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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MECHANIC'S LIEN SECTION

Peak Contracting and Consulting,)
Inc.,)

Plaintiff,)

v.)

No.

EOP Westbrook Corporate Center,)
LLC, aka BP - Westbrook Corporate)
Center, LLC; Tenant Development)
Corp.; Aetna Life Insurance)
Company; LaSalle Bank NA;)
Communication Contractors, Inc.;)
Just Rite Acoustics, Inc.; Broadband)
Office, Inc.; Jones Lang LaSalle)
Americas, Inc.; Open MRI Illinois)
Ventures, L.L.C.; Unknown Owners)
and Non Record Claimants)

Defendants.)

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Cook County Recorder

36.50

COMPLAINT FOR FORECLOSURE OF MECHANIC'S LIEN CLAIM AND FOR OTHER RELIEF

The Plaintiff, Peak Contracting and Consulting, Inc., (Peak)
by its attorneys, DI MONTE & LIZAK, for its Complaint states
as follows:

COUNT I

1. Peak was at all times pertinent hereto an Illinois
corporation engaged in the business of furnishing drywall and stud
work, materials and labor with its principal place of business

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located in Algonquin, Illinois, and duly authorized as such.

2. On and before September 22, 2000, the Defendant, EOP Westbrook Corporate Center, LLC, aka BP - Westbrook Corporate Center, LLC (Westbrook) was the record titleholder in fee simple of the real estate commonly referred to as 1 Westbrook Corporate Center, in the City of Westchester, County of Cook, State of Illinois ("SUBJECT PREMISES"), and also known by the legal description attached hereto as Exhibit A.

3. Tenant Development Corp.; Aetna Life Insurance Company; LaSalle Bank NA; Communication Contractors, Inc.; Just Rite Acoustics, Inc.; Broadband Office, Inc.; Jones Lang LaSalle Americas, Inc.; Open MRI Illinois Ventures, L.L.C.; have or claim to have an interest in the SUBJECT PREMISES.

4. There are or may be persons other than those whose names are specifically mentioned herein who may have or claim to have an interest in the subject matter of this suit or the SUBJECT PREMISES herein described. The name or names of such persons and the place or places of their residence are unknown to Peak and cannot, upon diligent inquiry, be found or ascertained, and, therefore, Peak makes all such persons defendants hereto under the name, style and description of UNKNOWN OWNERS and NON RECORD CLAIMANTS.

5. On a date unknown to Peak, Westbrook entered into an

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agreement with Tenant Development Corp. (Tenant) to construct certain improvements at the SUBJECT PREMISES. Whether said agreement was reduced to writing is not known to Peak.

6. On or about September 22, 2000, Peak entered into a written agreement with Tenant, duly authorized or knowingly permitted by Westbrook to make such agreement, by the terms of which Peak agreed to furnish drywall and stud work, materials and labor for use in the construction of improvements at the SUBJECT PREMISES and for which Tenant agreed to pay the sum of Thirty One Thousand Five Hundred Seventy Dollars (\$31,570.00). A copy of the written agreement is attached hereto and incorporated herein as Exhibit B.

7. At the special instance and request of Tenant, on its own behalf and on behalf of Westbrook, Peak furnished extra and additional drywall and stud work, materials and labor ("EXTRAS") for the SUBJECT PREMISES, the price agreed upon of the fair, reasonable value thereof, being Two Thousand Two Hundred and Fourteen Dollars (\$2,214.00).

8. In pursuance of the aforesaid agreement, Peak furnished drywall and stud work, materials and labor and EXTRAS to the SUBJECT PREMISES to the value of Thirty Three Thousand Seven Hundred Eighty Four Dollars (\$33,784.00). All of the aforesaid

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drywall and stud work, materials and labor and EXTRAS were furnished in compliance with all of the terms and conditions of the aforesaid agreement.

9. Peak completed the furnishing of the aforesaid drywall and stud work, materials and labor and EXTRAS on or about December 15, 2000.

10. All of the aforesaid drywall and stud work, materials and labor and EXTRAS furnished by Peak were delivered to and accepted for the SUBJECT PREMISES by Westbrook and Tenant and were used and employed in the improvement of the SUBJECT PREMISES and are an integral part thereof. The aforesaid drywall and stud work, materials and labor and EXTRAS constitute a permanent and valuable improvement of the SUBJECT PREMISES enhancing the value thereof to the extent of or in excess of Thirty Three Thousand Seven Hundred Eighty Four Dollars (\$33,784.00).

11. Peak has received as payment the sum of Nine Thousand Dollars (\$9,000.00), leaving due, unpaid, and owing the balance of Twenty Four Thousand Seven Hundred Eighty Four Dollars (\$24,784.00) together with interest as provided by 770 I.L.C.S. 60/1-60/39 from the 15th day of December, 2000.

12. By reason of the non-payment of the aforesaid balance, Peak is entitled to and does claim a mechanic's lien upon the

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SUBJECT PREMISES for Twenty Four Thousand Seven Hundred Eighty Four Dollars (\$24,784.00) and interest as provided by 770 I.L.C.S. 60/1-60/39 from the 15th day of December, 2000.

13. On or about March 15, 2001, Peak caused to be served its notice and claim for lien, a copy of which is attached hereto as Exhibit C. On or about March 16, 2001, Peak caused to be served its amended notice and claim for lien, correcting the amount claimed, a copy of which is attached hereto as Exhibit D.

14. On or about the 12th day of April, 2001, Peak caused to be recorded in the Office of the Recorder of Deeds, Cook County, Illinois as Document No.0010294244 a Subcontractor's Notice and Claim for Lien, a copy of which is attached hereto as Exhibit E.

15. Peak's mechanic's lien claim against the SUBJECT PREMISES is a first and prior lien on the same and a first and prior lien to the liens of any and all other encumbrances existing against the SUBJECT PREMISES.

WHEREFORE, Peak prays for the following relief:

A. That an accounting be taken as to the amount due Peak, including interest and costs and that Defendants be decreed to pay the same within a day certain.

B. That Peak be decreed to be entitled to a mechanic's lien against the SUBJECT PREMISES for the amount found to be due and

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that such lien shall be a first and prior lien on the SUBJECT PREMISES.

C. That a receiver be appointed for the SUBJECT PREMISES and that said receiver be given all the usual and customary powers given receivers of realty.

D. That in case of non-payment of the amount found to be due Peak, the SUBJECT PREMISES be sold to satisfy such amount, interest and costs and that a Certificate of Sale may issue to the purchaser at such sale.

E. That in case of such sale, and failure to redeem therefrom pursuant to law, the Defendants and all persons claiming through or under them be forever barred and foreclosed of all right or equity of redemption in the SUBJECT PREMISES, and that a deed may issue to the then holder of said Certificate of Sale and that he may be let into possession and a Writ of Assistance for such purpose be issued as necessary.

F. That in case such sale does not produce enough to pay the claim of Peak, it be awarded a money decree or a judgment at common law against the Defendant, Tenant, and all the defendant owners found to be personally liable for a deficiency and that execution issue thereon.

G. That Peak may have such other relief as to this Court may

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seem just and equitable.

COUNT II

1-7. Peak adopts and realleges Paragraphs 1, 2, 5, 6, 7, 8 and 9 of Count I above as Paragraphs 1 through 7 of Count II.

8. Peak has received as payment the sum of Nine Thousand Dollars (\$9,000.00), leaving due and unpaid the balance of Twenty Four Thousand Seven Hundred Eighty Four Dollars (\$24,784.00) together with interest at the statutory rate from December 15, 2000.

9. Peak has made repeated demands upon Tenant to pay said amount, but Tenant has refused and continues to refuse to pay the amount due and owing.

WHEREFORE, Peak demands judgment in its favor against Tenant in the amount of Twenty Four Thousand Seven Hundred Eighty Four Dollars (\$24,784.00), together with interest at the statutory rate from the 15th day of December, 2000 and the costs of this action.

DI MONTE & LIZAK

By: _____
Richard W. Laubenstein

02741
Linscott R. Hanson
Richard W. Laubenstein
DI MONTE & LIZAK
216 West Higgins Road
Park Ridge, Illinois 60068
(847) 698-9600

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UNOFFICIAL COPY CHICAGO TITLE INSURANCE COMPANY

400 S. JEFFERSON, CHICAGO, IL 60607

TRACT INDEX SEARCH

Order No.: 1401 S9548267 SP

Additional Tax Numbers:

Legal Description:

THAT PART OF LOT 1 IN WESTBROOK CORPORATE CENTER P.U.D., BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 50 MINUTES 55 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1, 1,443.755 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 14 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, 1,270.04 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, THENCE SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF CERMAK ROAD, 235.746 FEET TO THE PLACE OF BEGINNING OF THE TRACT TO BE DESCRIBED HEREIN; THENCE CONTINUING SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1 AND THE SOUTH LINE OF SAID CERMAK ROAD 592.578 FEET TO A NORTHERLY CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREES 19 MINUTES 40 SECONDS EAST ALONG AN EAST LINE OF SAID LOT 1, 249.18 FEET TO A NORTHERLY CORNER OF SAID LOT 1; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 26.16 FEET; THENCE SOUTH 30 DEGREES 04 MINUTES 58 SECONDS WEST, 280.95 FEET; THENCE NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST 134.15 FEET; THENCE SOUTH 60 DEGREES 04 MINUTES 58 SECONDS WEST, 141.66 FEET, THENCE NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST, 170.83 FEET, THENCE NORTH 00 DEGREES 04 MINUTES 58 SECONDS EAST, 563.35 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Permanent Tax Index Number: 15-30-200-042-0000

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EXHIBIT A

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STANDARD AGREEMENT
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TENANT DEVELOPMENT CORPORATION

1825 Hicks Road, Rolling Meadows, Illinois 60008 (847)991-8600 FAX(847)991-2048

(Subcontractor) Peak Contracting & Consulting 525 Eagle Ridge Road Algonquin, IL 60102	Date of Issue: September 22, 2000	AGREEMENT NUMBER: 918-00 Show this number on all packages, invoices and references to this order
	By: Michael S. Sneddon <i>MS</i>	
Attn: Mr. Les Rebbæk	PROJECT LOCATION: Broadband Office Chicago One Westbrook Corporate Center, Suite 410 Westchester, Illinois 60154	
Phone: 847-854-9070	IMPORTANT: Delivery of this order must be accomplished by: November 2, 2000	

OWNER: Equity Office Properties

THIS AGREEMENT made and entered into by and between the Subcontractor named above and Tenant Development Corporation herein known as Contractor, the day and year hereinafter written WITNESSETH that for the consideration to be paid by the Contractor as hereinafter set forth and subject to the terms and conditions of this Agreement and Rider A & B attached hereto and made a part hereof; the Subcontractor agrees to furnish, supply and deliver and/or install the goods and/or the services described below in complete accordance with the governing contract documents including any addenda or amendments thereto, for the Contractor's use and/or incorporation in the above captioned project. To wit:

Broadband Office Chicago

The Subcontractor shall furnish all necessary management, supervision, labor, materials, delivery and unloading, equipment, layout, tools, supplies, plant, hoisting, scaffolding, appurtenances, sundries, shop drawings, engineering services, testing, applicable taxes, insurances, escalation, overhead and profit and any other act or thing required to diligently and fully perform and complete this contract described as follows:

Furnish all drywall & stud work required as described per the architectural plan set by Greenwell Goetz Architects sheets A-1, A2-A through A2-f, 05-A3 through 05-A10, M-101 through M-401, FP-201, FP-301, P-201, P-301, P-302, E-101, E-301 and E-302, including but not limited to the following:

1. Provide Insurance Certificates to Tenant Development before starting work.
2. Installation of door frames will be an add to this contract of \$810.00.
3. No wood backing is included in this contract, but if required Peak Contracting & Consulting will furnish and install for \$970.00.
4. Cleanup all debris to Tenant Development furnished roll-off box located on site.

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IN CONSIDERATION WHEREOF the Contractor agrees to pay the Subcontractor the sum of: Thirty One Thousand, Five Hundred Seventy and 00/100 Dollars (\$ --- 31,570.00 ---)

In current funds, and to make such payment(s) toward this amount according to the terms attached hereto, subject to a 10 % retention.

IN WITNESS WHEREOF the parties hereto have been executed this Agreement this 22nd day of September, 2000.

SUBCONTRACTOR: Peak Contracting & Consulting

By: _____

Title: _____

CONTRACTOR: Tenant Development Corp.

By: *T. Christensen*

T. Christensen

Title: President

Subcontractor to sign, date and return ONE COPY to:
TENANT DEVELOPMENT CORPORATION

EXHIBIT B

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RIDER "A"
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 TERMS AND CONDITIONS COVERING THIS STANDARD AGREEMENT

1. **APPLICABLE TERMS, EXECUTION, BENEFITS, WAIVER, MODIFICATION AND ASSIGNMENTS** This Standard Agreement constitutes the entire agreement between the parties unless otherwise noted. Acknowledgment or acceptance of this Standard Agreement, or shipment or performance of any part thereof by Subcontractor shall constitute acceptance by Subcontractor of all the terms hereof, without reservation. **ADDITIONAL OR CONTRARY TERMS AND EXCEPTIONS TO OR INCONSISTENCIES WITH ANY PROVISION HEREOF ARE REJECTED AND SHALL NOT BE A PART OF THE CONTRACT BETWEEN THE PARTIES.** The terms hereof shall inure to and be binding upon both Contractor and Subcontractor and their respective heirs, legal representatives, successors and assigns, provided however, this Standard Agreement shall not be valid unless signed by a duly authorized agent of Contractor and no part may be modified and no breach waived except by an instrument in writing signed by a duly authorized agent of the Contractor and provided, further, no part hereof may be sublet or assigned by Subcontractor by operation of law or otherwise (except where this restriction is rendered ineffective by Federal Statute) without Contractor's prior written consent. The authorization limits are provided on the front of this document.
2. Time is of the essence and the Subcontractor agrees to keep himself thoroughly informed as to the overall progress of the project, to commence and to prosecute the work undertaken hereunder in a prompt and diligent manner whenever such work, or any part of it, becomes available, or at such time or times as the Contractor may direct, so as to promote the general progress of the entire construction project; and Subcontractor shall not delay or otherwise interfere with or hinder the work or progress of the Contractor or any Subcontractor. Any materials, services, supplies, tools, machines, equipment or plant to be furnished or used by Subcontractor hereunder shall be furnished in sufficient time to enable the Subcontractor and/or any other party requiring same, to perform and complete his or their work within the time or times established as herein provided. Upon Contractor's request, Subcontractor shall furnish such evidence as the Contractor may require relating the Subcontractor's ability to fully perform this Subcontract in the manner and within the time established as herein provided.
3. If the Subcontractor should neglect to prosecute the work properly or fail to perform any provision of this agreement, the Contractor, after twenty-four(24) hours written notice to the Subcontractor, may, without prejudice to any other remedy the Contractor may have, make good such deficiencies and deduct the cost thereof from the payment then or thereafter due the Subcontractor.
4. **INSPECTION**All work or services ordered shall be subject to inspection and acceptance as to quality, quantity and delivery by Contractor. Any work or services rejected shall be corrected at Subcontractor's expense as authorized by Contractor.
5. **PROGRESS PAYMENTS:** The Contractor shall make monthly payments to the Subcontractor on account of the contract price to the extent of Subcontractor's interest in the amounts allowed thereon and paid to the Contractor by the Owner, less the aggregate of previous payments, within 10 days of receipt thereof from the Owner, subject to the following conditions:
 - A. The Subcontractor's rate of progress and general performance are in keeping with the amounts requested and are satisfactory to the contractor.
 - B. Partial payments to the Subcontractor will be made in an amount equal to 90 percent of the estimated value of work and materials incorporated in the construction.
 - C. A monthly Payment Application from the Subcontractor shall be submitted to the Contractor not later than the twenty-fifth (25th) day of each month and shall include all supporting invoices, waivers and other documentation as may be required by the Contract Documents and stipulated within this Rider.
 - D. The monthly Payment Application from the Subcontractor shall **NOT** include any amounts for materials or equipment which have not yet been incorporated into the completed Work, whether or not such materials or equipment are stored either onsite or offsite, unless such payments have been previously approved by Contractor, and Subcontractor has furnished Contractor with bills of sale, warehouse receipts, insurance documents, invoices and other information deemed necessary by Contractor in connection with such payments.
 - E. The Subcontractor's monthly Payment Application shall be submitted to the Contractor on a Sworn Statement which complies with the provisions of the Illinois Mechanics Lien law and contains the following minimum information:
 - (1) The name, address and trade description of each sub-subcontractor or material supplier who will furnish the Subcontractor with labor, material or equipment having an aggregate value in excess of One Thousand Dollars (\$1,000.00).
 - (2) The aggregate amount of each such sub-subcontract or material supply agreement adjusted monthly to reflect any change orders, the amount of any previous payments, the amount of the payment requested in the current month, the amount of any pay retention and the balance to become due to each sub-subcontractor or supplier.
 - F. In submitting each monthly payment Application, the Subcontractor shall represent and warrant to the Contractor and Owner that:
 - (1) The Sworn Statement accurately reflects the total cost of completing the Work.
 - (2) There are no contracts, supply agreements or change orders pertaining to the Project which are not reflected on the Sworn Statement.
 - (3) The amount of each contract or supply agreement, the amount of any retained payments, and the balance to become due is accurately portrayed on the Sworn Statement.
 - (4) The amounts shown as "previously paid" to individual sub-subcontractors and suppliers have actually been paid.
 - G. Each monthly Payment Application shall be accompanied by Illinois Mechanic Lien waivers reflecting the amounts of the contracts and payments shown on the Subcontractor's Sworn Statement. If applicable, Mechanic Lien Waivers for all sub-subcontractors and material suppliers shall also accompany each application. If certain waivers from sub-subcontractors, and material suppliers shall also accompany each application, Subcontractor agrees to provide an Indemnification Agreement, Bond or other documents or escrow which may be required by Owner's title insurance company or lender.
 - H. The Subcontractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation into the construction or upon receipt of payment by the Subcontractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the SubContractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is imposed by the Subcontractor or such other person.

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3. If any sub-subcontractor, supplier or materialman files a lien against the Owner's property, Subcontractor shall take all steps which are necessary to remove the encumbrance of such lien from the Owner's property within twenty five (25) days. Except for liens which arise as a result of Owner's failure to make payments when due hereunder, failure by the Subcontractor to remove encumbrance of the lien within said 25 day period shall constitute a default under the Contract by the Subcontractor.

If the offending condition is not remedied by the Subcontractor within that period of time, the Contractor may, at his option, proceed to make application of the withheld funds in whatever manner the Contractor may, in his sole discretion, determine as being in the best interest of himself and/or the Owner. If the Contractor is compelled to expend monies in defending, discharging or otherwise disposing of any claim or lien or their demand in excess of retained or withheld sums, the Subcontractor shall, upon demand, reimburse the Contractor for the excess amount so expended, including reasonable attorney fees and costs incurred by Contractor incident to such defense, discharge or disposition, and for incident to Contractor's collection from Subcontractor of such excess.

The Contractor may deduct from amounts due or to become due to the Subcontractor pursuant to this Subcontract, any sums due or to become due to the Contractor from the Subcontractor whether or not said sums are in any way related to this Subcontract or project. Contractor may apply such deducted funds to any account, related or unrelated to this Subcontract or project, wherein the obligations of the Subcontractor have not been discharged as determined by the Contractor, and wherein the Contractor's interests are directly or indirectly involved.

6. FINAL PAYMENT

A. Upon substantial completion of the Work in accordance with all of the Contract Documents, the Subcontractor shall notify the Contractor in writing and the Contractor shall inspect the Work within twenty one (21) days. If during such inspection, the Contractor, or any duly authorized representative shall determine that the Work has not been performed in accordance with the Contract Documents, the Contractor shall so notify the Subcontractor in writing, specifying the items of work not satisfactorily completed (hereinafter referred to as a "Punch List"). Upon the completion of a Punch List, the Contractor shall disburse the remaining unpaid Contract Price to the Subcontractor to the extent of Subcontractor's interest in the amounts allowed thereon and paid to the Contractor by the Owner, except an amount equal to 200% of the Contractor's estimate of the value of any uncompleted Punch List work. The Subcontractor agrees to complete all Punch List work in accordance with the Contract Documents within thirty (30) days following receipt of the Punch List, and the Final Payment shall not be due until all work is complete.

B. Neither the Final Payment nor any remaining retainage shall become due until the Subcontractor has:

- (1) Provided the Contractor with a Subcontractor's Sworn Statement setting forth the total amount of all subcontracts, purchase orders or other obligations which have arisen during the course of constructing the Project, together with the name and address of all sub-Subcontractors and suppliers, amounts previously paid and the final amount due to each of them.
- (2) Provided the Contractor with a Chicago Title Insurance Company form of Affidavit of Title stating that all payrolls, bills for material and equipment, and other indebtedness connected with the Work or which might attach to the Owner's property, have been paid or otherwise satisfied and that there are no recorded or unrecorded leases, financing instruments or encumbrances relating to the work except as disclosed on the Subcontractor's final Sworn Statement.
- (3) Provided the Contractor with a signed and notarized Chicago Title Insurance Company Form of final Waiver of Mechanic's Lien claims from each sub-subcontractor and supplier that has furnished labor, material or equipment related to the Project, including a final waiver of lien from the Subcontractor. If any sub-subcontractor, supplier or materialman refuses to furnish a release or waiver of lien, the Subcontractor may furnish a bond and a title indemnity agreement satisfactory to the Owner and Owner's lender and Title Insurance company to indemnify them against any such potential lien. If any lien claim remains unsatisfied after twenty-five (25) days after all payments are made, the Subcontractor shall refund through the Contractor to the Owner all monies that the Owner may be compelled to pay in discharging such lien, including all incidental costs and reasonable attorney's fees.
- (4) Provided the Contractor with such other receipts, bills of sale or other documents which the Owner may reasonably require to assure itself that all obligations related to the Work have been satisfied and that the Owner will receive good and merchantable title to all parts of the Work, free from all liens and encumbrances.

C. Upon the full and satisfactory completion of all Work, and the satisfactory completion of all requirements of the Contract Documents, the Owner shall disburse one hundred percent (100%) of the Contract Price to Subcontractor through the Contractor (as such Contract Price may have been adjusted from time to time by approved change orders), less such amounts previously paid or as the Owner or Contractor determines are necessary to complete any unfinished work or to settle any claims.

D. The acceptance of final payment shall constitute a waiver of all claims by the Subcontractor against the Owner or any party having an interest in Owner's property except those previously made in writing and identified by the Subcontractor as unsettled at the time of the final Application for Payment.

7. WARRANTIES: Subcontractor expressly warrants that all of the work and services shall be:

- A. In exact accordance with any description or specification thereof and with the terms hereof; and
- B. shall be free from defects in material and workmanship for a period of one(1) year from delivery and/or installation and shall be merchantable and shall be fit for the purpose intended; and
- C. shall be delivered free and clear of all claims, liens and encumbrances; and
- D. shall be manufactured, packaged, sold, produced, and performed in strict compliance with all applicable federal, state and local laws, statutes, regulations and ordinances; and

Subcontractor further warrants that in the performance of this order, Subcontractor shall comply with the Federal Standards Act of 1938, as amended and agreed upon request, to furnish Owner with a certificate to such effect and in such form as Owner may from time to time require.

These express warranties shall survive delivery and shall not be deemed waived either by reason of Owners acceptance of said work or services or by payment or them. Any deviations from the requirements set forth herein must be approved in writing by an officer of the Owner. NO DISCLAIMER OF WARRANTY OR LIMITATION OF WARRANTY OR LIABILITY OR EXCLUSION OF TYPES OF DAMAGES FOR BREACH OF WARRANTY SHALL HAVE ANY EFFECT WHATSOEVER, NOR SHALL SUCH DISCLAIMER OR LIMITATION OF WARRANTY OR LIABILITY OR EXCLUSIONS OF TYPES OF DAMAGES BE CONSIDERED A PART OF THE CONTRACT.

TAXES: All applicable taxes shall be Subcontractors obligation and Subcontractor shall indemnify Contractor and Owner against all liability for such taxes.

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9. **SETOFFS:** Any amounts due from Owner to Subcontractor or due to Contractor under this Standard Agreement may, at Owner's election be applied by Contractor to payment of any amounts owing from the Subcontractor to Contractor or to any business entity directly or indirectly owned or controlled by the direct or indirect owners of Contractor.

- 10. **INDEMNITY:** Subcontractor shall protect, hold harmless and indemnify Contractor and Owner and its employees, agents and customers at Subcontractor's expense, from all claims, suits, damages, expenses, (including attorney's fees) and liabilities in any way arising out of:
 - A. any infringement (actual or claimed) of any patents, copyrights or tradenames, by any of the commodities, work or services covered by this Agreement, or by their manufacture, sale or use.
 - B. death or injury to persons or damage to property in any way resulting from any defects in material or workmanship in any of said commodities or arising out of performance or furnishing of any of said work or services, or
 - C. failure of Subcontractor in any way to comply with any applicable federal, state or local laws, regulations or orders (with all of which Subcontractor agrees to fully comply) or
 - D. any breach of representation, covenant, condition or warranty arising out of or made pursuant to this Agreement whether express, implied or by operation of law; or
 - E. any delay in Subcontractors delivery; or
 - F. the negligence of Subcontractor or those employed by Subcontractor or Subcontractor's agents or servants.

In addition, if there are claims, suits, damages, expenses (including attorney's fees) or liabilities indemnified against when any payment to Subcontractor would otherwise be due, such payment may, in Contractor's sole discretion, be deferred until such claims, suits, damages, expenses (including attorney's fees) and liabilities indemnified against are adjusted, or suitable special indemnity acceptable to the Contractor is provided by the Subcontractor.

11. **DEFAULT AND REMEDY:** If Subcontractor breaches any provision hereof or defaults in any of its obligations hereunder or becomes insolvent or makes an assignment for benefit of creditors or suffers a receiver to be appointed for any of Seller's assets, Contractor may, in addition to all other remedies which it may have, cancel this Order. Nothing herein contained shall be construed so as to render this clause unenforceable or ineffective. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law.

12. **INSURANCE:** Subcontractor shall carry its own expenses, for the benefit of Contractor, Commercial General Liability Insurance with combined limits for bodily injury, death and property damage of \$1,000,000.00 Each Occurrence / \$2,000,000.00 General Aggregate including Contractual Liability Insurance insuring Subcontractor's obligation to indemnify, defend and hold Contractor harmless from and against all liabilities for bodily injury including death, personal injury liability and property damage. All insurance shall be carried in a company or companies approved by Contractor with forms of insurance policies approved by Contractor. Subcontractor shall name as Additional Insureds on their insurance the Owner and Contractor as well as those required by this contract at no additional cost. Subcontractor shall furnish Contractor prior to commencement of any work with Certificate of Insurance evidencing such insurance and requiring 30 days notice to Contractor of any termination or cancellation of such insurance and if the Subcontractor fails to carry any insurance as Provided for herein, Contractor may, but is not compelled to, procure the said insurance and charge the cost thereof to Subcontractor.

13. **APPLICABLE LAW AND HEADINGS:** This Standard Agreement shall be governed by and construed in accordance with the law of the State of Illinois. The headings of the various paragraphs of these terms and conditions are for the convenience of the parties and shall not be deemed to be part of the terms themselves, or a part of the agreement between the Parties. The sole purpose of the headings is to aid the parties in locating various terms and clauses within the document.

RIDER "B"

Special Supplementary General Conditions

- 1. The Subcontractor shall restrict the delivery of materials, equipment or other construction supplies or apparatus to the building's truck dock, freight vestibule and freight elevator. Materials, equipment and supplies may be delivered by crane to the upper floors at the Subcontractor's option upon prior notice to the Contractor; however, landscaped areas which are completed adjacent to the building may not be used as access ramps to the building. Any damage to the landscape, lawn sprinklers, electrical wiring or fixtures, paving, concrete curbs, walks and drives shall be repaired; to the Owner's satisfaction in the time period established by the Owner and at the Subcontractor's expense.
- 2. The Contractor will provide roll-off debris containers to be located in the truck dock area at the location approved by the Owner. The Subcontractor will provide daily clean up to reduce potential safety and fire hazards. All construction debris containers or other stockpiled construction materials shall be located, as approved by the Contractor, so as not to interfere with the daily operations of either the tenants or the Owner in the building.
- 3. All Subcontractors shall restrict all construction traffic to the freight elevator and to unfinished service areas and stairways.
- 4. The Contractor will protect the freight elevator entry jams at every floor where their construction activity exists. The Contractor will also protect the cab floor, walls and elevator front surfaces. This protection notwithstanding, any damage to the elevators shall be repaired or replaced to the Owner's satisfaction in the time period established by the Owner. The cost of these repairs will be divided equally among the project's various Contractors and Subcontractors.
- 5. All workmen under the direction of the Subcontractor shall be restricted to using only those washrooms approved by the Owner. The Contractor shall install such coverings as may be necessary to protect the floors in these washrooms.
- 6. Automobile and truck parking areas for the construction workers shall be limited to those areas approved by the Owner. A plan indicating approved parking areas shall be posted in the Contractor's office when required.
- 7. Access to the site and to the building shall be as approved by the Owner.
- 8. The Subcontractor will limit his operations to only those areas designated by the Contractor for storage, shop area, etc.
- 9. Graffiti of any type will not be allowed. Personnel involved in such activity if identified will be removed from the site at the Contractor's request. Repairs will be assessed to their corresponding employer.

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- 10. The HVAC contractor shall wrap and otherwise protect all controls and thermostats from construction dust and debris. The HVAC contractor shall also install an appropriate filter over the opening or the return air shaft on each floor where construction will occur to prevent migration of airborne dust and debris into said completed areas.
- 11. All completed tenant areas, core areas and plenum spaces, adjacent or otherwise, shall be protected by the Contractor to prevent infiltration of construction dust and debris into said completed areas.
- 12. All smoke detectors in new construction areas shall be wrapped in plastic during construction by the electrical contractor. Upon the completion of the work, the plastic covers shall be removed by the Subcontractor.
- 13. The electric subcontractor shall provide for the separate metering of all electrical power and lighting through the new tenant's electric service. Panels and meter sockets shall be installed at project start-up. The Subcontractors shall not use electrical power which is separately metered to existing tenants or to the Owner.
- 14. The Contractor or the Electrical Subcontractor shall turn off all interior lights in construction areas at the end of each day (except for safety lighting required by OSHA or applicable building codes or requirements).
- 15. Prior to the start of construction, the Subcontractor will inspect the premises and inform the Contractor in writing of any building components or furnishings which are damaged.
- 16. Prior to the start of construction, the Subcontractor will inspect the premises and advise the Contractor in writing of any building components which may be in conflict with the intent of the new space plans scheduled for construction.
- 17. If it is necessary to shut down water, mechanical equipment, fire alarms or other operating systems during the course of construction, the Subcontractor shall provide the Contractor with at least 48 hours advance notice. If the operations of any existing building tenant will not allow the shut down of any building systems during normal working hours, such work shall be performed by the Subcontractor after regular working hours or on weekends at no additional cost.
- 18. The Subcontractor shall be responsible for all damage which results from his work. The Subcontractor shall repair or replace all damaged items to the satisfaction of the Contractor in the time period established by the Owner and at the Subcontractor's sole expense. This provision shall apply to new construction work as well as to damage to existing improvements.
- 19. At the completion of the work, and as a condition for final payment, the HVAC contractor shall test and balance the heating, ventilating and air-conditioning system in each new space and submit a written report to the Contractor. All testing and balancing shall be performed in accordance with the standards of the Association of Air Balancing Councils (AABC) and the Contract Specifications.
- 20. Construction materials and equipment shall be distributed within the work space so that the weight of such items does not exceed the 50 lb. per square foot live load capacity of the floors.
- 21. The Contractor shall supervise the transport of men, equipment and building supplies in the freight elevator so as not to exceed the rated lifting capacity of the elevator.
- 22. The Contractor shall not allow its employees or the employees of any of its Subcontractors to play radios, tape players, or similar devices in a loud or obnoxious manner which may be bothersome to other tradesmen or tenants. At the request of the Contractor, all radios, tape players or other devices shall be turned off, if, in the sole judgement of the Contractor, such devices are causing an unacceptable level of noise or distraction.

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ADDITIONAL INSUREDS:

- 1. Tenant Development Corporation (General Contractor).
- 2. EOP-Westbrook Corporate Center, L.L.C., a Delaware Limited Liability Company.
- 3. Equity Office Properties Trust, a Maryland Real Estate Investment Trust.
- 4. EOP Operating Limited Partnership, a Delaware Limited Partnership.
- 5. Equity Office Properties of Illinois, L.L.C., a Delaware Limited Liability Company and their respective Agents, Members, Partners, Employees and Mortgagees.

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NOTICE OF CLAIM OF SUBCONTRACTOR

TO: BP-WESTBROOK CORP. CENTER LLC
50 Rowes Wharf
Boston, MA 02110
(Owner)

LASALLE BANK, N.A.
135 S. LaSalle St.
Chicago, IL 60603
(Mortgagee)

AETNA LIFE INS. CO.
151 Farmington Ave.
Hartford, CT 06156
(Mortgagee)

You are hereby notified that the undersigned, Peak Contracting and Consulting, Inc., 525 Eagle Ridge Ln., Algonquin, Illinois 60102, has been employed by Tenant Development Corp., 1825 Hicks Rd. Rolling Meadows, Illinois 60008 to furnish dry wall and stud work materials and labor under its contract with you, on your property located at Broadband Office Chicago, 1 Westbrook Corporate Center, Suite 410, Westchester, Illinois 60154 and legally described as (SEE ATTACHED LEGAL DESCRIPTION) P.I.N 15-30-200-042-0000

and that there is due the undersigned therefor the sum of Thirty Three Thousand Seven Hundred Eighty-Four Dollars (\$33,784.00).

Dated at Park Ridge, Illinois, this 15th day of March, 2001

PEAK CONTRACTING AND CONSULTING, INC.

By: _____

Richard W. Laubenstein
Attorney and Agent

EXHIBIT C

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CHICAGO TITLE INSURANCE COMPANY

400 S. JEFFERSON, CHICAGO, IL 60607

TRACT INDEX SEARCH

Order No.: 1401 S9548267 SP

Additional Tax Numbers:

Legal Description:

THAT PART OF LOT 1 IN WESTBROOK CORPORATE CENTER P.U.D., BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 50 MINUTES 55 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1, 1,443.755 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 14 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, 1,270.04 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, THENCE SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF CERMAK ROAD, 235.748 FEET TO THE PLACE OF BEGINNING OF THE TRACT TO BE DESCRIBED HEREIN; THENCE CONTINUING SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1 AND THE SOUTH LINE OF SAID CERMAK ROAD 592.578 FEET TO A NORTHERLY CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREES 18 MINUTES 40 SECONDS EAST ALONG AN EAST LINE OF SAID LOT 1, 249.18 FEET TO A NORTHERLY CORNER OF SAID LOT 1; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 26.16 FEET; THENCE SOUTH 30 DEGREES 04 MINUTES 58 SECONDS WEST, 280.95 FEET; THENCE NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST 134.15 FEET; THENCE SOUTH 60 DEGREES 04 MINUTES 58 SECONDS WEST, 141.66 FEET, THENCE NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST, 170.83 FEET, THENCE NORTH 00 DEGREES 04 MINUTES 58 SECONDS EAST, 563.35 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Clerk's Office

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AMENDED NOTICE OF CLAIM OF SUBCONTRACTOR

TO: BP-WESTBROOK CORP. CENTER LLC
50 Rowes Wharf
Boston, MA 02110
(Owner)

LASALLE BANK, N.A.
135 S. LaSalle St.
Chicago, IL 60603
(Mortgagee)

AETNA LIFE INS. CO.
151 Farmington Ave.
Hartford, CT 06156
(Mortgagee)

You are hereby notified that the undersigned, Peak Contracting and Consulting, Inc., 525 Eagle Ridge Ln., Algonquin, Illinois 60102, has been employed by Tenant Development Corp., 5420 Newport Dr., Suite 64, Rolling Meadows, IL 60008 to furnish dry wall and stud work materials and labor under its contract with you, on your property located at Broadband Office Chicago, 1 Westbrook Corporate Center, Suite 410, Westchester, Illinois 60154 and legally described as (SEE ATTACHED LEGAL DESCRIPTION) P.I.N 15-30-200-042-0000

and that there is due the undersigned therefor, the sum of Thirty Three Thousand Seven Hundred Eighty-Four Dollars (\$24,784.00).

Dated at Park Ridge, Illinois, this 16th day of March, 2001

PEAK CONTRACTING AND CONSULTING, INC.

By: 

Richard W. Laubenstein
Attorney and Agent

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EXHIBIT D

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CHICAGO TITLE INSURANCE COMPANY

400 S. JEFFERSON, CHICAGO, IL 60607

TRACT INDEX SEARCH

Order No.: 1401 S9548267 SP

Additional Tax Numbers:

Legal Description:

THAT PART OF LOT 1 IN WESTBROOK CORPORATE CENTER P.U.D., BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 55 MINUTES 55 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1, 1,443.755 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 14 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, 1,270.04 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, THENCE SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF CERMAK ROAD, 235.746 FEET TO THE PLACE OF BEGINNING OF THE TRACT TO BE DESCRIBED HEREIN; THENCE CONTINUING SOUTH 89 DEGREES 55 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1 AND THE SOUTH LINE OF SAID CERMAK ROAD 592.578 FEET TO A NORTHERLY CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREES 18 MINUTES 40 SECONDS EAST ALONG AN EAST LINE OF SAID LOT 1, 249.18 FEET TO A NORTHERLY CORNER OF SAID LOT 1; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 26.16 FEET; THENCE SOUTH 30 DEGREES 04 MINUTES 58 SECONDS WEST, 280.95 FEET; THENCE NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST 134. FEET; THENCE SOUTH 60 DEGREES 04 MINUTES 58 SECONDS WEST, 141.66 FEET, THENCE NORTH 89 DEGREES 55 MINUTES 02 SECONDS WEST, 170.83 FEET, THENCE NORTH 00 DEGREES 04 MINUTES 58 SECONDS EAST, 563.35 FEET TO THE PLACE OF BEGINNING, COOK COUNTY, ILLINOIS.

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