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Eugene "Gene" Moore Fee: \$122.00  
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Property of Cook County Clerk's Office

**LEASE AGREEMENT**

**Dated March 21, 2002**

After recording return to:

**Randy S. Gussis**  
Shaw Gussis Fishman Glantz Wolfson & Towbin, LLC  
1144 West Fulton Street, Suite 200  
Chicago, Illinois 60607

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MGR Title

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CL:nm

REV. 6-14-02

## 2.4 ACRES LOCATED ALONG WEST BANK OF NORTH SHORE CHANNEL BETWEEN LINCOLN AND DEVON AVENUES IN CHICAGO, ILLINOIS

### LEASE AGREEMENT

THIS INDENTURE, made this 21<sup>st</sup> day of March 2002, by and between the METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a municipal corporation organized and existing under the laws of the State of Illinois, with principal offices at 100 East Erie Street, Chicago, Illinois 60611 (hereinafter designated the "Lessor"), and BGP LINCOLN VILLAGE, L.L.C. with principal offices c/o Terraco Inc, 8707 Skokie Boulevard, Skokie, Illinois (hereinafter designated the "Lessee").

WITNESSETH THAT:

### ARTICLE ONE

#### 1.01 PREMISES LEASED

The Lessor for and in consideration of the rents hereinafter reserved and of the covenants and agreements hereinafter contained, does hereby demise and lease unto said Lessee all of the Premises legally described and depicted as Parcels A, B, and C in the plat of survey marked Exhibit "A" which is attached hereto and made a part hereof, located in the County of Cook and State of Illinois for those purposes, as more specifically described in Article Three, Paragraph 3.07 hereof, pursuant to 70 ILCS 2605/8 and 8c consisting of approximately 2.4 acres of improved real estate and commonly known as a portion of North Shore Atlas Parcel No. 8.05.

For the purposes of this Lease, the terms "Leased Premises, Leasehold Premises, Demised Premises," or similar terms may be used interchangeably, and shall be used synonymously to mean the real property which is the subject hereof and any improvements located thereon at the time of leasing or placed thereon by Lessee during the term of this Lease.

#### 1.02 TERM OF LEASE

The term of this Lease is 60 years, beginning on the 1st day of January, A.D., 2003, and ending on the 31st day of December, A.D., 2063, unless said term shall end sooner under the provisions hereof.

#### 1.03 LEASE EXECUTED BY LESSOR WITHOUT WARRANTIES

It is expressly covenanted and agreed by the parties hereto that the Lessor executes and delivers this Lease without representation or warranties concerning Lessor's title to the Premises and authority to execute this Lease, the size of the Demised Premises, the useable areas of the Demised Premises, and building and

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zoning laws affecting the Demised Premises. The Lessee has examined the title to the Demised Premises and Lessor's authority to enter into this Lease, the size of the Demised Premises, and the useable areas of the Demised Premises, and is satisfied therewith. Lessee has further examined the building and zoning laws concerning the Demised Premises and is satisfied that he may construct the improvements which are hereinafter set forth in Section 6.01 of this Lease and that said Lessee may use the Demised Premises in accordance with the uses set forth in Section 3.07 of this Lease:

- A. In the event on the date hereof or any time hereafter, the building and zoning laws do not permit the use set forth in Section 3.07 hereof or the construction set forth in Section 6.01 hereof, the Lessee agrees, at its own expense within one (1) year of the date of this Lease, to take such action as may be necessary to obtain such zoning change and building permits;
- B. The failure of the Lessee to obtain such zoning change as may be necessary and/or such building permit within one (1) year of the date of this Lease, shall be cause for immediate cancellation of this Lease, at the option of the Lessor, provided, however, in this event, all rents due or coming due hereunder shall abate as of the date of the cancellation of this Lease pursuant to this subsection.

## 1.04 EFFECT OF CONDEMNATION OF DEMISED PREMISES

It is expressly covenanted by the parties hereto that in the event of any condemnation of the Demised Premises herein leased, or any part thereof, the entire condemnation award shall be the sole property of the Lessor, except for the actual value of the improvements made by Lessee during this Lease as of the date of the final judgment order in said condemnation proceedings; that Lessee shall be entitled only to a decrease in the rent reserved by percentage in relation to the whole tract to the part taken; and in the event the whole tract is taken or so much of the tract is taken as to prohibit the operation or use of the Demised Premises by Lessee for the purpose set forth in Section 3.07 hereof on the portion remaining impracticable, the Lessee shall be entitled to the cancellation of this Lease.

## ARTICLE TWO

### 2.01 RENT AND ADDITIONAL COMPENSATION

The Lessee covenants and agrees, in consideration of the leasing of the Premises aforesaid, to pay to the Lessor as rent for the said Demised Premises:

- A. **BASIC ANNUAL RENTAL PAYMENT:** During the ten- (10) year period from January 1, 2003, through December 31, 2013, the annual rental shall be ONE HUNDRED SIX THOUSAND AND NO/100 DOLLARS (\$106,000.00) payable in quarterly installments each to be due on the 1st day of every January, April, July and October

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during the term hereof with the first installment being due on the 1st day of January, 2003. The annual rent for the first year shall be equal to 10% of the appraised fair market value of the fee simple estate and the land upon which the Demised Premises is located. The annual rent so established shall remain in force and effect for a period of ten (10) years, subject to adjustment as hereinafter provided. The annual rent after the first ten (10) Years shall be established as set forth in Paragraph 2.01(B) of this agreement.

- B. TEN-YEAR PERIODIC RENTAL ADJUSTMENT:** Reappraisal on each periodic ten-year anniversary following the effective date of this Lease, and every ten-year periodic anniversary thereafter shall be made. The fixed annual rental to be paid by Lessee to Lessor for the next ten-year period shall be adjusted and predetermined in accordance with the conclusions of a review of the fair market value of the fee simple estate upon which the Demised Premises are located, (independent of the improvements constructed by Lessee on the property subsequent to the effective date of this Lease) in accordance with 70 ILCS 2605/8c by not less than two (2) appraisals prepared by appraisers who are members of the American Institute of Real Estate Appraisers or a similar equivalently recognized professional organization, which shall be procured and paid for by the Lessee and delivered to the Lessor. The annual rental payment for each following ten-year period will be increased or decreased, by multiplying the fair market value of the fee simple estate upon which the Demised Premises is located by the same percentage used to determine the annual rental payment for the first ten-year period. The Lessor shall have the right to procure and pay for a third appraisal, which may be considered in determining the fair market value of the fee simple estate. The fair market value of the fee estate and the rental for the Demised Premises shall be established by the Board of Commissioners of the Lessor. Such fair market value shall not be less than the lowest appraisal nor higher than the highest appraisal, including the appraisal, if any procured, by the Lessor. The appraisals required of the Lessee shall be made and dated within the last ninety (90) days of the ten-year period of this Lease which will be expiring. Said appraisals shall be delivered to the Lessor not later than forty-five (45) days prior to the end of the ten-year period. In the event that fair market value and/or the annual rent for the next ten-year period has not been established by the Board of Commissioners of the Lessor before the commencement of any new period, the Lessee shall continue to pay the annual rent established for the last year of the prior ten-year period until such reappraisal and decennial rent adjustment. (Annual rent adjustments shall also apply to any deferred decennial rent adjustment, which is not made in a timely manner). **ALL TEN-YEAR PERIODIC ANNUAL RENT ADJUSTMENTS PURSUANT TO THIS**

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**SUBPARAGRAPH, WHEN EXECUTED SHALL BE MADE WITHOUT REGARD TO THE ANNUAL RENT IN EFFECT FOR THE LAST YEAR OF THE PRECEDING TEN-YEAR PERIOD. Upon the establishment of fair market value and the adjusted annual rental to be paid for that ten-year period, at any time later than the end of any period of this Lease, such fair market value and rent shall take effect as of the first (1st) day of the period; the Lessee shall, within thirty (30) days, after notice, pay such additional rent as may be required if fair market value is higher than the previous period; if fair market value is lower than the previous period, the Lessee shall be given credit to apply on the next rental payment when said payment is due.**

**(1) TEN-YEAR PERIODIC RENTAL ADJUSTMENT OF LEASEHOLDS CONSISTING OF IMPROVED (AT THE TIME OF LEASING) REAL ESTATE**

The foregoing to the contrary notwithstanding, where Lessee, at the commencement of this Lease, occupies real estate with Lessor-owned improvements already constructed and in place upon the Demised Premises, all decennial reappraisals of the Demised Premises for the purpose of making a decennial rental adjustment shall be appraised as improved with all improvements in place and "as-is" and "as-found."

In the event that Lessee shall, with Lessor's approval, demolish any improvement in existence on the Demised Premises at the time same is demised to Lessee, and replace it either in kind or in specie during the term hereof, all decennial appraisals shall ascribe a value to the replacement improvement for purposes of the appraisal equal to its original cash purchase price, less depreciation, plus the depreciated value of the original improvement at the time of its removal. All valuations of the replacement improvement shall be made using the "replacement" cost rather than "market value" approach. Any improvement removed by Lessee must be removed and not replaced for a period of ten (10) consecutive years before the value of such improvement may be disregarded in a subsequent decennial appraisal if a decennial appraisal occurs before ten (10) full years has elapsed, then the depreciated value of the improvement (whether original or replacement) at the time of its removal shall be included in the appraisal for that ten- (10) year term.

In the event Lessee shall demolish any improvement in existence on the Demised Premises at the time same is demised to Lessee and not replace same, any decennial appraisal shall include the depreciated fair market value of the improvement until at least ten (10) years shall have expired.

- C. All annual rental payments required to be made by Lessee hereunder, shall be paid in equal quarterly installment(s), in advance, to be due on the 1st day of every January, April, July, and October during the term of this Lease, with the first installment being due on the 1st day of January, 2003.

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## D. ADDITIONAL COMPENSATION -- (NON-RENT):

- (1) **Cash:** In addition to the foregoing cash rent to be paid by Lessee to Lessor, Lessee shall pay in cash to Lessor 0 percent (0 %) of the gross revenues generated by Lessee's use of or activities on the Demised Premises.

On each anniversary of the effective date of this Lease, Lessee shall furnish to Lessor an audited and certified statement of all items of income attributable to Lessee's use of the Demised Premises and simultaneously remit its check to Lessor in an amount equal to the aforesaid percentage multiplied by the audited and certified statement for that one-year period. All such audited and certified statements shall be subject to confirmation by Lessor. Lessee shall furnish all original books and records or certified copies thereof necessary to confirm such statements, upon reasonable demand by Lessor, at no cost to Lessor.

- (2) **Services:** In the event Lessee is engaged in the business of solid waste disposal (whether on the Demised Premises or elsewhere), as additional consideration for the granting of this Lease, Lessee covenants and agrees to collect from those facilities and installations of Lessor, as designated by Lessor's General Superintendent, transport and dispose of 0 tons/cu. yds. of Lessor's solid waste, including, but not limited to dewatered sludge, grit, screenings refuse, and other non-hazardous solid wastes, in a lawful manner, at Lessee's sole cost, risk, and expense.

**NOTE: THE VALUE OF ADDITIONAL COMPENSATION REQUIRED TO BE PAID FOR SERVICES PERFORMED BY LESSEE PURSUANT TO THIS SUBPARAGRAPH E SHALL NOT BE CONSIDERED IN DETERMINING THE HIGHEST RESPONSIBLE BIDDER FOR LEASE AWARD PURPOSES.**

- E. In addition, the Lessee shall pay all administrative and legal costs incurred by the Lessor in collecting any arrearage in rent including, but not limited, to payment for legal work for the preparation of lawsuits and for the issuance of notices.

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## ARTICLE THREE

### GENERAL PROVISIONS

#### 3.01 INTEREST ON RENT NOT PAID WHEN DUE

Lessee agrees that any and all installments of rent accruing under the provisions of this Lease, which shall not be paid when due, shall bear interest at the rate of two percent (2%) per annum in excess of the prime rate charged by a principal bank in Chicago, Illinois, to its commercial borrowers as determined on the first date of a delinquency from the day when the same is or are payable by the terms of this Lease, until the same shall be paid; provided if any installment or installments of said rent shall become due on a Sunday or legal holiday the same shall be paid without interest on the next succeeding regular business day.

#### 3.02 RENT RESERVED TO BE LIENS ON ALL BUILDINGS, ETC. ERECTED ON DEMISED PREMISES

It is agreed by Lessee that the whole amount of rent reserved and agreed to be paid for the Demised Premises and each and every installment thereof shall be and is hereby declared to be a valid lien upon all buildings and other improvements on the Demised Premises or that may at any time be erected, placed, or put on the Demised Premises by the Lessee and upon the interest of said Lessee in this Lease and in the Demised Premises hereby leased.

#### 3.03 FORCIBLE COLLECTION OF RENT BY LESSOR NOT TO AFFECT RELEASE OF OBLIGATIONS

It is expressly understood and agreed that the forcible collections of the rent by any legal proceedings or otherwise by the Lessor or any other action taken by Lessor under any of the provisions hereof, except a specific termination or forfeiture of this Lease, shall not be considered as releasing the Lessee from its obligation to pay the rent as herein provided for the entire period of this Lease.

#### 3.04 WAIVER OF COUNTERCLAIM

In the event Lessor commences any legal proceedings for non-payment of rent, forcible detainer, or violation of any of the terms hereof, Lessee will not interpose any counterclaim or set off of any nature or description in any such proceedings.

#### 3.05 RIGHT OF LESSOR TO RE-ENTER DEMISED PREMISES UPON EXPIRATION OF NOTICE

It is understood and agreed by and between the parties hereto that if the Lessee shall default in the payment of any of the rent herein provided for upon the day the same becomes due and payable, and such default shall continue for thirty (30) days after notice thereof in writing given by the Lessor or its agent or attor-

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neys to the Lessee in the manner hereinafter provided, or in case the Lessee shall default in or fail to perform and carry out any of the other covenants and conditions herein contained, and such default or failure shall continue for ninety (90) days after notice thereof and provided that Lessee has not initiated corrective action with respect to the default which is the subject of said notice within the initial thirty (30) days of said notice in writing given in like manner, then and in any and either of such events, it shall and may be lawful for the Lessor, at its election, at or after the expiration of said thirty (30) days or said ninety (90) days (as the case may be) after the giving of said notice to declare said term ended, to re-enter, to expel, remove, and put out the Lessee or any other person or persons occupying the Demised Premises, using such force as may be necessary in so doing, and repossess and restore Lessor to its first and former estate, and to distraint for any rent that may be due thereon upon any of the property of the Lessee located on the Demised Premises, whether the same shall be exempt from execution and distress by law or not; and the Lessee, for itself and its assigns, in that case, hereby waives all legal right, which it now has or may have, to hold or retain any such property, under any exemption laws now in force in this State, or any such property, under any exemption laws now in force in this State, or in any other way; meaning and intending hereby to give the Lessor, its successors and assigns, a valid lien upon any and all the goods, chattels or other property of the Lessee located on the Demised Premises as security for the payment of said rent in a manner aforesaid. And if at the same time said term shall be ended at such election of the Lessor, its successors or assigns, or in any other way, the Lessee for itself and its successors and assigns, hereby covenants and agrees to surrender and deliver up said Premises and property peaceably to the Lessor, its successors or assigns, immediately upon the termination of said term as aforesaid; and if the Lessee or the successors or assigns of the Lessee shall remain in possession of the same on the day after the termination of this Lease, in any of the ways above named, it shall be deemed guilty of a forcible detainer of the Demised Premises under the statutes and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcible or otherwise, with or without process of law, as above stated.

### 3.06 LESSEE TO PAY TAXES, ASSESSMENTS AND WATER RATES

As a further consideration for granting this Lease, the Lessee further covenants, promises and agrees to bear, pay and discharge (in addition to the rent specified) on or before the penalty date, all water rates, taxes, charges for revenue and otherwise, assessments and levies, general and special, ordinary and extraordinary, of any kind whatsoever, which may be taxed, charged, assessed, levied or imposed upon the Demised Premises or upon any and all of which may be assessed, levied or imposed upon the Demised Premises estate hereby created and upon the reversionary estate in said Demised Premises during the term of this Lease.

And it is further understood, covenanted and agreed by the parties hereto that all of said water rates, taxes, assessments and other impositions shall be paid by said Lessee before they shall respectively become delinquent, and in any case within adequate time to prevent any judgment, sale or forfeiture. In the event real estate taxes are levied or extended with respect to the Demised Premises on the



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basis of improved real estate, Lessee shall deposit a sum of money equal to one-hundred-ten percent (110%) of each year's taxes with Lessor during the term of this Lease, to be held in reserve to secure payment of Lessee's real estate taxes. In lieu of cash, the Lessee may deposit with Lessor an irrevocable letter of credit or bond of equivalent amount. Any sums of monies in excess of the one-hundred-ten percent (110%) retainage held by Lessor in the reserve after the payment of the second installment of the current year's real estate taxes for the Demised Premises will be remitted to the Lessee. In the event Lessee fails to submit to the Lessor proof of payment of the real estate tax applicable to the Demised Premises property within sixty (60) days of the date said tax is due, then Lessor shall after reasonable written notice apply the escrow funds to pay the unpaid real estate taxes and any penalties and interest due thereon, without questioning or being accountable to Lessee for the correctness or legality of the same. If the amount of funds held by Lessor should not be sufficient to pay said taxes, Lessee shall remit to Lessor that additional amount necessary to pay said deficiency within thirty (30) days from the date written demand of same is made by Lessor to Lessee. Lessee's obligation to fund and maintain a balance on deposit equal to one-hundred-ten percent (110%) of the prior year's real estate taxes in the aforesaid reserve is a continuing obligation of Lessee during the term of this Lease.

### 3.07 USE OF DEMISED PREMISES

It is understood that the Demised Premises are to be used by said Lessee for the sole and exclusive purpose of a parking lot for patrons of the adjacent shopping center and for the construction, operation, and maintenance of a senior-assisted living facility/building and related purposes and for no other purpose whatsoever.

### 3.08 PROHIBITED USES AND ACTIVITIES

Lessee specifically agrees not to use the said Demised Premises or any part thereof, or suffer them to be used for tanneries, slaughter houses, rendering establishments, or for any use of similar character or for gambling in any form, or for the conducting thereon of any business which shall be unlawful. Lessee also specifically agrees that no alcoholic beverages of any kind shall be sold, given away, or consumed with the knowledge and consent of Lessee on the Demised Premises unless this Lease is for a term of more than twenty (20) years and then only with the prior written consent of Lessor's Board of Commissioners and the furnishing of dram shop insurance or other applicable insurance protection, with respect to such activities with policy limits, form and carrier approved by Lessor and naming Lessor, its Commissioners, officers, agents and employees as additional insureds, said insurance shall provide that said policy shall not be canceled without twenty (20) days advance written notice thereof, in addition to any insurance provided pursuant to paragraph 4.03. for which the Lessor is the named insured. Hunting and the manufacture, sale, distribution, discharge, and unauthorized use of guns and firearms on the leasehold premises is expressly prohibited.

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## 3.09 LESSEE TO YIELD UP DEMISED PREMISES, ETC., UPON EXPIRATION OF LEASE AND DEMOLISH ANY IMPROVEMENTS IF NOTIFIED BY LESSOR

The Lessee agrees at the expiration of the term hereby created or the termination of this Lease under the provisions hereof, to yield up said Demised Premises, together with any buildings or improvements which may be constructed or placed upon the Demised Premises, to the Lessor in as good condition as when said buildings or improvements were constructed or placed thereon, ordinary wear and tear excepted. Lessee agrees to remove any and all storage tanks from the Demised Premises including aboveground and belowground storage tanks and restore the Demised Premises to TACO Tier I Residential Standards set forth in 35 IAC 742.500 and as may be amended prior to the expiration of the Lease. Lessee agrees to remove any and all asbestos contained on Demised Premises, prior to the expiration of the Lease, including but not limited to, asbestos contained in any fixture, improvements or buildings located on the Demised Premises. One-hundred-twenty (120) days prior to the expiration of this Lease, Lessor will determine which, if any, improvements constructed by Lessee during the term of this Lease on the Demised Premises shall be demolished. Lessee will, upon receipt of ninety (90) days advance written notice, demolish at Lessee's sole cost and expense, the improvements identified by Lessor. Should Lessee fail to demolish the improvements after notice, Lessor will have these improvements demolished and Lessee will be required to pay all costs therefor. This requirement survives expiration or termination of this Lease Agreement.

## 3.10 FAILURE OF LESSOR TO INSIST ON PROVISIONS NO WAIVER

The Lessee covenants and agrees that if the Lessor shall one or more times waive its right to insist upon prompt and satisfactory performance according to the terms of this Lease of any of the obligations of the Lessee, no such waiver shall release the Lessee from its duty promptly and strictly to satisfy at all times after such waiver each and every obligation arising under the provisions of this Lease, and especially any of such provisions with respect to which such waiver may previously have been made by the Lessor as aforesaid; and the Lessee covenants and agrees that if the Lessor shall for any length of time waive any right or rights accruing to Lessor under the provisions of this Lease, such waiver shall be construed strictly in Lessor's favor and shall not estop Lessor to insist upon any rights, subsequently accruing to it under this Lease not in terms specifically waived; and the Lessee covenants and agrees that if Lessee violates any of the obligations under this Lease, no waiver by the Lessor of its right to take advantage of such violation shall estop Lessor from insisting upon its strict rights in case of and as to any subsequent violation by the Lessee of the same or any other obligation; and the Lessee covenants and agrees that this provision of this Lease shall apply especially (but not exclusively) to the right of the Lessor to require prompt payment of the rent in this Lease and that neither acceptance by the Lessor of any payment of any other unpaid installment or installments of rent, nor any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction and Lessor

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may accept such check or payment without prejudice to Lessor's right to recover the balance of rent or pursue any other remedy provided in this Lease.

## 3.11 VARIOUS RIGHTS, CUMULATIVE, ETC.

The Lessee agrees that the various rights and remedies of the Lessor contained in this Lease shall be construed as cumulative, and no one of them as exclusive of the other or exclusive of any rights or remedies allowed by law, and that the right given in this Lease to the Lessor to collect any additional rent, monies or payments due under the terms of this Lease by any proceedings under this Lease or the right herein given the Lessor to enforce any of the terms and provisions of this Lease, shall not in any way affect the right of the Lessor to declare this Lease terminated and the term hereby created ended, as herein provided, upon the default of the Lessee, or failure of the Lessee to perform and carry out, all of the provisions in this Lease provided to be performed and carried out by the Lessee.

## 3.12 RIGHT TO MORTGAGE LEASEHOLD PREMISES INTEREST

- A. The Lessee is hereby expressly given the right at any time and from time to time, to mortgage its leasehold interest in the Demised Premises, by mortgage or trust deed, but any such mortgage or trust deed shall in no way create any lien or encumbrance on the fee of the Demised Premises and the interest of the Lessor therein and the interest of the Lessor in any improvements which may be placed on the Demised Premises by the Lessee; and it is further mutually covenanted and agreed that the mortgagee or trustee in any such mortgage or trust deed and the holder or owner of the indebtedness secured by said mortgage or trust deed shall not personally liable upon the covenants in the Lease unless and until it or its assignee(s) shall acquire the Demised Premises estate created by this Lease. It is further covenanted and agreed that any mortgage or trust deed must be paid in full and a duly executed and recordable release thereof issued therefor prior to the expiration of the term of said Lease.
- B. **DEMISED PREMISES MORTGAGEE - TAX ESCROW:** If any Demised Premises Mortgagee while the holder of any Leasehold Mortgage with respect to the Demised Premises shall require Lessee to deposit with such Demised Premises Mortgagee the amounts necessary to pay the general real estate taxes and/or special assessments against the Demised Premises pursuant to Paragraph 3.05 hereof, Lessee may make such deposits directly with said Mortgagee, provided, however, that such Demised Premises Mortgagee or Lessee shall notify Lessor of said requirement in advance of Lessee's making the first such deposit and provide to Lessor Lessee or Lessee's Mortgagee documents to establish to Lessor's satisfaction the fact of the establishment

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and annual maintenance of the required escrow deposits hereunder. In any event, where Lessee is required to deposit with the Demised Premises Mortgagee the amounts necessary to pay the general real estate taxes and/or special assessments, the same to be paid as and when the same become due and payable, and the Lessee shall cause to be delivered to Lessor the receipted bills or photostatic copies thereof showing such payment within thirty (30) days after such receipted bills shall have been received by Lessee. A tax escrow established in compliance with this paragraph shall be in lieu of escrow required by Paragraph 3.06 of this Agreement.

### 3.13 DISCLOSURE OF LEASE TO COUNTY TAX ASSESSOR AND RECORDING OF LEASE WITH THE RECORDER OF DEEDS

Within thirty (30) days from the effective date of this Lease, Lessee shall deliver to the Assessor of the County in which the Demised Premises are situated a copy of this Lease so that said Assessor can take such steps as he determines necessary to subject the interest of the Lessee to general real estate taxation and will record this Lease with the Recorder of Deeds of the county in which the Demised Premises are situated.

### 3.14 NO NUISANCE PERMITTED

The Lessee covenants and agrees not to maintain any nuisance on the Demised Premises or permit any noxious odors to emanate from the Demised Premises which shall be in any manner injurious to or endanger the health, safety and comfort of the persons residing or being in the vicinity of the Demised Premises.

### 3.15 DEMISED PREMISES TO REMAIN CLEAN AND SANITARY

The Lessee covenants and agrees to keep the Demised Premises in a clean and sanitary condition in accordance with all applicable laws, ordinances, statutes and regulations of the county, city, village, town, or municipality (wherein the Demised Premises are located), the State of Illinois, the United States of America, and the Metropolitan Water Reclamation District of Greater Chicago.

### 3.16 LESSEE SHALL ABIDE BY LAW

The Lessee covenants and agrees that it shall abide by any and all applicable laws, ordinances, statutes and regulations of the county, city, village, town, or municipality (wherein the Demised Premises are located), the State of Illinois, the United States of America, and enforcement and regulatory agencies thereof and the Metropolitan Water Reclamation District of Greater Chicago which regulate or control the Demised Premises, the Lessee and/or Lessee's use of the Demised Premises.

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## ARTICLE FOUR

### 4.01 INDEMNIFICATION

The Lessee for itself, its executors, administrators, successors and assigns agrees to and does hereby expressly assume all responsibility for and agrees to defend, indemnify, save and keep harmless the Lessor, its Commissioners, officers, agents, servants, and employees against any claim (whether or not meritorious), loss, damage, cost or expense which the Lessor, its Commissioners, officers, agents, servants and employees may suffer, incur or sustain or for which it may become liable, growing out of any injury to or death of persons or loss or damage to property which shall at any time during the term of this Lease be caused by or in connection with the use, occupancy or possession of the Demised Premises, and for any such loss, damage, cost or expense which shall at any time during the term of this Lease be caused by or in the performance of any work or construction, installation, maintenance, removal or repair of any buildings or structures placed upon the Demised Premises, or as a penalty or claim for the sale or giving away of any intoxicating liquors on or about the Demised Premises, or the use of the Demised Premises for illegal or immoral purposes. In case any action, suit or suits shall be commenced against the Lessor growing out of any such claim, loss, damage, cost or expense, the Lessor may give written notice of the same to the Lessee, and thereafter the Lessee shall attend to the defense of the same and save and keep harmless the Lessor from all expense, counsel fees, costs, liabilities, disbursements, and executions in any manner growing out of, pertaining to or connected therewith.

### 4.02 INDEMNIFICATION AGAINST MECHANICS LIENS

The Lessee agrees to indemnify, save and keep harmless the Lessor of and from any claims for mechanics' liens by reason of any construction work, repairs, replacements or other work or for any improvements made to or placed upon the Demised Premises by or in behalf of Lessee or at Lessee's instance.

### 4.03 INSURANCE

The Lessee, prior to entering upon the Demised Premises and using the same for the purposes for which this Lease is granted, shall procure, maintain and keep in force at Lessee's expense, public liability property damage insurance in which the Lessor, its Commissioners, officers, agents, and employees are a named insured and fire and extended coverage and all risk property insurance in which the Lessor is named as the Loss Payee from a company to be approved by the Lessor. ("CLAIMS MADE" policies are unacceptable). Each afore-referenced policy shall have limits of not less than:

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**COMPREHENSIVE GENERAL LIABILITY**  
**Combined Single Limit Bodily Injury Liability**  
**Property Damage Liability**  
 in the amount of not less than \$4,000,000.0 per occurrence  
 and  
**FIRE AND EXTENDED COVERAGE**  
 in an amount not less than the replacement cost of improvements  
 located on the premises

Prior to entering upon said Demised Premises, the Lessee shall furnish to the Lessor certificates of such insurance or other suitable evidence that such insurance coverage has been procured and is maintained in full force and effect. Upon Lessor's written request, Lessee shall provide Lessor with copies of the actual insurance policies within ten (10) days of Lessor's request for same. Such certificates and insurance policies shall clearly identify the Demised Premises and shall provide that no change, modification in or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the Lessor. The provisions of this paragraph shall in no wise limit the liability of the Lessor as set forth in the provisions of 4.01 above, or

#### 4.04 INSURANCE ON IMPROVEMENTS

The Lessee shall keep any buildings and improvements erected, constructed or placed on the Demised Premises fully insured to the replacement cost thereof against loss by explosion, fire and/or windstorm or other casualty loss for their full replacement cost at Lessee's own expense at all times during the term of this Lease by an insurance company or companies approved by the Lessor. Lessor shall be a named insured on all of said insurance policies and a certificate of insurance evidencing same shall be provided to Lessor and kept current at all times throughout the term of this Lease. All policies of insurance indemnifying against such loss by explosion, fire and/or windstorm so insured shall be payable to the Lessor, as additional security for the payment of rent and the performance by the Lessee of the covenants herein; said policy or policies to be delivered to the Lessor as soon as issued, provided, however, that in the event of loss to or destruction of said buildings and other improvements, the insurance proceeds received by the Lessor in excess of the amounts then due for rent and charges under the provisions of this Lease shall be held in trust by the Lessor for the repair, restoration or rebuilding of such damaged or destroyed buildings and other improvements, and shall be disbursed therefor by said Lessor only on architect's certificates after the Lessee has, at its own expense, without charge or lien upon said buildings or other improvements, restored, rebuilt or repaired the same to an extent that will enable the Lessor, with the insurance money remaining in its hands after the payment of the rent and charges due it, to complete said buildings or other improvements in as good condition as they were in before the said loss or damage by explosion, fire and/or windstorm.

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## 4.05 FAILURE OF LESSEE TO INSURE IMPROVEMENTS

In the event the Lessee should at any time neglect, fail or refuse to insure or to keep insured the buildings and other improvements on said Demised Premises as above provided, then the Lessor at its election may procure or renew such insurance and the amount paid therefor shall be repaid by the Lessee to the Lessor with the rents next thereafter falling due under this Lease, together with interest thereon at the rate of two percent (2%) in excess of the prime rate charged by the principal bank in Chicago, Illinois, to its commercial borrowers as determined on the first date of a delinquency from the respective dates of any such payments.

## 4.06 RIGHT OF LESSEE TO RECOVER PROCEEDS

It is covenanted and agreed by and between the parties hereto that the Lessor shall not be held responsible for the collection or non-collection of any of said insurance money in any event but only for such insurance money as shall come into its hands. The Lessee, however, shall have the right in the name of the Lessor to sue for and recover any and all sums payable under any of said policies for losses arising thereunder provided it shall indemnify and save harmless the Lessor from any costs or attorney's fees in connection with any such proceeding to recover such insurance money. However, all sums so recovered shall be paid to the Lessor to be applied as herein provided.

## 4.07 APPLICATION OF INSURANCE PROCEEDS

It is covenanted and agreed by and between the parties hereto that in case of damage to the buildings and improvements to be erected, constructed or placed on the Demised Premises, as aforesaid, or the destruction thereof (or loss or damage to any buildings or other improvements thereafter standing upon the Demised Premises) the Lessee shall repair, restore or rebuild the same within one year from such destruction or damage, and in such case the insurance money received by the Lessor pursuant to the terms of this Lease under said policies, after deducting therefrom the reasonable charges of the Lessor for handling such insurance and all costs and expenses of collecting the same, including attorney's fees, and all unpaid and overdue rental payments shall be paid in whole or in part by the Lessor to the contractor or contractors (employed by the Lessee) upon the delivery to the Chief Engineer of the Lessor of certificates of the architects of the Lessee properly endorsed by the Lessee and accompanied by waivers of lien and release for the cost and expense of repairing, restoring or rebuilding said buildings or other improvements as the work of repairing, restoring, or rebuilding progresses.

## 4.08 INSURANCE PROCEEDS DEFICIENCY

It is understood and agreed between the parties hereto that in case the insurance money collected by the Lessor shall not be sufficient to fully pay for the repair, restoration or rebuilding of said buildings and other improvements as aforesaid, then the Lessee shall be required to pay such sums of money, in addition to said insurance money so collected by the Lessor as aforesaid as may be necessary

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to pay for the complete repair, restoration or rebuilding of said buildings and other improvements; it being understood, however, that the Lessor shall not be required to pay such insurance money so collected until the Chief Engineer of the Lessor is satisfied that such sum will complete the repair, restoration and rebuilding of said buildings and other improvements, free of mechanics' liens for labor or material, in which event such monies shall be paid by the Lessor to the contractor or contractors employed by the Lessee to complete the repair, restoration or rebuilding of said buildings and other improvements, upon delivery to the Chief Engineer of the Lessor of certificates of the architects of the Lessee properly endorsed by the Lessee accompanied by waiver of lien and release as the work of repairing, restoring or rebuilding of said buildings and other improvements shall progress. It is expressly understood that nothing herein shall prevent the Lessee from replacing any building or structure destroyed or damaged with other buildings or structures of different design and construction of at least equal value on any part of the Demised Premises.

#### 4.09 LESSOR NOT RESPONSIBLE FOR RESTORATION OF IMPROVEMENTS

It is covenanted and agreed that the Lessor shall not be liable to contribute or pay any sum of money toward the restoration, repair or rebuilding of said buildings or other improvements. In the event of the termination of this Lease by lapse of time, or by reason of any default by the Lessee in any of its payments, or a breach by the Lessee of any of the covenants and agreements of this Lease before the repair, restoration, replacement or rebuilding of said buildings or other improvements shall be completed, as aforesaid, then in any of said cases the insurance money collected by the Lessor shall belong absolutely to the Lessor.

#### 4.10 EXCESS INSURANCE PROCEEDS

It is understood and agreed that after the work of any such repairs, restoration, or rebuilding by the Lessee shall have been completed and paid for, any excess of insurance money then remaining on deposit with the Lessor shall belong to the Lessee and in that event, the Lessor shall pay to the Lessee the balance of said insurance money upon its written request. The provisions of this paragraph as well as those of paragraphs numbered 4.04 to 4.09, inclusive, shall apply whenever and so often as any buildings or other improvements erected and completed on the Demised Premises, under any of the provisions of this Lease, shall have been damaged or destroyed by fire or windstorm.

#### 4.11 SECURITY DEPOSIT

Lessee as further consideration for the granting of this Lease, agrees that in addition to the payment of any rents hereinabove required, and to further secure the performance by it of all of the covenants herein contained, shall deposit with the Lessor, prior to its occupancy of the Demised Premises a sum of money equal to two (2) months rent. Said security deposit shall be returned to the Lessee upon its satisfactory performance of all the covenants and conditions herein contained. Provided, however, in the event of a default in the performance of any such covenant



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by the Lessee, the Lessor shall use said security deposit to satisfy and discharge any such covenant. Any unused portion of said security deposit shall be returned to the Lessee upon the termination or expiration of this Lease. Said security deposit shall be maintained at no less than its initial funded balance at all times during the term of the Lease.

## ARTICLE FIVE

### 5.01 GENERAL ENGINEERING RESERVATIONS AND REQUIREMENTS

- A. The Lessor has heretofore executed various agreements with governmental agencies, public utility companies, private corporations and individuals for the installation of pipelines, duct lines, sewers, cables, electric transmission lines and other surface and subsurface structures, constructions and improvements. Pursuant to those agreements, the various grantees have installed and are operating their respective surface and underground plant facilities which may lie within or otherwise affect the Demised Premises. Lessee shall, at its own initiative, inquire and satisfy itself as to the presence or absence of all such facilities on the Demised Premises, and waives all claims which it might otherwise have against Lessor on account of the presence of such facilities on the Demised Premises as same may affect Lessee's use and enjoyment of the Demised Premises.
- B. The Lessee expressly agrees that within an area delineated by a line parallel with and 60 feet distance from the top of the edge of the water of any waterway which traverses or is adjacent to the Demised Premises (Corporate Use Reserve Area) and all areas within the Demised Premises below the lowest elevation of development thereon as reflected in the Lessee's approved development plans for the Demised Premises, the Lessor and anyone acting under its authority shall have the right, without payment therefor, to construct, operate, maintain, repair, renew and relocate any and all pipe, sewer, structure, facility power, and communications lines and appurtenances upon, under and across the Demised Premises. All such work shall be performed in such a manner so as to cause the least amount of interference with Lessee's use of the Demised Premises.
- C. Lessee expressly understands and agrees that the Lessor may have installed various sewers, shafts, ducts, pipes, and other facilities upon, over or beneath the Demised Premises. Lessor shall cooperate with Lessee to ascertain, identify and locate all of Lessor's improvements, structures and constructions on the Demised Premises. Lessee covenants and agrees that at no time shall its use and occupancy of the Demised Premises damage or interfere with said facilities.

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- D. The Lessor reserves unto itself a perpetual right, privilege, and authority to construct, maintain, operate, repair and reconstruct intercepting sewers (with its connecting sewers and appurtenances), and any other drains or structures constructed or operated in the furtherance of Lessor's corporate purpose upon, under and through Corporate Use Reserve Area and below the lowest elevation of Lessee's approved development plan for the Demised Premises. The Lessor shall also have the right, privilege and authority to enter upon and use such portions of said Demised Premises as may be necessary in the opinion of the Chief Engineer of the Lessor, for the purpose of constructing, maintaining, operating, repairing and reconstructing intercepting sewers, connecting sewers, drains or other structures, appurtenances, parking areas and access drive which do not unreasonably interfere with Lessee's use of the Demised Premises.

It is expressly understood that no blockage or restriction of flow in the water will be tolerated at any time. No construction or improvements of any kind can project into the waterway during construction or after permanent repairs are completed.

It is further expressly understood and agreed by the Lessee that no buildings, materials, or structures shall be placed or erected and no work of any character done on said Demised Premises so as to injure or damage in any way said intercepting sewer, connecting sewers, drains or other structures and appurtenances located at any time on the Demised Premises, or so as to interfere with the maintenance, operation or reasonable access thereto.

- E. It is expressly understood and agreed that the Lessor shall not be liable to the Lessee for any loss, cost or expense which the Lessee shall sustain by reason of any damage at any time to its property caused by or growing out of the failure of the sewers, structures, or other equipment of the Lessor located on the Demised Premises, or by any other work which the Lessor may perform on the Demised Premises under the terms hereof, or adjacent to the Demised Premises.
- F. The Lessee shall relocate or remove the improvements existing or constructed upon the Demised Premises, at no cost to the District in the following instances:

- (1) In the event that the Demised Premises are adjacent to any channel or waterway, and said channel or waterway is to be widened by the District or any other governmental agency; or

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- (2) In the event that any agency of government, having jurisdiction over said channel or waterway, requires the relocation or removal of said improvements; or
- (3) In the event that said relocation or removal is required for the corporate purposes of the District.

Such relocation or removal shall be commenced within ninety (90) days after notice thereof in writing is served upon the Lessee and diligently prosecuted to the conclusion.

- G. If any time in the future, any portions of the Demised Premises are required for the construction of highways and roadways, or adjuncts thereto, such as interchanges, ramps and access roads, as determined by the Chief Engineer of the Lessor, for the use of any other governmental agency engaged in the construction of highways and roadways, or adjuncts thereto, then in such event, it is understood and agreed by the parties hereto, that the Lessee shall surrender possession of such part of the Demised Premises that may be so required. Lessee also agrees, at its own cost and expense, to remove all of its equipment, structures or other works from those portions of the Demised Premises so required, or reconstruct or relocate such of its installations so as to permit the use of the Demised Premises for the construction of highways and roadways or adjuncts thereto within sixty (60) days after notice shall have been given to the Lessee by said Chief Engineer.
- H. The Lessor reserves to itself or to its assignees or permittees at any time during the term of this Lease, upon thirty (30) days written notice given by the Lessor to the Lessee, the right to construct, reconstruct, maintain, and operate additional force mains, intercepting sewers, drains, outlets, pipe lines, pole lines, and appurtenances thereto; and such other structures, buildings, apparatus, and water control equipment as may be needed for the corporate purposes of the Lessor upon, under, and across the Demised Premises. Any such construction shall be located as determined by the Chief Engineer of the Lessor so as to cause, in his opinion, the least interference with any equipment, or improvements, that the Lessee may then have on the Demised Premises.
- I. The Lessee agrees that if at any future date it desires to dispose of sewage, industrial wastes or other water-carried wastes from the Demised Premises, it will discharge the said sewage, industrial wastes or other water-carried wastes into an intercepting

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sewer owned by or tributary to the sewerage system of the Lessor. Lessee will make application and secure the necessary permit from the Metropolitan Water Reclamation District of Greater Chicago and all governmental and regulatory agencies having jurisdiction thereof before discharging any of the aforesaid sewage, industrial waste or other water-carried wastes into any intercepting sewers.

- J. The Lessee also agrees to collect separately all roof water, surface runoff from grounds and roadways, and drainage water and to discharge the same directly into the North Shore Channel all to be done in a manner acceptable to said Chief Engineer of the Lessor.
- K. It is agreed by and between the parties hereto that the Lessee shall submit to the Chief Engineer of the Lessor for his approval, the general plans for handling the sewerage, grading, and drainage of the Demised Premises; and for any roadways, water supply, telephone and electric service, if any, and of all improvements or any other construction to be erected thereon, before the commencement of any work thereon.
- L. The Lessor reserves to itself the right of access to the North Shore Channel as well as right of access to the Demised Premises for inspection by the Lessor and its duly accredited agents at all times, and for such surveys or any other purposes as the Chief Engineer of the Lessor may deem necessary.
- M. Any blockage or restriction of flow in the waterway will not be tolerated at any time. No construction or improvements of any kind can project into the waterway during construction or after permanent repairs are contemplated.

**5.02 SPECIFIC ENGINEERING, DESIGN AND OPERATING  
RESERVATIONS AND RESTRICTIONS.  
(CLARIFICATION -- NOT LIMITATION)**

**ARTICLE SIX**

**PROVISIONS FOR BUILDING AND IMPROVEMENTS  
6.01 CONSTRUCTION REQUIREMENT**

The Lessee agrees within \_\_\_\_\_ ( ) year(s) from the date hereof to improve the Demised Premises by the construction thereon of the hereinafter called

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"improvements", free and clear of all mechanics' and materialman's liens, claims, charges or unpaid bills capable of being made liens and to design, construct, operate and maintain in full compliance with all applicable building and zoning laws of any agency having jurisdiction thereof. All plans must be approved in writing by the Chief Engineer of the Lessor prior to commencement of construction.

## 6.02 TIME OF CONSTRUCTION

Construction of the improvements shall commence within \_\_\_\_ ( ) year(s) of the effective date of this Lease. All of said buildings and improvements shall be completed within \_\_\_\_ ( ) year(s) of the effective date of the Lease. In the event said improvements are not completed or construction is not commenced as provided above, then the Lessor may at its option terminate this Lease upon giving ninety (90) days notice, in writing, to the Lessee.

## 6.03 IMPROVEMENTS REVERT TO LESSOR AT LEASE TERMINATION OR EXPIRATION

It is expressly understood and agreed by and between the parties hereto that upon the termination of this Lease by forfeiture, lapse of time or by reason of the failure by the

Lessee to keep and perform the covenants, agreements or conditions herein contained, any buildings or other improvements erected, constructed or placed upon the Demised Premises during the term hereof shall become and be the absolute property of the Lessor and no compensation therefor shall be allowed or paid to the Lessee except as stated in Article 3.09. Lessee shall surrender same in good and proper condition, with all fixtures and appurtenances in place and in good working order, ordinary wear and tear excepted. Lessee shall not commit waste during the term hereof or in the course of vacating same.

## ARTICLE SEVEN

### 7.01 NOTICES

All notices herein provided for from the Lessor to the Lessee or Lessee to Lessor shall be personally served or mailed by U. S. Registered or Certified Mail Return Receipt Requested, First Class Postage Prepaid addressed to the Lessee at:

BGP Lincoln Village, L.L.C.  
c/o Mid-America Asset Management Co.  
Two Mid-America Plaza  
Suite 330  
Oak Brook Terrace, Illinois 60181  
Attn: President

or to Lessor at:

.....  
.....  
.....  
.....

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Metropolitan Water Reclamation District  
of Greater Chicago  
100 East Erie Street  
Chicago, Illinois 60611  
Attn: General Superintendent

or any other address either party may designate in writing. Any notice so mailed by one party hereto to the other shall be and is hereby declared to be sufficient notice for all the purposes of this Lease and that a post office registry receipt showing the mailing of such notice and the date of such mailing shall be accepted in any court of record as competent prima facie evidence of those facts.

## 7.02 RIGHT TO DECLARE LEASE TERMINATED

It is understood and agreed by the Lessee that neither the right given in this Lease to the Lessor to collect rent or such other compensation as may be due under the terms of this Lease by sale nor any proceedings under this Lease shall in any way affect the right of the Lessor to declare this Lease terminated and the term hereby created ended as above provided, upon default of or failure by the Lessee to perform and carry out any of the provisions of this Lease, as herein provided, after notices as aforesaid. And the Lessee, for itself and its assigns, hereby waives its right to any notice from the Lessor of its election to declare this Lease at an end under any of the provisions hereof or to any demand for the payment of rent or the possession of the Demised Premises, except as aforesaid.

## 7.03 RIGHTS OF LESSOR IN EVENT OF FORFEITURE OR TERMINATION

In the event of the termination of this Lease by reason of forfeiture by the Lessee arising from a default by or failure of it to carry out and perform any of the covenants herein contained, the Lessor shall not be obligated to refund to the Lessee any sums of money paid by the Lessee to the Lessor as rentals under the terms of this Lease, and such sums of money shall be retained by the Lessor as liquidated damages, but this provision shall not operate to relieve the Lessee of its obligation to pay to the Lessor the balance of the rental then due the Lessor for the entire term of this Lease.

## 7.04 ABANDONMENT

Lessee shall not without the prior written approval of Lessor abandon or vacate the Demised Premises or cease to operate its business thereon. Re-entry and repossession by Lessor following abandonment by Lessee shall not constitute a waiver of any rights of the Lessor, and shall not be construed as a termination of the Lease. Lessee shall remain liable for all its obligations under the Lease. For purposes of this section, leasehold shall be deemed abandoned if Lessee ceases business on the Demised Premises for a period of twenty eight (28) consecutive days or fails to secure the Demised Premises from unauthorized use or entry within sixty (60) days of its execution and delivery of this Lease.

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## 7.05 TERMS OF LEASE BINDING ON SUCCESSOR AND ASSIGNS

The parties hereto agree that all of the terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors, lessees, sub-lessees and assigns; and whenever in this Lease reference to either of the parties hereto is made, such reference shall be deemed to include, where applicable, also a reference to the successors, lessees, sub-lessees and assigns of such party; and all the conditions and covenants of this Lease shall be construed as covenants running with the land during the term of this Lease.

## 7.06 NO ASSIGNMENT OR SUBLEASE

- A. It is agreed by and between the parties that the Lessee shall not sublet or assign any part of this Lease to any other governmental agency, individual, partnership, joint venture, corporation, land trust or other entity without prior written consent of the Lessor.

Lessee shall notify Lessor in writing not less than sixty (60) days prior to any proposed sublease or assignment. Lessee shall identify the name and address of the proposed assignee/sublessee and deliver to Lessor original or certified copies of the proposed assignment, a recital of assignee's personal and financial ability to comply with all the terms and conditions of the Lease and any other information or documentation requested by Lessor. Lessor shall not unreasonably withhold the consent to assignment or sublease.

It is agreed that reasonable grounds for withholding consent shall include but not be limited to the following:

1. The proposed activity of the assignee/sublessee does not conform with the terms of this Lease or policies established by the Lessor.
2. The proposed assignee/sublessee does not have either substantial experience in the business provided for in the Lease or the financial resources to comply with the requirements of the Lease.
3. There is an existing violation of or uncured default by Lessee with respect to the Lease.
4. The activity of the proposed assignee/sublessee would interfere with or disturb neighboring tenants or owners.

In addition to the payment of all cash rent or additional compensation otherwise herein required to be paid by or performed by the Lessee, Lessee will pay to the Lessor, as additional compensation hereunder in the event Lessee assigns this Lease or sublets all or part of the Demised Premises, fifty percent (50%) of all value

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it receives from its assignee/sublessee for the use and occupancy of the Demised Premises as a result of the sublease or assignment in excess of the cash rent which Lessee is currently paying with respect to the subleased portion of the leasehold or the leasehold as a tract, if assigned.

The value of additional services to be performed by the Lessee, sublessee or assignee shall not in any way be included in determining the foregoing fifty-percent (50%) sum.

It is agreed that this Lease shall not pass by operation of law to any trustee or receiver in bankruptcy or for the assignment for the benefit of creditors of the Lessee.

Any attempted sublease or assignment not in compliance with this section shall be void and without force and effect.

- B. With respect to a Sublease for a portion of the Demised Land or Property submitted to Lessor for approval; (i) the Sublease may provide that, if at any time the Lessee is in default under this Lease and, as a result thereof, this Lease or the rights of the Lessee hereunder have been suspended or terminated, the Sublessee will attorn to and recognize the Lessor herein as its Lessor therein; and (ii) during the period of such attornment, (A) the terms of the Sublease will provide that in such an event the Sublessee shall cure the Lessee's default(s) as they relate to the Sublease Premises, and agrees to pay as rent to the Lessor the Base Rent, on a per-square-foot basis, or the rent payable to the Lessee under the Sublease, whichever is greater, as well as all forms of impositions, maintenance costs, taxes, utilities, and other expenses on a per-square-foot basis required to be paid by Sublessee under the Sublease; and (B) upon notice from Lessor to Lessee and Sublessee to be delivered, if at all, within thirty (30) days following attornment by Sublessee, such other provisions of the Sublease may be suspended, modified, or terminated by the Lessor to make consistent with this Lease Agreement so as to insure that the Sublessee assumes all obligations with respect to the Subleased Premises which previously were the covenants, agreements, and obligations of the Lessee.

The Lessor agrees to review any Sublease Non-Disturbance Provision or Agreement ("SNA") contained in, or attached or related to any Sublease presented by Lessee for the Lessor's consent, and Lessor's consent to any such SNA shall not be unreasonably withheld.

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## ARTICLE EIGHT

### MISCELLANEOUS PROVISIONS

#### 8.01 LESSEE MAY IMPEAD THE METROPOLITAN WATER RECLAMATION DISTRICT IN REAL ESTATE LITIGATION

The Lessee may, after notice in writing to the Lessor, implead the Lessor as a party at any time during the term of this Lease, in any litigation concerning the Demised Premises in which Lessor is a necessary party.

#### 8.02 LESSEE TO PAY ALL COSTS OF ENFORCEMENT

The Lessee agrees to pay and discharge all costs and reasonable attorney's fees and expenses, which the Lessor shall incur in enforcing the covenants of this Lease.

#### 8.03 HEADINGS ARE FOR CONVENIENCE OF PARTIES

All paragraph headings of this Lease are inserted for purposes of reference and convenience of the parties only, and do not constitute operative provisions of the Lease.

#### 8.04 COMPLIANCE WITH WATERWAY STRATEGY RESOLUTION

To the extent that the Demised Premises embrace or abut a waterway regulated by Lessor or in which Lessor asserts property rights, Lessee shall to the extent applicable, comply with the Waterway Strategy Resolution and Implementation Criteria therefor, the River Edge Renaissance Program and the Revised Leasing Criteria for the North Shore Channel Right-of-Way Lands of the Lessor's Board of Commissioners in the execution of its development plan for the Demised Premises which abut any such waterway and Demised Premises which afford Lessee direct access thereto may be utilized by the Lessee for the purpose of waterborne commerce. However, the Lessee will be responsible for the construction and maintenance of any docking facility at its own cost and expense which is compatible with the Waterway Strategy Resolution to maintain the bank in an aesthetically pleasing condition. Permanent storage of bulk commodities, unsightly materials and/or debris on waterway side of the scenic berm or the docking area is prohibited.

It is the intent of the Lessor to maintain, where possible, a "natural" appearance to its properties by retaining existing vegetative cover. However, the Lessor recognizes that site development will sometimes necessitate the removal of existing vegetative cover. In those cases the Lessor will require the Lessee to re-establish vegetative cover in the same quantities and qualities as those removed. The re-established plant materials are to be considered as an addition to the landscaping required within the scenic easement.

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Lessee will comply with all applicable local zoning and setback requirements. The Lessor reserves the right to traverse the Demised Premises to access the waterway which abuts the Demised Premises.

The Lessor's Board of Commissioners has heretofore adopted its Waterway Strategy Resolution relating to the development of leased waterways property. The Lessee shall implement the beautification plan described in the attached Exhibit C. Lessee shall comply with all applications of said Resolution in its use and development of the Demised Premises. Lessee's method of compliance therewith shall be approved by Lessor's Chief Engineer in writing.

## ARTICLE NINE

### LEASEHOLDS WITH EXISTING IMPROVEMENTS

#### 9.01 LESSEE WILL NOT ALLOW WASTE TO IMPROVEMENTS

The Lessee will keep the leasehold improvements safe, clean and in good order, repair and condition which shall include all necessary replacement, repair and decorating. Lessee will not allow the improvements to become damaged or diminished in value, ordinary wear and tear excepted, by anyone or by any cause.

#### 9.02 CONDITION OF Premises AND IMPROVEMENTS NOT WARRANTED

Lessee expressly acknowledges that the Lessor has made no representations, warranties express or implied, as to the adequacy, fitness or condition of Demised Premises or the improvements upon the Demised Premises for the purpose set forth in Article Three, Paragraph 3.07 hereof or for any other purpose or use express or implied by the Lessee. Lessee accepts the Demised Premises and the improvements thereon, if any, "AS-IS" and "WITH ALL FAULTS". Lessee acknowledges that it has inspected the Demised Premises and has satisfied itself as to the adequacy, fitness and condition thereof.

#### 9.03 MODIFICATION OF IMPROVEMENTS

No modification of the leasehold improvements shall be made by Lessee without the prior written approval of the Lessor and compliance by Lessee with all other terms of this Agreement. This paragraph shall not apply to interior improvements of a solely cosmetic nature.

#### 9.04 PLAT OF SURVEY AND LEGAL DESCRIPTION

Lessee understands and agrees that in the event the legal description and plat attached hereto are not legally sufficient for acceptance for recordation of this Lease by the Recorder of Deeds of the county in which the Demised Premises are located, Lessee shall procure, at its own expense, a plat of survey and legal description of the Demised Premises prepared and certified in writing by a Registered Illinois Land Surveyor, within twenty-one (21) days of the execution date hereof. Said

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plat of survey and legal description shall be reasonably satisfactory to and approved by the Lessor's Chief Engineer in writing. Failure to timely procure and receive approval of said plat of survey and legal description shall be grounds for immediate termination of this Lease. The Lessor reserves the right and Lessee concurs that Lessor shall insert said legal description and plat of survey into this Lease Agreement as Exhibits A and B, respectively, upon the approval thereof by District's Chief Engineer, without further affirmative act by either party hereto.

## ARTICLE TEN

### GENERAL ENVIRONMENTAL PROVISIONS

#### 10.01 DEFINITIONS

- A. "Environmental Laws" shall mean all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, state and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, orders, notices or demands relating to industrial hygiene, and the protection of human health or safety from exposure to Hazardous Materials, or the protection of the environment in any respect, including without limitation:
- (1) all requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation, treatment, storage, disposal, handling, or release of Hazardous Materials;
  - (2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and
  - (3) the Comprehensive Environmental Response, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA)(42 U.S.C. Sec. 6901 et seq.), Clean Air Act (42 U.S.C. Sec 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec.

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11001 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Safe Drinking Water Act (42 U.S.C. Sec. 300(f) et seq.), the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and all rules, regulations and guidance documents promulgated or published thereunder, Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipal laws relating to public health, safety or the environment.

**B. "Hazardous Materials" shall mean:**

- (1) any and all asbestos, natural gas, synthetic gas, liquefied natural gas, gasoline, diesel fuel, petroleum, petroleum products, petroleum hydrocarbons, petroleum by-products, petroleum derivatives, crude oil and any fraction of it, polychlorinated biphenyls (PCBs), trichloroethylene, ureaformaldehyde and radon gas;
- (2) any substance (whether solid, liquid or gaseous in nature), the presence of which (without regard to action level, concentration or quantity threshold) requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law;
- (3) any substance (whether solid, liquid or gaseous in nature) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or dangerous;
- (4) any substance (whether solid, liquid or gaseous in nature) the presence of which could cause or threaten to cause a nuisance upon the Demised Premises or to adjacent properties or pose or threaten to pose a hazardous threat to the health or safety of persons on or about such properties;
- (5) any substance (whether solid, liquid or gaseous in nature) the presence in of which on adjacent properties could constitute trespass by or against Lessee or Lessor;

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- (6) any materials, waste, chemicals and substances, whether solid, liquid or gaseous in nature, now or hereafter defined, listed, characterized or referred to in any Environmental Laws as "hazardous substances," "hazardous waste," "infectious waste," "medical waste," "extremely hazardous waste," "hazardous materials," "toxic chemicals," "toxic substances," "toxic waste," "toxic materials," "contaminants," "pollutants," "carcinogens," "reproductive toxicants," or any variant or similar designations;
- (7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations or quantity thresholds specified herein); or
- (8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.

C. "Phase I Environmental Assessment" shall mean:

- (1) an assessment of the Demised Premises performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Demised Premises, and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Demised Premises, a review of the utilization and maintenance of Hazardous Materials on the Demised Premises, review of the Demised Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Demised Premises, site interviews and site history evaluations, basic engineering analyses of the risks to human health and the environment of any areas of identified concerns, and preparation of a written report which discusses history, site land use, apparent regulatory compliance or lack thereof and which includes historical summary, proximity to and location of USTs, LUSTs, TSDFs, CERCLA site flood plain, maps, photograph log, references, conclusions and recommendations.

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## 10.02 MANUFACTURE, USE, STORAGE, TRANSFER OR DISTRIBUTION OF HAZARDOUS MATERIALS UPON OR WITHIN THE Demised Premises

Lessee, for itself, its heirs, executors, administrators, successors and assigns, covenants that to the extent that any Hazardous Materials are manufactured, brought upon, placed, stored, transferred or distributed upon or within the Demised Premises by Lessee, or its subtenant or assigns, or any of their agents, servants, employees, contractors or subcontractors, same shall be done in strict compliance with all Environmental Laws.

Construction or installation of new or reconstruction of existing underground storage tanks and underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Chief Engineer of the District.

## 10.03 USE OF PREMISES (RESTRICTIONS - ENVIRONMENTAL)

Lessee shall use the Demised Premises only for purposes expressly authorized by Article 3.07 of this Lease. Lessee will not do or permit any act that may impair the value of the Demised Premises or any part thereof or that could materially increase the dangers, or pose an unreasonable risk of harm, to the health or safety of persons to third parties (on or off the Demised Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Demised Premises or use the Demised Premises in any manner (i) which could cause the Demised Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Demised Premises within the ambit of, the Resource Conservation and Recovery Act of 1976, Section 6901 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance, (ii) so as to cause a release or threat of release of Hazardous Materials from the Demised Premises within the meaning of, or otherwise bring the Demised Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, Section 2251 of Title 33 of the United States Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.

## 10.04 CONDITION OF PROPERTY (ENVIRONMENTAL)

- (1) In the event Lessee has been the prior occupant/tenant of the Demised Premises under a prior occupancy/use authorization, Lessee warrants and represents that the Demised Premises and improvements thereon, including all personal property, are free from contamination by any Hazardous Materials, that there has not been

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thereon a release, discharge, or emission, of any Hazardous Materials during its occupancy of the Demised Premises as defined by any Environmental Laws, and that the Demised Premises does not contain, or is not affected by underground storage tanks, landfills, land disposal sites, or dumps. (This provision is applicable only to tenants seeking a new lease for the same property).

- (2) In the event of a release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Demised Premises or the improvements thereon, Lessee will take all appropriate response action, including any removal and remedial action, either before or after the execution date of this Lease.

## 10.05 INDEMNIFICATION (ENVIRONMENTAL)

- A. In consideration of the execution and delivery of this Lease Agreement, the Lessee indemnifies, exonerates, and holds the Lessor and its officers, officials, Commissioners, employees, and agents ("Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages and expenses incurred in connection with any of these (irrespective of whether any such Indemnified Party is a party to the action for which indemnification is here sought), including reasonable attorney's fees, costs and disbursements, incurred by the Indemnified Parties as a result of or arising out of or relating to (i) the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of Lessee's activities, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, compliance, or other matter relating to the protection of the environment, or (iii) the release or threatened release by Lessee, its subsidiaries, or its parent company, of any Hazardous Materials, or the presence of Hazardous Materials on or under the Demised Premises, or any property to which the Lessee, its parent company or any of its subsidiaries has sent Hazardous Materials, (including any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under any Environmental Law), regardless of whether caused by or within the control of the Lessee, its parent company or its subsidiaries, provided that, to the extent Lessor is strictly liable under any Environmental Laws, Lessee's obligation to Lessor under this indemnity shall be without regard to fault on the part of the Lessee with respect to the violation of law which results in liability to Lessor.

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- B. Lessee shall defend, indemnify, save and keep harmless the Indemnified Parties against any loss, damage, cost, lien or expense which they may suffer, incur or sustain or for which it may become liable, growing out of any injury to or death of persons or loss or damage to property which shall at any time during the term of this Lease be caused by or resulting from the migration of Hazardous Materials from the Demised Premises to adjacent properties. In case any action, suit, proceeding or investigation shall be commenced against one or more of the Indemnified Parties growing out of any such loss, damage, cost or expense, the Lessee shall give immediate written notice of the same to the Lessor, and Lessee shall attend to the defense of the same and save and keep harmless the Indemnified Parties from all expense, attorney's fees, costs, disbursements and liabilities in any manner growing out of, pertaining to or connected therewith.**
- C. Lessee shall be responsible for all costs for remediation of the Demised Premises for contamination that migrates from adjacent property during the term of the Lease but Lessor may seek recovery from any responsible third party.**

## 10.06 SITE RESTORATION/REMEDATION BOND (ENVIRONMENTAL)

On or before the commencement of the last five-year period of the leasehold term hereunder, Lessee shall lodge with the Lessor its Environmental Site Restoration/Remediation Bond in the penal sum of \$10,000.00, secured either by cash, irrevocable letter of credit or a commercial bond with surety to secure Lessee's performance of and compliance with the provisions and intent of Article 10 of this Lease. A cash payment securing the bond hereunder will be placed in an interest bearing account established by the Lessor specifically for this purpose. Any interest paid on account of said deposit shall be the property of and payable periodically to the Lessee. Such account shall be drawable only by Lessor upon its unilateral act. At no time shall the amount on deposit in said account be less than the penal sum of this Bond. Any commercial bond with surety shall be fully prepaid by the Lessee and documented as such at the time it is lodged with the Lessor. Said bond shall be in a form approved by the Lessor and shall be maintained in full force and effect until such time as Lessee has demonstrated and documented to the reasonable satisfaction of Lessor (and Lessor has executed its written release thereof to the issuer), full compliance with all Environmental Laws, relating to Lessee's use or occupancy of the Demised Premises and its environmental restoration or remediation. This provision shall survive the termination/expiration of this Lease.



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## 10.07 ENVIRONMENTAL COVENANTS

Lessee agrees to and covenants as follows:

- A. It has no knowledge of any pending or threatened:**
- (1) claims, complaints, notices, or requests for information directed to Lessee with respect to any alleged violation of any Environmental Laws, or**
  - (2) complaints, notices, or requests for information directed to Lessee regarding potential liability under any Environmental Law, relating to or arising from the Demised Premises.**
- B. Lessee covenants and agrees that, throughout the term of the Lease, all Hazardous Materials which may be used by any person for any purpose upon the Demised Premises shall be used or stored thereon only in a safe, approved manner, in accordance with all generally accepted industrial standards and all Environmental Laws.**
- C. Lessee has been issued and is in compliance with all permits, certificates, approvals, licenses, and other authorizations relating to environmental matters and necessary for its business, if any.**
- D. Lessee, to the best of its knowledge, is not a potentially responsible party with respect to any other facility receiving waste of the Lessee (whether or not from the Demised Premises) under CERCLA or under any statute providing for financial responsibility of private parties for cleanup or other actions with respect to the release or threatened release of any Hazardous Materials.**
- E. None of the manufacturing or distribution facilities of Lessee is subject to any environmental lien. "Environmental Lien" means a lien in favor of any government entity for any liability under any law relating to the environment or costs incurred by such government entity in response to the release or threatened release of any substance into the environment.**
- F. Lessee will take all reasonable steps to prevent and has no knowledge of any conditions on the Demised Premises that is or was alleged by any government entity or third party to be in violation of any Environmental Laws. There will be no spill, discharge, leak, emission, injection, escape, dumping, or release of any toxic or Hazardous Materials by any persons on the Demised Premises.**

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- G.** Except as disclosed on Attachment D hereto, Lessee and its parent company, if any, have not received from any government entity since 1980, any written complaint or written notice asserting potential liability, written request for information, or written request to investigate any site under the CERCLA of 1980, as amended, or under any domestic state law comparable to CERCLA or any foreign law comparable to CERCLA.
- H.** Lessee, to the best of its knowledge after due inquiry, since November 15, 1971, represents that there has not been any discharging, spilling, leaking, dumping, or burying of hazardous substances, as defined in CERCLA, or disposal of hazardous wastes, as defined in RCRA, or of any other pollutant or contaminant at the Demised Premises that is likely to form the basis for any written claim by any government entity seeking to impose liability for remedial action under CERCLA or RCRA \*(This provision applicable only to occupants/tenants seeking a new lease for the same property).
- I.** Lessee will not allow the installation of asbestos on the Demised Premises, or any item, article, container or electrical equipment, including but not limited to transformers, capacitors, circuit breakers, reclosers, voltage regulators, switches, electromagnets and cable, containing PCBs.
- J.** Within 60 days after execution of the Lease, the Lessee shall prepare and submit a general statement to Lessor of its operations and maintenance program for any activities conducted on Demised Premises, describing its layout, process, method of inspections, reporting procedure, and maintenance of equipment, which shall be updated annually and submitted to Lessor on the anniversary date of the execution of the Lease.
- K.** Lessee agrees to conduct daily monitoring and to maintain a daily log book to ensure compliance with all Environmental Laws which may be inspected by Lessor at its option.
- L.** The Lessee shall notify Lessor in writing of any proposed significant renovation or improvement on or to the Demised Premises, which notice shall include any drawings, plans and specifications thereof, at least 30 days prior to beginning construction of any such renovation or improvement. For purposes of this subsection (L), renovation shall be deemed significant when the total cost exceeds \$10,000.00.
- M.** The ~~aforsaid~~ ~~representations~~ and warranties shall survive the expiration or termination of the Lease.

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## 10.08 DEFAULT (ENVIRONMENTAL)

The occurrence of any one or more of the following events shall constitute a default under this Lease Agreement, but said default shall not terminate the Lease unless Lessor notifies Lessee of termination in writing:

- A. The Demised Premises are listed or proposed for listing on the National Priorities List pursuant to Section 1.05 of the CERCLA, 42 U.S.C. Section 9605, on the CERCLIS, or on any other similar state list of sites or facilities requiring environmental investigation or cleanup.
- B. Lessee is determined to have liability for underground storage tanks, active or abandoned, including petroleum storage tanks, on or under the Demised Premises, including any release of Hazardous Materials therefrom, that, singly or in the aggregate, have or may reasonably be expected to have a material adverse effect on the financial condition, operations, assets or business, properties or prospects of Lessee or its parent company.
- C. Lessee is determined to have liability for polychlorinated biphenyls (PCBs) that require immediate remediation or cleanup or friable asbestos in such condition to cause or threaten to cause, a present health hazard at any property previously leased by Lessee that, singly or in the aggregate, has or may reasonably be expected to have a material adverse effect on the financial condition, operations, assets, business, properties, or prospects of Lessee, or its parent company.
- D. Lessee is determined to have liability under any Environmental Laws for any condition that exists at, on, or under any property previously leased by Lessee that, with the passage of time or the giving of notice, or both, gives rise to liability that, singly or in the aggregate, has or may reasonably be expected to have a material adverse effect on the financial condition, operations, assets, or business properties or prospects of Lessee, or its parent company.

## 10.09 COVENANTS (ENVIRONMENTAL)

Lessee shall cause its parent company and each of its respective subsidiaries, contractors, subcontractors, employees and agents to:

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- A. (1) Use and operate all of the Demised Premises in compliance with all applicable Environmental Laws, keep all material permits, approvals, certificates, and licenses in effect and remain in material compliance with them;**
- (2) undertake reasonable and cost-effective measures to minimize any immediate environmental impact of any spill or leak of any Hazardous Materials;**
- (3) provide notice to the Lessor of the operation of any on-site non-hazardous waste disposal facility. For purposes of this subsection (A)(3), the term "waste" means any discarded or abandoned material, and the term "disposal facility" means any facility in which wastes are placed for disposal or storage, in each case, for longer than three (3) months.**
- B. Notify Lessor by telephone within two hours of the release of Hazardous Materials, including the extent to which the identity of the Hazardous Materials is known, the quantity thereof and the cause(s) of the release, and provide Lessor within 72 hours of the event, with copies of all written notices by Lessee, its parent and its subsidiaries that are reported to government regulators or received from the government regulators.**
- C. Provide such information that Lessor may reasonably request from time to time to determine compliance by the Lessee with this Article.**
- D. Lessee covenants and agrees to cooperate with Lessor in any inspection, assessment, monitoring or remediation instituted by Lessor during the Lease term and to allow prospective tenants or purchasers reasonable access to the Demised Premises one year prior to the expiration of the Lease.**

## 10.10 COMPLIANCE (ENVIRONMENTAL)

The Lessee will cause its parent company and each of its subsidiaries, if any, to exercise due diligence to comply with all applicable treaties, laws, rules, regulations, and orders of any government authority.

- A. Lessee shall conduct a Phase I Environmental Assessment, at its own expense, with respect to the Demised Premises every fifth anniversary of the execution of this Lease and submit the written report to the Lessor within 90 days after each fifth anniversary. After review of each Phase I Environmental Assessment, or at any other time, upon receipt of any information or report**

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Lessor, at its sole discretion, may require Lessee, at Lessee's expense, to obtain a Phase II Environmental Assessment with respect to the Demised Premises. The written report of the Phase II Environmental Assessment shall be submitted to Lessor within 120 days of Lessor's request for same. If the Phase II Assessment discloses the presence of any Hazardous Materials contamination on the Demised Premises or adjacent property, Lessee shall take immediate action to remediate the contamination and to restore the Demised Premises to a clean and sanitary condition and to the extent required by any and all environmental laws. Lessor may require Lessee to obtain a Phase I and Phase II Environmental Assessment with respect to the Demised Premises at any other time.

- B. Lessee agrees to implement its own building maintenance and operations program for asbestos inspections on an annual basis and to report its findings to Lessor annually on the anniversary date of the Lease.
- C. Capacitors, transformers, or other environmentally sensitive installations or improvements shall be removed at the end of the Lease at Lessor's election.
- D. In addition to the Environmental Assessments required in paragraph A of this Article, Lessor shall have the right, but is not required to cause an independent environmental consultant, chosen by the Lessor at its sole discretion, to inspect, assess and test the Demised Premises for the existence of any and all environmental conditions and any and all violations of Environmental Laws (Environmental Assessment). The scope, sequence and timing of the Environmental Assessment shall be at the sole discretion of Lessor.
- E. If any Environmental Assessment reveals, or Lessor otherwise becomes aware of, the existence of any violation of any Environmental Laws that either Lessee is unwilling to remediate or that Lessor is unwilling to accept, Lessee shall be in default under this Lease and Lessor shall have the right and option to terminate this Agreement and to declare it null and void.
- F. Not less than ~~one~~ (1) year prior to the expiration of the Lease, Lessee shall have caused to be prepared and submitted to the Lessor a written report of a site assessment in scope, form and substance, and prepared by an independent, competent and qualified professional and engineer, registered in the State of Illinois, satisfactory to the Lessor, and dated not more than eighteen (18) months prior to the expiration of the Lease, showing that:

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- (1) the Demised Premises and any improvements thereon do not materially deviate from any requirements of the Environmental Laws, including any licenses, permits or certificates required thereunder;
  - (2) the Demised Premises property and any improvements thereon do not contain: (i) asbestos in any form; (ii) urea formaldehyde; (iii) items, articles, containers, or equipment which contain fluid containing polychlorinated biphenyls (PCBs); or (iv) underground storage tanks which do not comply with Environmental Laws;
  - (3) the engineer has identified, and then describes, any Hazardous Materials utilized or maintained on the Demised Premises, the exposure to which is prohibited, limited, or regulated by any Environmental Laws;
  - (4) if any Hazardous Materials were utilized and maintained on the Demised Premises, the engineer has conducted and submitted a Phase II Environmental Assessment of the Demised Premises, which documents that the Demised Premises and improvements are free of contamination by Hazardous Materials;
  - (5) the engineer has identified and then describes, the subject matter of any past, existing, or threatened investigation, inquiry, or proceeding concerning environmental matters by any federal, state, county, regional or local authority, (the "Authorities"), and describes any submission by Lessee concerning said environmental matter which it intends to give, has been given or should be given with regard to the Demised Premises to the Authorities; and
  - (6) the engineer includes copies of the submissions made pursuant to the requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986, (SARA) Section 11001 et seq. of Title 42 of the United States Code.
- G. In the event Lessee should receive a Notice of Environmental Problem, Lessee shall promptly provide a copy to the Lessor, and in no event later than seventy-two (72) hours from Lessee's and any tenant's receipt or submission thereof. "Notice of Environmental Problem" shall mean any notice, letter, citation, order, warning, complaint, inquiry, claim, or demand that: (i) the Les-

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see has violated, or is about to violate, any Environmental Laws; (ii) there has been a release, or there is a threat of release, of Hazardous Materials, on the Demised Premises, or any improvements thereon; (iii) the Lessee will be liable, in whole or in part, for the costs of cleaning up, remediating, removing, or responding to a release of Hazardous Materials; or (iv) any part of the Demised Premises or any improvements thereon is subject to a lien in favor of any governmental entity for any liability, costs, or damages, under any Environmental Laws, arising from or costs incurred by such government entity in response to a release of a Hazardous Material.

## 10.11 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)

- A.** In the event Lessee receives a Notice of Environmental Problem as defined in Paragraph 10.10G, Lessee shall, within ninety (90) days, submit to Lessor a written report in scope, form and substance, and prepared by an independent, competent and qualified, professional, registered engineer, satisfactory to the Lessor, showing that the engineer made all appropriate inquiry consistent with good commercial and customary practice, such that consistent with generally accepted engineering practice and procedure, indicating whether any evidence or indication came to light which would suggest there was a release of substances on the Demised Premises which could necessitate an environmental response action, and which describes the Demised Premises compliance with, or lack thereof, and with all applicable Environmental Laws or certificates required thereunder, and the Lessee's compliance with the representations and warranties previously set forth in this Lease. After review of the written report, Lessor may require Lessee to submit a written Phase II Environmental Assessment pursuant to provisions set forth in paragraph 10.10A.
- B.** Lessor hereby expressly reserves to itself, its agents, attorneys, employees, consultants, and contractors, an irrevocable license and authorization to enter upon and inspect the Leased Premises and improvements thereon, and perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and other tests which may physically invade the Demised Premises or improvements thereon, as the Lessor, in its sole discretion, determines is necessary to protect its interests.

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IN WITNESS WHEREOF, THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO has caused this instrument to be executed in triplicate by the Chairman of the Committee on Finance of its Board of Commissioners and attested by its Clerk, and its corporate seal to be hereunto affixed; and the Lessee has caused this instrument to be executed in triplicate by its President and attested by its Secretary and its corporate seal to be hereunto affixed all the day and year first above written.

METROPOLITAN WATER RECLAMATION DISTRICT  
OF GREATER CHICAGO

By: *Gloria Alitto Majewski*  
Gloria Alitto Majewski  
Chairman of Committee on Finance

ATTEST:

*Mary C. West*  
Mary C. West, Clerk

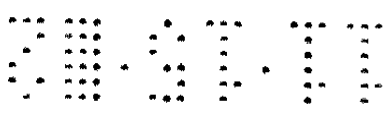
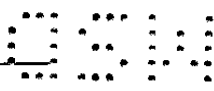
BGP LINCOLN VILLAGE, L.L.C.

By: *Scott Clark*  
Title: Managing Member

ATTEST

By: *[Signature]*

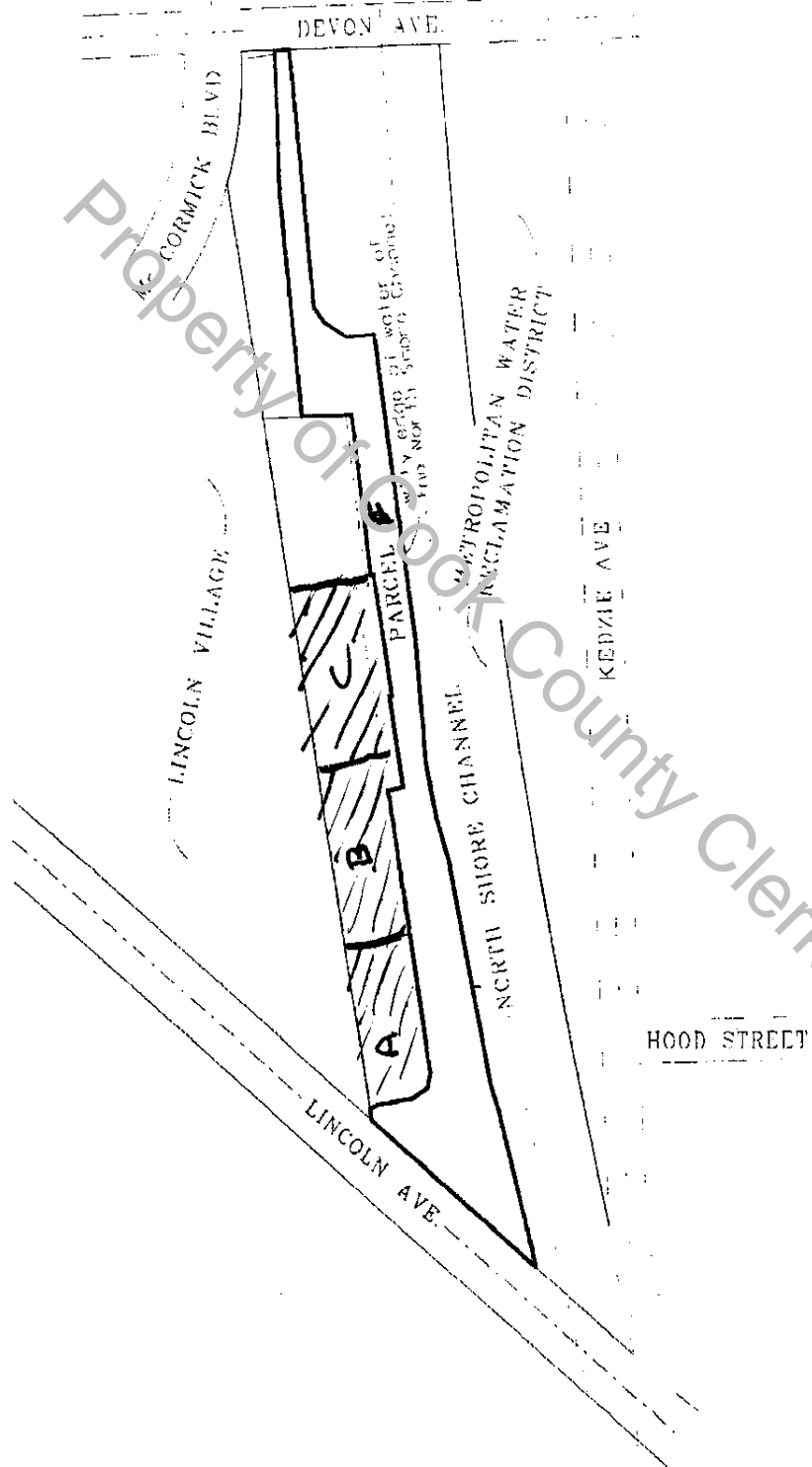
Title: Member





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AMERICAN SURVEYING CONSULTANTS, PC.  
6035 N. NORTHWEST HWY., SUITE 201  
CHICAGO, IL. 60631 (773) 763-1387



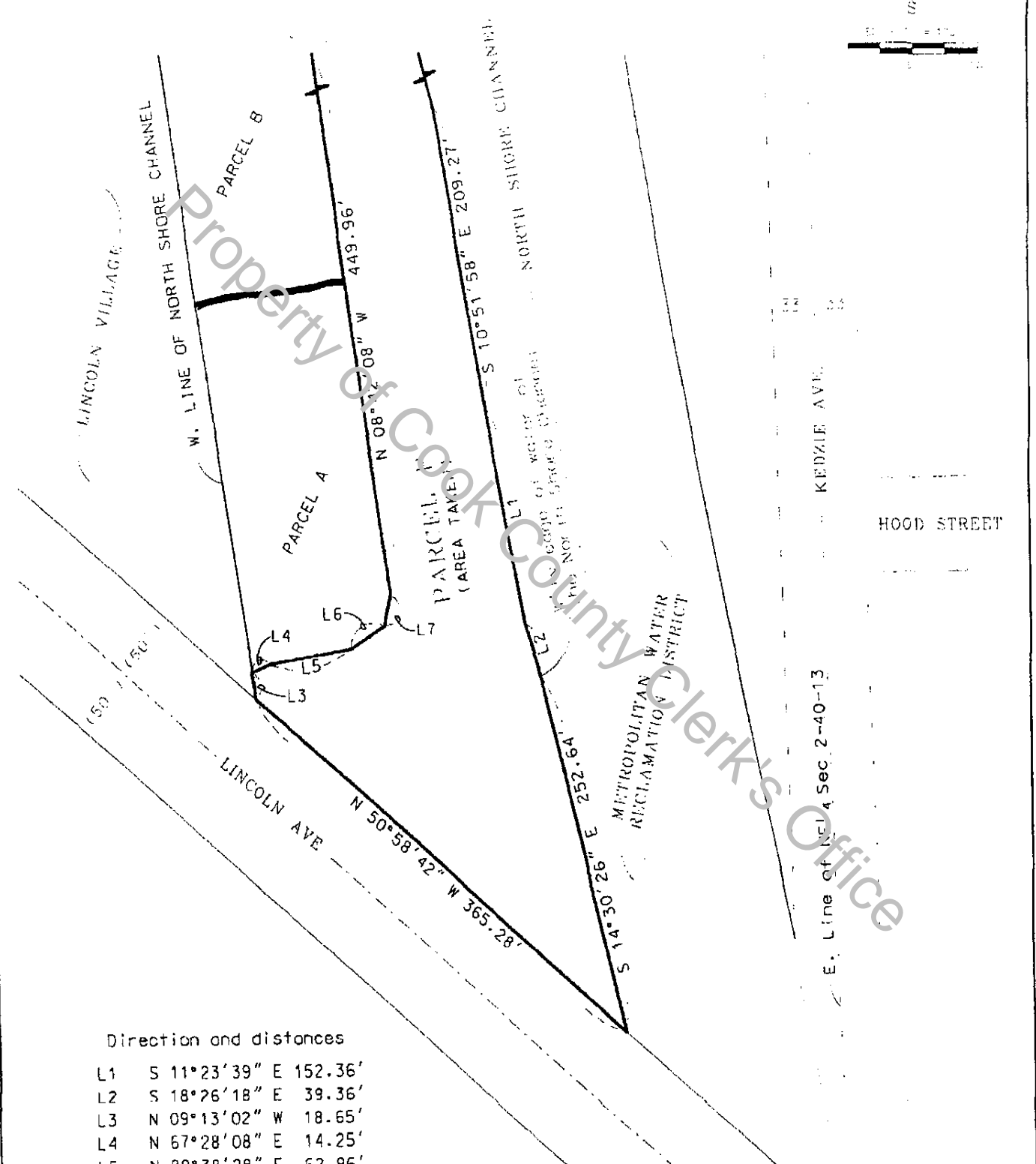
Property of Cook County Clerk's Office

SCALE:	1" = 300'	ASC No.	200060-2
DATE:		OWNER:	METROPOLITAN WATER RECLAMATION DISTRICT
		PARCEL:	F

EXHIBIT A-1

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AMERICAN SURVEYING CONSULTANTS, PC.  
 6035 N. NORTHWEST HWY. SUITE 201  
 CHICAGO, IL. 60631 (773) 763-1387



Direction and distances

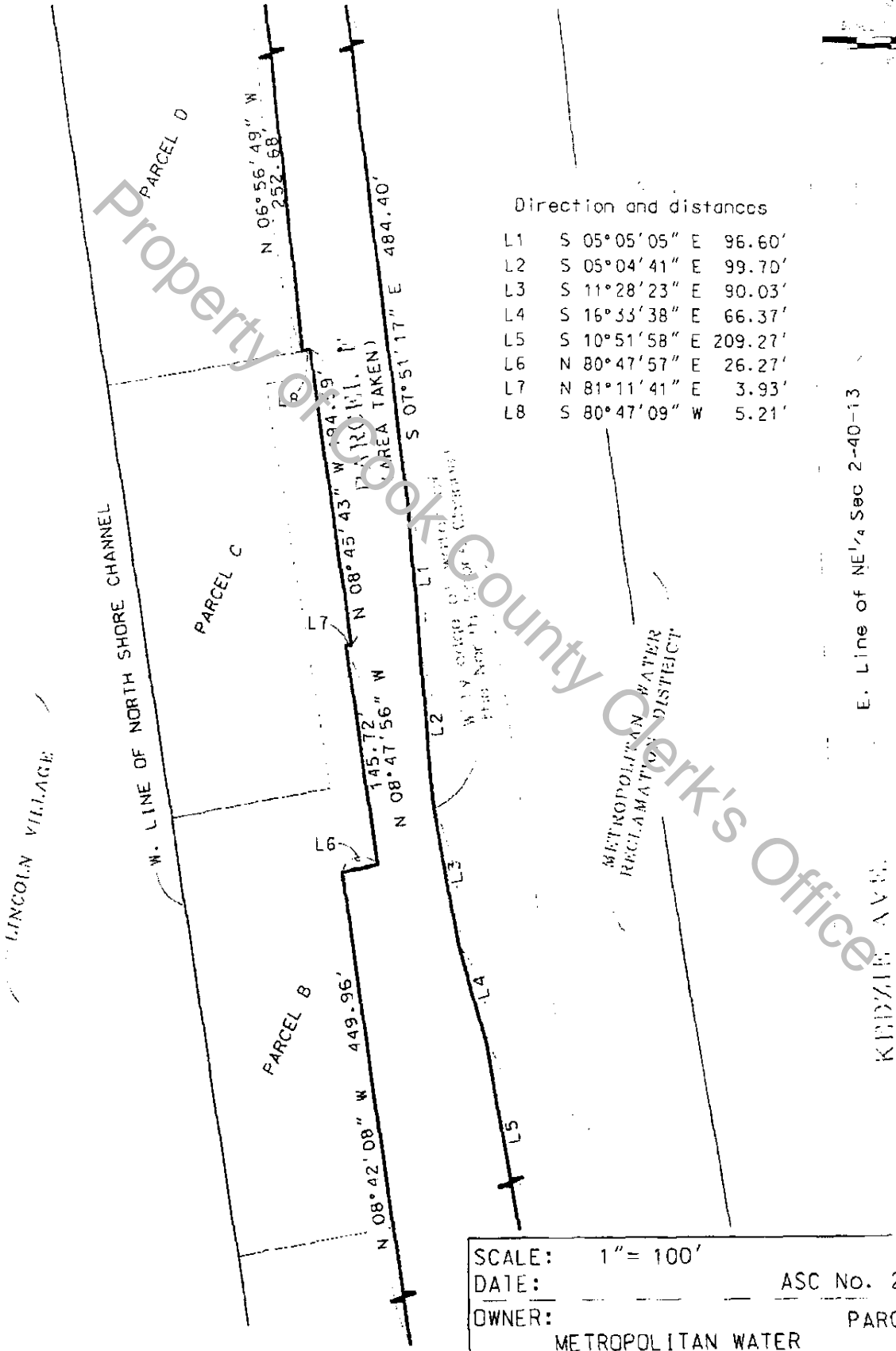
L1	S 11° 23' 39" E	152.36'
L2	S 18° 26' 18" E	39.36'
L3	N 09° 13' 02" W	18.65'
L4	N 67° 28' 08" E	14.25'
L5	N 80° 38' 28" E	62.96'
L6	N 58° 19' 04" E	30.39'
L7	N 12° 43' 48" E	22.73'

SCALE: 1" = 100'  
 DATE: \_\_\_\_\_  
 OWNER: METROPOLITAN WATER RECLAMATION DISTRICT  
 ASC No. 200060-2  
 PARCEL: F

EXHIBIT A-2

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AMERICAN SURVEYING CONSULTANTS, PC.  
 6035 N. NORTHWEST HWY. SUITE 201  
 CHICAGO, IL. 60631 (773) 763-1387



Direction and distances

L1	S 05°05'05" E	96.60'
L2	S 05°04'41" E	99.70'
L3	S 11°28'23" E	90.03'
L4	S 16°33'38" E	66.37'
L5	S 10°51'58" E	209.27'
L6	N 80°47'57" E	26.27'
L7	N 81°11'41" E	3.93'
L8	S 80°47'09" W	5.21'

E. Line of NE 1/4 Sec 2-40-13

KIDDER AVE.

SCALE: 1" = 100'  
 DATE: \_\_\_\_\_ ASC No. 200060-2  
 OWNER: METROPOLITAN WATER RECLAMATION DISTRICT  
 PARCEL: \_\_\_\_\_

EXHIBIT A-3

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Leased Premises include Parcels A, B and C  
 with the exception of that portion of parcels A, B, and  
 C described in the legal description for Parcel F

## Parcel A

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13, East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence N50°-57'-58"W along the Northeasterly right-of-way line of Lincoln Avenue 462.72 feet to the point of beginning; thence continuing N50°-57'-58"W along said Northeasterly line 115.00 feet to the westerly right-of-way line of the North Shore Channel; thence N9°-08'-31"W, along said Westerly line 275.00 feet; thence N80°-51'-29"E, 115.00 feet; thence S8°-43'-31"E, 275.01 feet; thence S13°-49'-19"W, 93.07 feet to the point of beginning, containing 0.8309 acres;

## Parcel B

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13, East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence N50°-57'-58"W, along the Northeasterly right-of-way line of Lincoln Avenue 577.72 feet to the westerly right-of-way line of the North Shore Channel; thence N90°-08'-31"W, along said westerly line 275.00 feet to the point of beginning; thence continuing N9°-08'-31"W, 285.00 feet; thence N80°-51'-29"E, 118.00 feet; thence S8°-32'-20"E, 285.00 feet; thence S80°-51'-29"W, 115.00 feet to the point of beginning, containing 0.7522 acres.

## Parcel C

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13, East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence N50°-57'-58"W along the Northeasterly right-of-way line of Lincoln Avenue, 577.72 feet to the Westerly right-of-way line of the North Shore Channel; thence N9°-08'-31" W, along said Westerly line 560.00 feet to the point of beginning; thence continuing N9°-08'-31" W, 285.00 feet; thence N80°-51'-29" E, 145.00 feet; thence S8°-44'-24" E, 285.01 feet; thence S80°-51'-29" 143.00 feet to the point of beginning, containing 0.9421 acres.

EXHIBIT A-4

**UNOFFICIAL COPY**

The leased premises shall not include the land legally described below as Parcel

PARCEL


Part of the East Half of the Northeast Quarter of Section 2, Township 40 North, Range 13, East of the Third Principal Meridian in Cook County Illinois, described as follows: Commencing at the northeast corner of the Northeast Quarter of said Section 2; thence South 88 degrees 16 minutes 34 seconds West, along the north line of said Section 2, a distance of 538.11 feet; thence South 01 degrees 43 minutes 26 seconds East, 33.00 feet to the south line of Devon Avenue, said point being the Point of Beginning; thence North 88 degrees 16 minutes 34 seconds East, along said south line of Devon Avenue, 26.08 feet; thence South 05 degrees 41 minutes 30 seconds East, 398.13 feet; thence South 37 degrees 01 minutes 19 seconds East, 29.60 feet; thence South 59 degrees 56 minutes 22 seconds East, 45.67 feet; thence North 85 degrees 13 minutes 05 seconds East, 47.73 feet to the westerly edge of water of the North Shore Channel; thence southerly for the next nine courses along said westerly edge of water of the North Shore Channel, South 07 degrees 51 minutes 17 seconds East, 484.40 feet; thence South 05 degrees 05 minutes 05 seconds East, 96.60 feet; thence South 05 degrees 04 minutes 41 seconds East, 99.70 feet; thence South 11 degrees 28 minutes 23 seconds East, 90.03 feet; thence South 16 degrees 33 minutes 38 seconds East, 66.77 feet; thence South 10 degrees 51 minutes 58 seconds East, 209.27 feet; thence South 11 degrees 23 minutes 39 seconds East, 152.36 feet; thence South 18 degrees 26 minutes 18 seconds East, 39.36 feet; thence South 14 degrees 30 minutes 26 seconds East, 252.64 feet to the northeasterly line of Lincoln Avenue; thence North 50 degrees 58 minutes 42 seconds West, along said northeasterly line of Lincoln Avenue, 365.28 feet; thence North 09 degrees 13 minutes 02 seconds West, 18.65 feet; thence North 67 degrees 28 minutes 08 seconds East, 14.25 feet; thence North 80 degrees 38 minutes 28 seconds East, 62.96 feet; thence North 58 degrees 19 minutes 04 seconds East, 30.39 feet; thence North 12 degrees 43 minutes 48 seconds East, 22.73 feet; thence North 08 degrees 42 minutes 08 seconds West, 449.96 feet; thence North 80 degrees 47 minutes 57 seconds East, 26.27 feet; thence North 08 degrees 47 minutes 56 seconds West, 145.72 feet; thence North 81 degrees 11 minutes 41 seconds East, 3.93 feet; thence North 08 degrees 45 minutes 43 seconds West, 194.59 feet; thence South 80 degrees 47 minutes 09 seconds West, 5.21 feet; thence North 06 degrees 56 minutes 49 seconds West, 252.68 feet; thence South 88 degrees 16 minutes 34 seconds West, 37.30 feet; thence North 05 degrees 48 minutes 11 seconds West, 355.80 feet; thence North 01 degrees 43 minutes 26 seconds West, 212.55 feet to the Point of Beginning.  
Said parcel contains 145248 square feet, or 3.334 acres, more or less.

EXHIBIT A-5

# UNOFFICIAL COPY

STATE OF ILLINOIS)  
  ) SS.  
COUNTY OF COOK )

The undersigned, being Commissioners and General Superintendent of the Metropolitan Water Reclamation District of Greater Chicago, being first duly sworn upon oath, individually deposes and says that he/she is not and has not been a party to any collusive agreement with the Lessee or Lessees of the Premises described herein.


  
\_\_\_\_\_  
President Terrence J. O'Brien

  
\_\_\_\_\_  
Vice President Kathleen T. Meany

  
\_\_\_\_\_  
Commissioner Gloria Alitto Majewski

  
\_\_\_\_\_  
Commissioner James C. Harris

  
\_\_\_\_\_  
Commissioner Barbara J. McGowan

  
\_\_\_\_\_  
Commissioner Frank Avila


  
\_\_\_\_\_  
Commissioner Cynthia M. Santos

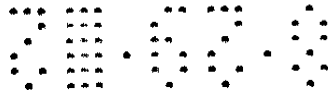
  
\_\_\_\_\_  
Commissioner Patricia Young

  
\_\_\_\_\_  
Commissioner Harry "Bus" Yourell

  
\_\_\_\_\_  
General Superintendent John C. Farnan

SUBSCRIBED AND SWORN to  
before me this 10<sup>th</sup> day  
of April, 2003.

  
\_\_\_\_\_  
Notary Public



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
                                      ) SS  
COUNTY OF COOK        )

## LESSEE'S NON-COLLUSION AFFIDAVIT

\_\_\_\_\_, the President and  
\_\_\_\_\_, the Secretary of  
\_\_\_\_\_, the Lessee in the above and  
foregoing Lease, being first duly sworn on oath deposes and says that they are the  
\_\_\_\_\_  
President and Secretary respectively of the  
Lessee hereunder and that neither they nor any agent of the Lessee have been a  
party to any collusive agreement with the Lessor hereunder or with Lessor's Com-  
missioners, General Superintendent or officers with respect to the leasing of the  
Premises which are the subject of the above and foregoing Lease.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

SUBSCRIBED AND SWORN to  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

0322727118

2011.08.11

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK        )

I, Nancy V. Murphy Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gloria Alitto Majewski personally known to me to be the Chairman of the Committee on Finance of the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago, a municipal corporation, and Mary C. West, personally known to me to be the Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Chairman of the Committee on Finance and such Clerk, they signed and delivered the said instrument as Chairman of the Committee on Finance of the Board of Commissioners and Clerk of said municipal corporation, and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Commissioners of said municipal corporation, as their free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10<sup>th</sup> day of April A.D. 2003.

Nancy V. Murphy  
Notary Public

My Commission expires:

2-10-07



0322

727118



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Loan Stare, a Notary Public in and for said County,  
 (Name)  
 in the State aforesaid, DO HEREBY CERTIFY that Scott Gerrell,  
 (Name)  
 personally known to me to be the Managing Member  
 (Title)  
 of BCP Lincoln Village, L.L.C, a corporation, and  
 (Corporation Name),  
Daniel Wang personally known to me to be the  
 (Name)  
member of said corporation are the same persons  
 (Title) *limited liability company*  
 whose names are subscribed to the foregoing instrument, appeared before me this  
 day in person and severally acknowledged that as such Managing Member  
 (Title)  
Member of said corpora-  
 (Title)  
 tion, duly executed said instrument in behalf of said corporation and caused the  
 corporate seal of said corporation to be affixed thereto pursuant to authority given  
 by the Board of Directors of said corporation, as their free and voluntary act and as  
 the free and voluntary act and deed of said corporation, for the uses and purposes  
 therein set forth. *limited liability company*

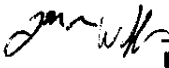
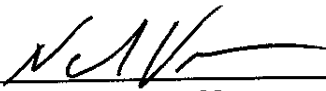
2003 GIVEN under my hand and Notarial Seal this 4th day of MARCH, A.D.


\_\_\_\_\_  
Notary Public

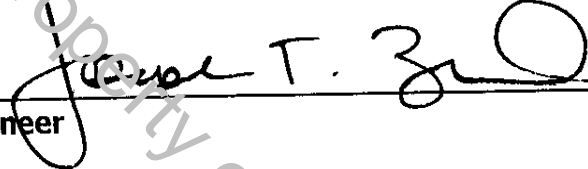
OFFICIAL SEAL"  
 My Commission expires:  
 NOTARY PUBLIC, STATE OF ILLINOIS  
 MY COMMISSION EXPIRES 1/9/2005

# UNOFFICIAL COPY

**APPROVED: As to Plat and Legal Description:**


   
\_\_\_\_\_  
**Engineer of Infrastructure Management**

  
\_\_\_\_\_  
**Assistant Chief Engineer Infrastructure & Budget Management Division**

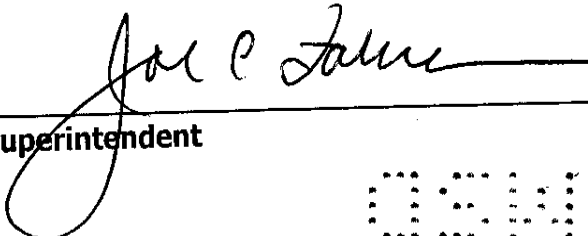
  
\_\_\_\_\_  
**Chief Engineer**

**APPROVED AS TO FORM AND LEGALITY:**

  
\_\_\_\_\_  
**Head Assistant Attorney**

  
\_\_\_\_\_  
**Attorney**

**APPROVED:**

  
\_\_\_\_\_  
**General Superintendent**

05/14

08:57:11