no liability or obligation with respect to Requirements applicable to the Existing Improvements or any part thereof or the CTA Improvements or any part thereof, unless such liability or obligation arises in the first instance from Tenant's (or Tenant's employees', agents' or invites') acts, omissions, activities or operations on, in or at the Premises.

Section 10.02 Contests. Tenant shall, at its own costs and expense, have the right to contest the validity of any Requirements or the application thereof. During such contest, compliance with any such contested Requirements may be deferred by Tenant, provided, however that Tenant shall promptly comply with any such Requirements (and compliance shall not be deferred) if at any time the Premises or the Tenant's Improvements, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subjected to civil or criminal liability or penalty, or there if claimed to be a default under any Leasehold Mortgage, by reason of noncompliance therewith, or if such deferral creates an imminent and substantial endangerment to health or the environment. Landlord agrees that it will cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant covenants to indemnify and save Landlord harmless from Claims arising out of or in connection with such activities.

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## ARTICLE 11 - DISCHARGE OF LIENS

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Section 11.01 No Liens. Tenant shall not create or permit to be created or to remain, and shall discharge (as provided in Section 11.02), any lien, encumbrance or charge levied on account of any mechanic's, laborer's or materialman's lien, conditional sale, title retention agreement or chattel mortgage, or otherwise (collectively, a "Lien") which might be or become a lien, encumbrance or charge upon the Premises, and Tenant's Improvements or any part thereof which is not permitted by the terms of this Lease.

Section 11.02 Discharging Liens. If any Lien shall at any time be filed against the Premises or any part thereof, within 30 days after notice of the filing thereof, Tenant shall cause the same to be discharged which may be accomplished by release of record, or by deposit, bonding proceedings or obtaining title insurance over such lien. If Tenant shall fail to cause such Lien to be discharged within the period aforesaid, then Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due to by procuring the discharge of such Lien by deposit or by bonding proceedings, or by obtaining title insurance and in any such event Landlord shall be entitled if Landlord so elects, to compel the prosecution of an action for the foreclosure of such Lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by the Landlord and all costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Default Rate, shall be paid by Tenant to Landlord on demand.

## ARTICLE 12 - INDEMNIFICATION

Section 12.01 Indemnification of Landlord. In addition to any other indemnification obligations provided for in this Lease (except where expressly stated otherwise), Tenant agrees to indemnify, defend and forever hold harmless Landlord and Landlord's successors, assigns, officers, directors, agents and employees against and from all liabilities, claims, liens, obligations, lawsuits, causes of action, fines, penalties, damages, losses, fees, costs and expenses, including reasonable attorney's fees (referred to collectively herein as "Indemnification Costs") that may be imposed upon, incurred by or asserted against the Landlord and/or Landlord's successors, assigns, officers, directors, agents, and employees arising from or in connection with this Lease including but not limited to any of the following: the violation by the Tenant of any of the provisions of this Lease; any injury to any person, loss of life, or loss or destruction of property, (including but not limited to vehicles) on the Premises, Adjacent Facilities and Improvements or any part thereof; any use, non-use, possession, occupation, operation, alteration, repair, condition, maintenance or management of the Premises, Adjacent Facilities and Improvements or any part thereof; and any act or failure to act by Tenant or any of Tenant's successors, assigns, officers, directors, agents, employees, contractors (including but not limited to subcontractors of any tier), suppliers, laborers, subtenants, licensees or invitees.

Section 12.02 Tender of Defense. Landlord will promptly notify Tenant in writing of any Indemnification Costs which Landlord believes to be covered by the Tenant's indemnity and defense obligations under this Article 12 or any other provisions of this Lease. If Tenant does not accept in writing the foregoing tender of defense within ten (10) days after receipt of notice from Landlord, Landlord may retain its own counsel and present its own defense and in such case Tenant shall pay (in addition to any Indemnification Costs) all costs, attorneys' fees and

expenses incurred by Landlord in defending such liability, claim, lien, obligation, lawsuit or cause of action.

Section 12.03 Survival. The provision of this Article 12 and the provisions of all other indemnity provisions elsewhere contained in this Lease shall survive any termination of the Lease.

**ARTICLE 13 - LANDLORD'S RIGHTS OF INSPECTION AND ENTRY**

Section 13.01 Landlord's Right of Inspection and Entry. During the Term, Landlord shall have the right at all times to enter and have access to the Premises:

- (a) For purposes of inspection, testing and analysis to determine Tenant's compliance with this Lease, any Requirements or any Environmental Laws;
- (b) To exhibit the Premises to prospective purchasers, mortgages or tenants;
- (c) In the event of any Default by Tenant, for purposes of curing such Default;
- (d) In the event of an emergency in the Premises which requires, in Landlord's sole discretion, that Landlord have access to the Premises; and
- (e) In the event of an occurrence concerning the Landlord's transportation system (including, but not limited to, any emergency or needed repairs, maintenance or inspections) which requires Landlord to have access to the Premises. The occurrence of an event requiring such access shall be determined solely by the Landlord, and the Landlord shall be provided such access at any time required by the Landlord. Landlord shall not be liable or responsible to Tenant for any loss suffered by Tenant as a result of such access or work done during such access and Tenant shall not claim an eviction, constructive or otherwise, as a result of such access. If Tenant is unable to operate in the Premises during such access, all Fixed Rent shall abate until Tenant may again operate its business in the Premises.
- (f) Landlord's rights under this Article 13 may be exercised on its behalf by any authorized representatives of Landlord.

**ARTICLE 14 - LANDLORD'S ADDITIONAL RIGHTS AND REMEDIES**

Section 14.01 Landlord's Right to Pay or Perform. If at any time Tenant shall fail to maintain or deliver any of the insurance policies provided for herein, or shall fail to make any other payment or perform any other acts or its part to be made or performed, and provided cure periods, if any, afforded in the event of such failure have expired and such failure shall then continue, then upon 30 days prior Notice to Tenant (of with Notice in case of any emergency) and without waiving or releasing Tenant from any obligation of Tenant contained in the Lease. Landlord may (but shall be under no obligation to):

- (a) secure and maintain any of the insurance policies provided for herein, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed under this Lease and may enter upon the Premises or Tenant's Improvements for the purpose and take all such action thereon as may be necessary therefor.

Section 14.02 Amounts Payable by Tenant. Tenant shall pay to landlord on demand, and upon being provided copies of all bills for such sums paid by Landlord under Section 14.01 and all reasonable costs and expenses arising in connection with the performance of any act taken under Section 14.01, together with the interest thereon at the Default Rate from the respective dates of payment or incurring of each such cost and expenses until paid.

**ARTICLE 15 - NO UNLAWFUL OCCUPANCY**

Section 15.01 Tenants shall not use or occupy, nor permit or suffer, the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use of purpose, nor for any purpose or in any way in violation of the certificate of occupancy for the Improvements or of any present or future requirements, or that would constitute a public or private nuisance or waste. Tenant covenants that, immediately upon discovery of any such unlawful or illegal use, it shall take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants or other persons causing or giving rise to such unlawful or illegal use.

**ARTICLE 16 - DEFAULTS, REMEDIES**

Section 16.01 "Event of Default" Defined. Each of the following shall be an "Event of Default":

- (a) Tenant's failure to pay any installment of Fixed Rent when due;
- (b) Tenant's failure to pay any other payment of money, costs or expenses to be paid by Tenant under this Lease, when due;
- (c) Tenant's failure to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease, and the continuance of such failure for a period of five (5) days;
- (d) Filing or execution or occurrence of:
  - (1) A petition in bankruptcy by or against Tenant;
  - (2) A petition or answer by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of any bankruptcy act;
  - (3) Adjudication of Tenant as a bankrupt or insolvent (either in bankruptcy or equity sense);
  - (4) An assignment by Tenant for the benefit of creditors;

- (5) A petition or other proceeding by or against Tenant for, or the appointment of, a trustee, receiver, guardian, conservator or liquidator of Tenant with respect to the Premises or with respect to all or substantially all of Tenant's property; or
- (6) A petition or other proceeding by or against Tenant for its dissolution or liquidation or the taking of possession of lessee's property by any governmental authority in connection with dissolution or liquidation;
- (e) Entry of an order, judgment, or decree by any court of competent jurisdiction granting any prayer or demand contained in any petition under Subsection 16.01(d), (1), (2), (5) or (6); or
- (f) Tenant's abandonment of the Premises; or
- (g) Taking by any person of Tenant's interest in this Lease upon execution, attachment or other process of law or equity; or
- (h) Tenant's failure to comply with any Requirement, including, without limitation, any Environmental Laws; or
- (l) Tenant's release or disposal of any Hazardous Material in, on or at the Premises.

**Section 16.02 Termination.** If an Event of Default shall occur, Landlord at its option at any time thereafter may give Notice to Tenant (a "Notice of Intent to Terminate") stating that this Lease shall expire and terminate on the date specified in such Notice, and upon the date specified in such Notice this Lease, the Term hereunder, and all rights of Tenant shall expire and terminate as if that date were the date herein definitely fixed for the termination of the Term, and Tenant shall quit and surrender the Premises, but Tenant shall remain liable as hereinafter provided.

**Section 16.03 No Waiver.** No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

**Section 16.04 Cumulative Remedies.** Landlord's right to terminate this Lease shall not be exclusive of, but shall be cumulative and in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies in equity or by statute or otherwise.

**Section 16.05 Rental as Lien.** The Rental hereunder and each and every installment thereof shall be and they hereby are declared to constitute a valid lien upon the interest of



Tenant in this Lease.

ARTICLE 17 - DESIGNATED PARKING SPACES

Tenant shall limit the parking of automobiles on the premises to forty-eight (48) automobiles and designate only forty-eight (48) parking spaces on the premises by clearly marking, with painted lines, such parking spaces.

The regular parking of more than forty-eight automobiles on the premises and/or marking with painted lines on otherwise more than forty-eight (48) parking spaces shall be a violation of the lease and a default of this lease on the part of the tenant.

ARTICLE 18 - LANDLORD'S CONSENT

It is understood and agreed that the granting of any consent by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent, shall not be deemed a waiver by Landlord or its rights to require such consent for any further similar act by Tenant, and Tenant shall secure such consent for each and every happening of the event requiring such consent, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent. Except as expressly provided herein to the contrary, Landlord shall exercise its right of consent in a reasonable manner, and without undue delay or condition.

ARTICLE 19 - SURRENDER OF POSSESSION

Section 19.01 Surrender of Premises. On the last day of the Term or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises pursuant to Article 16, Tenant shall surrender and deliver up to Landlord the Premises and all Improvements without delay and free from all Hazardous Material. Nothing in this Section 19.01 shall negate or impair Tenant's right to remove Tenant's personal property in accordance with Section 19.03.

Section 19.02 No Notice Required. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises at any such termination date.

Section 19.03 Personal Property. Any personal property of Tenant or any subtenant which shall remain on the Premises or Tenant's improvements after the termination of this Lease and the removal of Tenant or such subtenant from the Premises, at the option of Landlord, may be deemed to have been abandoned by Tenant or such subtenant, as the case may be, and any personal property thereof may be retained by Landlord as its property or be disposed of, without accountability to Tenant, such tenant or subtenant, as the case may be, in such manner as Landlord may see fit.

ARTICLE 20 - QUIET ENJOYMENT

Section 20.01 Quiet Enjoyment. Landlord covenants that, if and so long as Tenant shall faithfully perform the agreements, terms, covenants and conditions of this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term without

molestation or disturbance by or from Landlord or any party claiming by, through under Landlord.

ARTICLE 21 - NOTICES

Section 21.01 Notices. All notices, required or permitted under this Lease shall be in writing and shall be served upon the parties in person, or by certified or registered mail (return receipt requested) directed to the addresses set forth below (or any other or further addresses designated by a party pursuant to written notice):

Landlord: At the address stated in Article 1© of the Lease, with a copy to:

Chicago Transit Authority  
Merchandise Mart Plaza  
P.O. Box 3555  
Chicago, Illinois 60654  
Attention: Legal Department

Tenant: At the address stated in Article 1(E) of the Lease

ARTICLE 22 - ENVIRONMENTAL COVENANTS

Section 22.01 Environmental Laws. (a) For purposes of this Lease, "Environmental Laws" means any past, present or future federal, state or local laws, statute, regulations, rules, ordinances and policies relating to environmental matters and contamination of any type whatsoever, including without limitation those relating to: (1) treatment, storage, disposal, generation or transportation of any Hazardous Material; (2) spills, discharges, leaks, emissions, escapes, dumping or other releases or threatened releases of any Hazardous Material into the environment, whether or not notification or reporting to any federal, state or local agency was or is required; (3) air, water, or noise pollution; (4) surface or groundwater contamination; (5) the protection of natural resources; (6) wildlife, marine sanctuaries or wetlands; (7) storage tanks, vessels and related equipment; (8) abandoned or discarded barrels, containers and other closed receptacles; (9) health and safety of employees and other persons; (10) reporting or notification regarding or relating to any Hazardous Material; and (11) otherwise relating to the manufacture, processing, use, distributor, treatment, storage, disposal, transportation or handling of any Hazardous Material.

(b) For purposes of this Lease, "Hazardous Material" means:

- (1) Any pollutant, contaminant, pesticide, solid waste or hazardous or extremely hazardous, dangerous or toxic waster, substance, chemical, or material within the meaning of any applicable federal, state or local statute, law, code, rule, regulation, ordinance, order, standard, permit license or requirement (including consent decrees, judicial decisions and administrative orders), together with all amendments thereto and reauthorizations thereof, including but not limited to (i) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601, et seq., and all amendments thereto and reauthorizations thereof; and (ii) any "hazardous waste" as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6902 et seq., and all amendments thereto and

reauthorizations thereof;

(2) Even if not prohibited, limited or regulated by Environmental Laws, any pollutant, contaminant, hazardous, dangerous or toxic chemical material, waste or any other substance, including, without limitation, any industrial process or pollution control waste (whether or not hazardous within the meaning of RCRA) which may or could pose a hazard to the environment or the health and safety of any occupant, user or third party at the Leased Premises or the Real Estate or any owner, operator, occupant, user, tenant or third party at property near (but necessarily contiguous to) the Leased Premises or the Real Estate, or could presently or at any time in the future cause a detriment to, or impair the beneficial use and/or economic value to the Leased Premises or the Real Estate, or any portion thereof;

(3) Petroleum, crude oil or any fraction thereof;

(4) Natural gas, natural gas liquids, liquefied natural gas (all the foregoing collectively called "Natural Gas Products"), synthetic gas or mixtures of Natural Gas Products and synthetic gas;

(5) Any radioactive material, including any source, special nuclear or byproduct material, however produced, as defined in the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and amendments thereto and reauthorizations thereof;

(6) Asbestos-containing materials in any form or condition; or

(7) Chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 et seq.

**Section 22.02 No Environmental Representations** Tenant agrees and acknowledges that Landlord has made no representation concerning the presence or absence of any Hazardous material on, in, under or about the Premises or any property adjacent to the Premises and that the Landlord has made no representation or warranty concerning the existence or non-existence of any past or present violation of, or obligation arising in connection with any Environmental Laws affecting the Premises. Tenant hereby waives any and all claims, actions, causes of actions, suits or demands of any nature against the Landlord which the Tenant may have now or in the future for damages, payments, costs or expenses (including, without limitation, claims of contribution or indemnity and any expenses of investigation or the condition of the Premises, regardless of the results of such investigation, and claims arising under, or pursuant to, any Environmental Laws including, without limitation, CERCLA,) suffered by the Tenant as a result of the presence or alleged presence of any Hazardous Material on, in, under or near the Premises, the violation, at any time in the past, present or future, of any Environmental Laws affecting the Premises or the existence of any undischarged obligation under any Environmental Laws relating to the Premises. This waiver shall survive the leasing of the Premises to the Tenant.

**Section 22.03 Use and Disclosure** Tenant shall not cause or permit any Hazardous Material to be stored, treated, generated, discharged, released or transported to, at, upon, in or under the Premises in violation of any Environmental Laws. At the commencement of this Lease and on January 15th of each year thereafter, (each such date being hereafter called

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"Disclosure Date"), Tenant shall disclose to Landlord in writing the names and amounts of all Hazardous Material, or any combination thereof, which it intends to store, treat, generate, discharge, release, use or transport to, at upon, in or under the Premises during the calendar year. On each such Disclosure Date, Tenant shall also disclose to Landlord in writing the names and amount of all Hazardous Material, or any combination thereof, which were stored, treated, generated, discharged, released, used or transported to, at, upon, in or under the Premises during the previous year.

**Section 22.04 Disposal of Hazardous Material Prohibited.** Notwithstanding anything to the contrary herein, Tenant shall not cause or permit any Hazardous Material to be disposed of at, upon, in or under the Premises. In the event of the release, spill, discharge, leakage or disposal of any Hazardous Material at, upon, in or under the Premises during the Term, Tenant shall (i) notify Landlord of such release, spill, discharge, leakage or disposal; and (ii) promptly undertake, at its sole costs and expense, all actions as are necessary to return the Premises to the condition existing prior to such release, spill, discharge, leakage or disposal, provided, however, that Tenant shall first obtain Landlord approval of any such remedial actions.

**Section 22.05 Environmental Permits & Licenses.** Tenant shall obtain and comply with, at its sole cost and expense, any and all licenses, permits, registrations, governmental approvals and consents, and financial assurances (including, without limitation, insurance) required under Environmental Laws in connection with the Premises. Tenant shall provide a copy of any such licenses, permits, registrations, governmental approval and consents and forms of financial assurance to the Landlord.

**Section 22.06 Notice of Environmental Violation.** Tenant shall promptly send Landlord a copy of any notice of violation, complaint, citation, demand, claim, injury or correspondence issued or brought by any governmental entity or any person or entity regarding the Premises and which relates to environmental matters or the environmental condition of the Premises, including without limitation any violation or obligation arising under any Environmental Laws.

**Section 22.07 Environmental Indemnification.** Tenant shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Landlord) save and keep Landlord, its directors, officers, employees and agents, and Landlord's assigns and any successors to Landlord's interest in the chain of title of the Premises and their partners, directors, officers, employees and agents, harmless from and against any and all liability, demands, claims, actions, or causes of actions, assessments, losses, fines, penalties, costs (including, without limitation, any investigatory, removal or remedial costs), damages and expenses (including without limitation reasonable attorneys', consultants' and witness' fees), sustained or incurred as a result of or arising out of or by virtue of any of the following occurring as a result of Tenant's occupancy of and activity upon the Premises, or accrue during Tenant's occupancy of the Premises:

(a) Any generation, transportation, storage, treatment or disposal of any Hazardous Material which occurred or is alleged to have occurred (a) at the Premises during the Term, or (b) at any off-site location with regard to Hazardous Material generated, manufactured, sold, transported, handled, stored, treated, recycled, reclaimed or reused by Tenant or its agents at, upon or from the Premises during the Term;

(b) Any spills, discharges, leaks, emissions, injections, escapes, dumping,

releases or threatened releases of any Hazardous Material at or upon the Premises which resulted from or were caused by, or which are alleged to have resulted from, or to have been caused by, activities, events, conditions or occurrences during the Term;

(c) Any discharges to surface waters or groundwater which resulted from or were caused by, or which are alleged to have resulted from, or to have been caused by, activities, events, conditions or occurrences at or upon the Premises during the Term;

(d) Any air emissions which resulted from or were caused by, or which are alleged to have resulted from, or to have been caused by, activities, events, conditions or occurrences at or upon the Premises during the Term;

(e) The exposure of, and resulting consequences to any persons, including without limitation employee of Tenant, to any Hazardous Material generated, processed, handled, sold, stored, treated or used in the conduct of Tenant's business at the Premises or which is contained in or constituting a part of merchandise manufactured by Tenant at the Premises;

(f) Any violation of, or any obligation arising in connection with, any Environmental Law which results from or is caused by, or is alleged to have resulted from, or to have been caused by, activities, events, conditions or occurrences at or upon the Premises during the Term;

(g) Tenant's violation of any term of this Lease.

**Section 22.07.1 Reciprocal Indemnity.** If as a consequence of Landlord's own conduct upon the premises any of the above 22.07(a) through (g) occurs, then Landlord shall indemnify, defend, save and keep Tenant and its directors, officers, employees and agents harmless in the same manner as provided for in the first paragraph of this section.

**Section 22.08 Environmental Covenants Cumulative.** Tenant's covenants and undertakings in this Article 22, including, without limitation, Tenant's indemnification obligations, shall be in addition to any other obligations and liabilities Tenant may have to Landlord under this Lease, at common law or under any law, statute, ordinance or regulation. Tenant's indemnification obligations shall survive the expiration or earlier termination of this Lease.

## ARTICLE 23 - MISCELLANEOUS

**Section 23.01 Captions.** The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**Section 23.02 Default Rate.** Wherever reference is made in this Lease to the payment by Tenant of interest to Landlord at the "Default Rate", it shall mean a rate per annum equal to the sum of (a) the "Prime Rate" (hereinafter defined), and (b) 1%. The "Prime Rate" is the rate per annum from time to time announced or published in the First National Bank of Chicago as its "prime rate". It is expressly agreed that the term "Prime Rate" is not intended,



SCHEDULE A

Units 101, 102, 103, 104, 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 501, 502, 503, 504, 601, 602, 603 and 604, in the Old Town Square Unit One Condominium as delineated on the Plat of Survey of the following described parcel of real estate: All of Lot 11 in Old Town Square Subdivision, being a subdivision in the Northeast 1/4 of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, which Survey is attached as Exhibit E to the Declaration of Condominium, as amended, together with its undivided percentage interest in the Common Elements, all in Cook County, Illinois.

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## SCHEDULE B

### Legal Description for the OTS II Development

Units 101, 102, 103, 104, 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 501, 502, 503 & 504 in The Condominiums of Old Town Square II as delineated on a survey of the following described real estate:

That part of Lot 10 in Oscar Mayers Subdivision in the West Half of the Northeast Quarter and the East Half of the Northwest Quarter of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, described as follows: beginning at the Northwest corner of Lot 10 aforesaid; Thence South  $89^{\circ} 53' 34''$  East along the North line thereof 39.11 feet; Thence South  $00^{\circ} 02' 05''$  East 165.74 feet; Thence South  $89^{\circ} 53' 02''$  East 25.79 feet; Thence South  $00^{\circ} 02' 05''$  East 22.20 feet to the North line of the South 145.11 feet of said Lot 10; Thence North  $89^{\circ} 53' 02''$  West along the North line of the South 145.11 feet of Lot 10 aforesaid for a distance of 53.90 feet to a West line of Lot 10; Thence North  $06^{\circ} 01' 51''$  West along said West line 6.29 feet to a corner of Lot 10; Thence North  $89^{\circ} 51' 59''$  West along a South line of Lot 10 aforesaid 11.0 feet to a corner of Lot 10; Thence North  $00^{\circ} 02' 05''$  West along a West line of Lot 10 aforesaid 181.64 feet to the point of beginning, in Cook County, Illinois.

which Plat of Survey is attached as Exhibit D to the Declaration of Condominium recorded January 10, 2000 in the office of the Recorder of Deeds of Cook County, Illinois, as Document No.00024774.

Cook County Clerk's Office



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## Schedule C

That part of the following:

Parcel 1: Lot 207 in Bronson's Addition to Chicago, in the West Half of the Northeast Quarter of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, except from the above that part thereof described in quit claim deed document 0010041622, in Cook County, Illinois;

also,

Parcel 2: Sub Lots 1 to 4, Both inclusive, the West part of Sub-Lot 5, being 16 feet on the North line and 19.16 feet on the South line of said Sub-Lot 5 and Sub-Lots 10, 11 and 12 in Assessors Division of Lot 206 in Bronson's Addition to Chicago, aforesaid, except from the above that part thereof described in quit claim deed document 0010041622, in Cook County, Illinois;

also,

Parcel 3: Lot 7 (except the North 141.00 feet thereof) in Oscar Mayer's Resubdivision of various Lots and vacated alleys in various Subdivisions in the West Half of the Northeast Quarter and in the East Half of the Northwest Quarter of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, recorded November 21, 1980 as Document Number 25677341 and registered in the registrars office of Cook County, Illinois November 21, 1980 as Document LR3189994, in Cook County, Illinois;

also,

Parcel 4: That part of Scott Street lying South of Lot 7 in Oscar Mayer's Resubdivision aforesaid and lying North of Lot 207 in Bronson's Addition to Chicago aforesaid and lying North of Lots 10, 11 and 12 in Circuit Court Partition of Lot 206 in Bronson's Addition to Chicago aforesaid and lying East of a line drawn from the Northwest corner of Lot 207 aforesaid to the Southwest corner of Lot 7 aforesaid and lying West of a line drawn perpendicular to the South line of Scott Street through the Southeast corner of Lot 7 aforesaid, in Cook County, Illinois;

taken as a TRACT and described as follows:

commencing at the Northwest corner of said TRACT; thence North  $89^{\circ}59'58''$  East, along the North line thereof, 222.49 feet to the point of beginning; the next 8 courses being along the Northerly, Easterly and Southerly lines of said TRACT; thence North  $89^{\circ}59'58''$  East 67.25 feet; thence South  $00^{\circ}01'41''$  East, 89.51 feet; thence South  $00^{\circ}06'26''$  West, 65.76 feet; thence North  $89^{\circ}53'34''$  West, 6.74 feet; thence South  $00^{\circ}03'07''$  East, 181.65 feet; thence South  $89^{\circ}53'40''$  East, 4.84 feet; thence South  $01^{\circ}12'18''$  East, 151.43 feet; thence North  $89^{\circ}53'02''$  West, 68.62 feet; thence North  $00^{\circ}00'00''$  East, 488.16 feet to the point of beginning, in Cook County, Illinois.

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Schedule C

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Parcel 2: Sub Lots 1 to 4, Both inclusive, the West part of Sub-Lot 5, being 16 feet on the North line and 19.16 feet on the South line of said Sub-Lot 5 and Sub-Lots 10, 11 and 12 in Assessors Division of Lot 206 in Bronson's Addition to Chicago, aforesaid, except from the above that part thereof described in quit claim deed document 0010041622, in Cook County, Illinois;

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taken as a TRACT and described as follows:

commencing at the Northwest corner of said TRACT; thence North  $89^{\circ}59'58''$  East, along the North line thereof, 222.49 feet to the point of beginning; the next 8 courses being along the Northerly, Easterly and Southerly lines of said TRACT; thence North  $89^{\circ}59'58''$  East 67.25 feet; thence South  $00^{\circ}01'41''$  East, 89.51 feet; thence South  $00^{\circ}06'26''$  West, 65.76 feet; thence North  $89^{\circ}53'34''$  West, 6.74 feet; thence South  $00^{\circ}03'07''$  East, 181.65 feet; thence South  $89^{\circ}53'40''$  East, 4.84 feet; thence South  $01^{\circ}12'18''$  East, 151.43 feet; thence North  $89^{\circ}53'02''$  West, 68.62 feet; thence North  $00^{\circ}00'00''$  East, 488.16 feet to the point of beginning, in Cook County, Illinois.

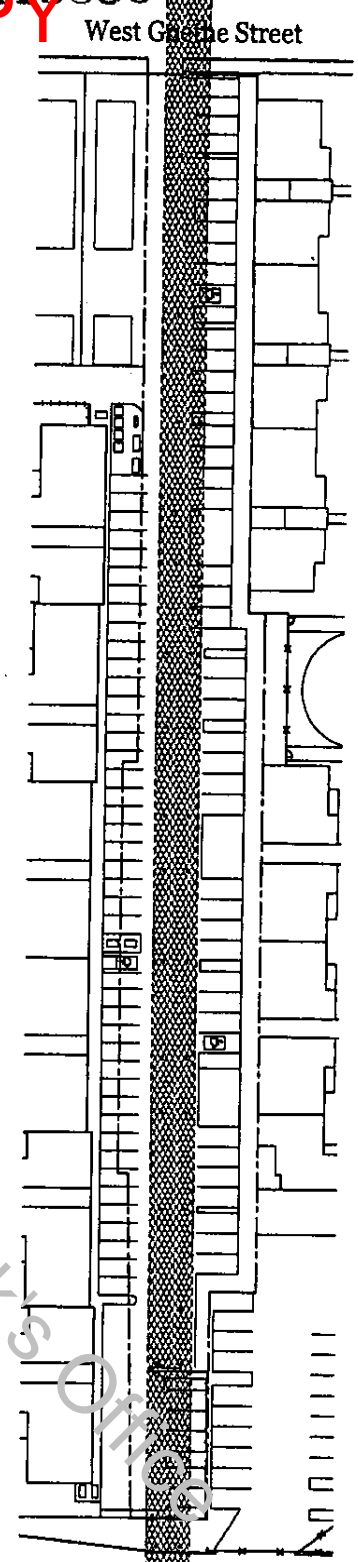
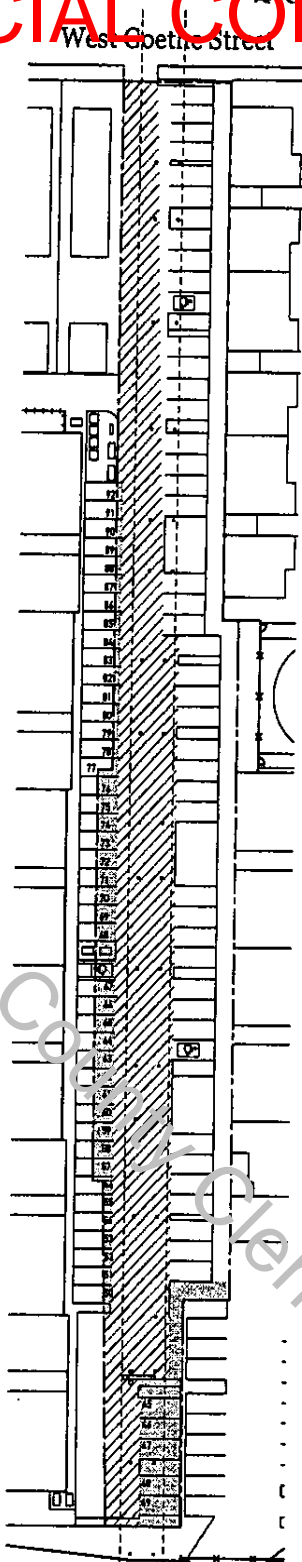
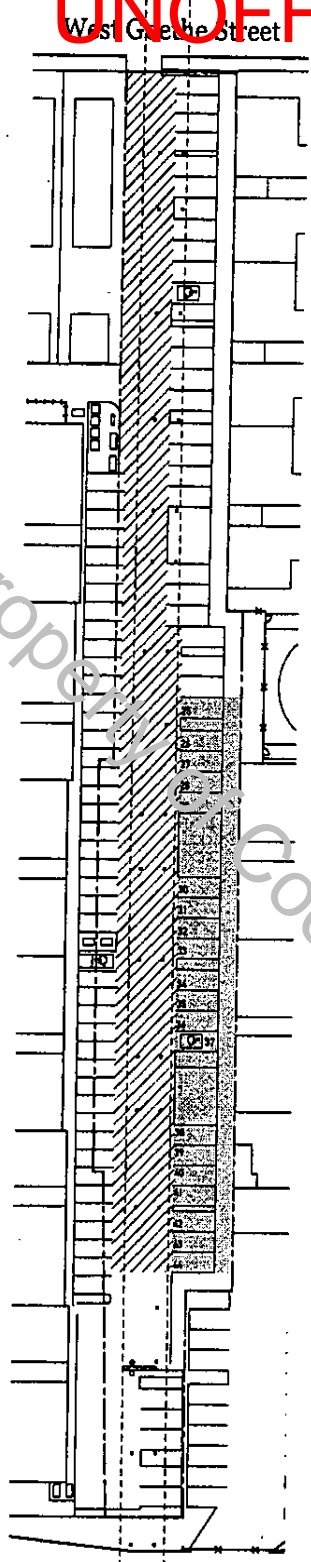
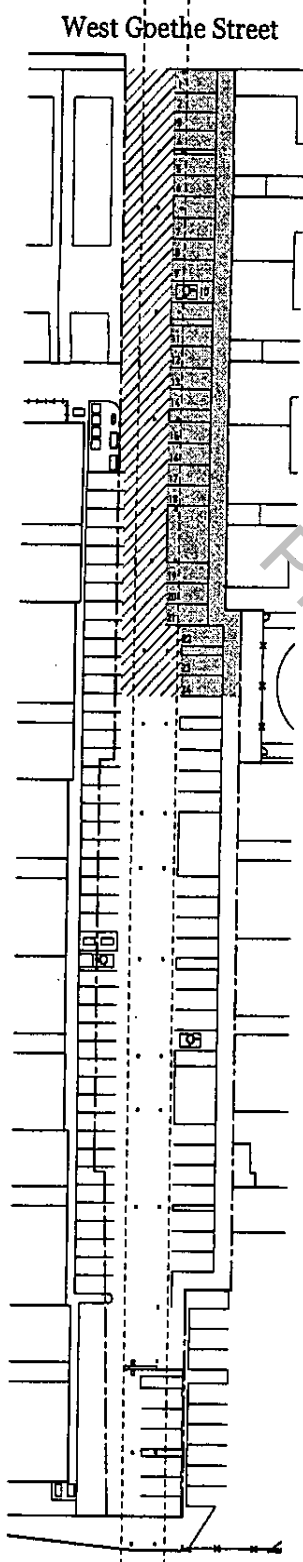
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Schedule D  
Designated Separate Space and Shared Space Plan

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	<u>Separate Space</u>	<u>Shared Space</u>
OTS I -	The exclusive right to use the area shaded on the first drawing (with all drawings counted from left to right) on Schedule D-1	The non-exclusive right to use the area cross-hatched on the first drawing on Schedule D-1
OTS II -	The exclusive right to use the area shaded on the second drawing on Schedule D-1	The non-exclusive right to use the area cross-hatched on the second drawing on Schedule D-1
OTVE	The exclusive right to use the area shaded on the third drawing on Schedule D-1	The non-exclusive right to use the area cross-hatched on the third drawing on Schedule D-1

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N. Division Ave.  
Old Town Square I

N. Division Ave.  
Old Town Square II




N. Division Ave.  
Old Town Village East

N. Division Ave.  
CTA Tracks



Schedule D-1

**Legend**

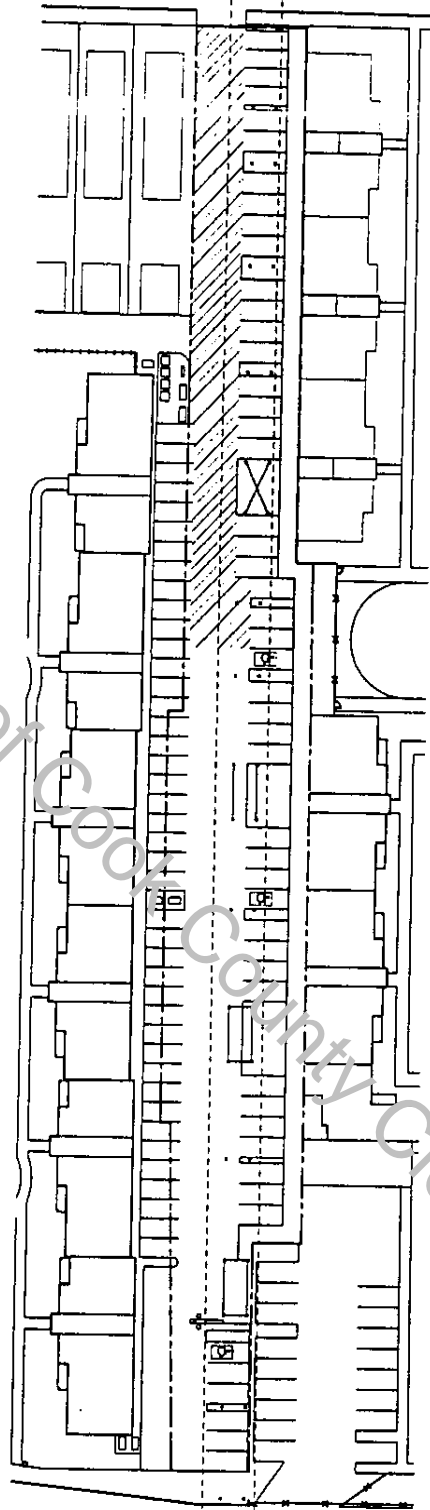
-  Shared Space
-  Separate Space
-  CTA overhead tracks

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West Goethe Street

20119836

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
N. Division Ave.

Old Town Square I

Schedule D-2



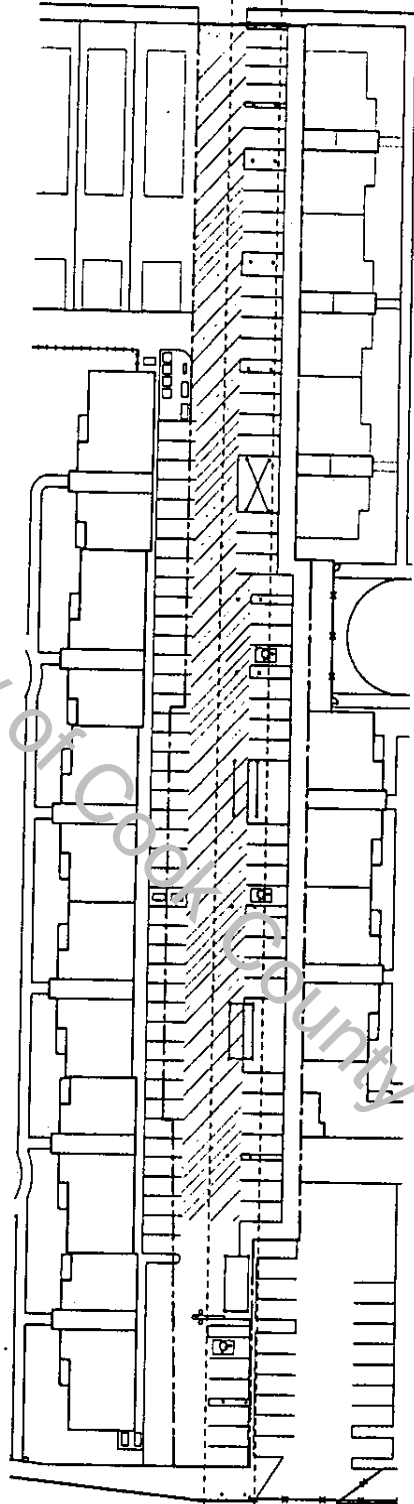
**Legend**

	Shared Space
	Separate Space

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West Goethe Street



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
N. Division Ave.

Old Town Square II

Schedule D-3



**Legend**

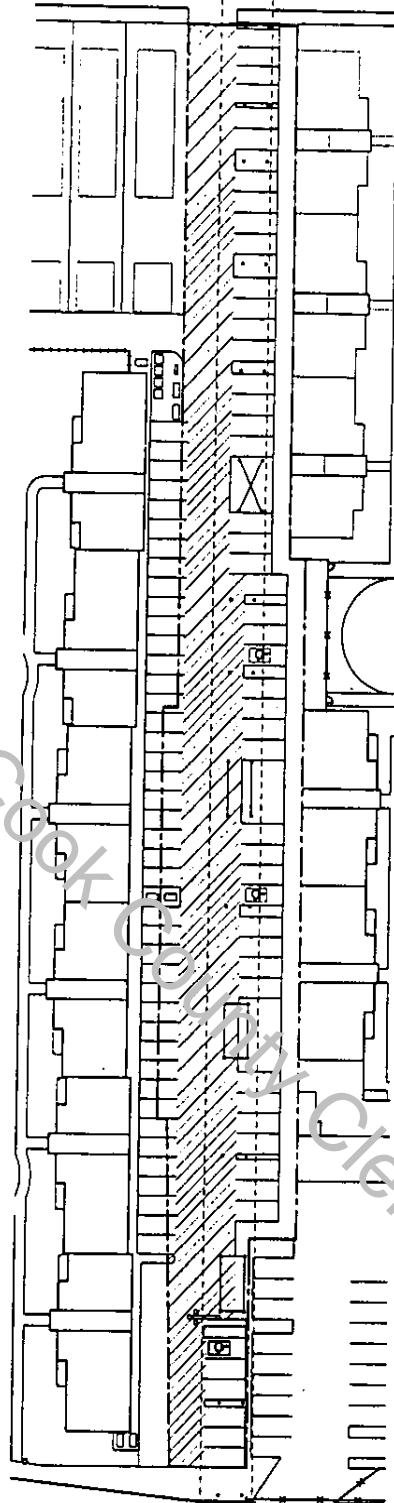
-  Shared Space
-  Separate Space

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West Goethe Street

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N. Division Ave.

Old Town Village East

Schedule D-4

### Legend



Shared Space



Separate Space

