

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY,
AND AFTER RECORDING
RETURN TO:



Doc#: 0414131087
Eugene "Gene" Moore Fee: \$132.00
Cook County Recorder of Deeds
Date: 05/20/2004 01:27 PM Pg: 1 of 52

Bruce P. Mason, Esq.
Mason, Silver, Wenk & Mishkin, L.L.C.
1033 Skokie Boulevard, Suite 250
Northbrook, Illinois 60062

GROUND LEASE

FOR

REAL ESTATE

BETWEEN

NORTHWESTERN UNIVERSITY, AS LESSOR,

AND

270 EAST PEARSON, L.L.C., AS LESSEE

DATED: AS OF MAY 20, 2004

Property of Cook County Clerk's Office

8
8
②

CTI 8117006 DBL

UNOFFICIAL COPY

TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
1.	Premises	
1.1	Premises; Term.....	1
1.2	Delivery of Possession; Condition of Premises	1
2.	Definitions	
2.1	“Additional Rent”	2
2.2	“Affiliate”	2
2.3	“Appurtenant Rights”	2
2.4	“Building” or “Buildings”	2
2.5	“Business Day” or “Business Days”	2
2.6	“By-Laws”	2
2.7	“Casualty”	2
2.8	“Changes and Alterations” or “Change or Alteration”	2
2.9	“City”	2
2.10	“Claim or Claims”	2
2.11	“Commencement Date”	2
2.12	“Common Area”	2
2.13	“Condemnation Proceeding”	2
2.14	“Condominium Act”	2
2.15	“Condominium Association”	3
2.16	“Day” or “Days”	3
2.17	“Declaration”	3
2.18	“Default”	3
2.19	“Environmental Event”	3
2.20	“Environmental Laws”	3
2.21	“Event of Default”	3
2.22	“Expiration Date”	3
2.23	“Fee Mortgage”	3
2.24	“Fee Mortgagee”	3
2.25	“First Leasehold Mortgage”	3
2.26	“First Leasehold Mortgagee”	3
2.27	“Governmental Authority” or “Governmental Authorities”	3
2.28	“Government Requirements”	3
2.29	“Ground Rent”	3
2.30	“Hazardous Substances”	3
2.31	“Imposition” or “Impositions”	3
2.32	“Improvements”	3
2.33	“Indemnitee”	3
2.34	“Indemnitor”	4
2.35	“Land”	4
2.36	“Lease”	4
2.37	“Lease Interest Rate”	4
2.38	“Leasehold Mortgage”	4
2.39	“Leasehold Mortgagee”	4
2.40	“Lessee”	4
2.41	“Lessor”	4

UNOFFICIAL COPY

2.42	“Lessor’s Estate”	4
2.43	“Limited Common Area”	4
2.44	“Mortgage”	4
2.45	“Notice of Claim”	5
2.46	“Notice of Potential Claim”	5
2.47	“Potential Claim”	5
2.48	“Premises”	5
2.49	“Project”	5
2.50	“Protected Persons”	5
2.51	“Remediation”	5
2.52	“Rent”	5
2.53	“Residential Ground Lease”	5
2.54	“Restoration”	5
2.55	“Successor-Lessor”	5
2.56	“Termination Date”	5
2.57	“Termination Notice”	5
2.58	“Unavoidable Delays”	5
2.59	“Unit”	6
2.60	“Unit Mortgage”	6
2.61	“Unit Mortgagee”	6
2.62	“Unit Owner” or “Unit Owners”	6
2.63	“Unit Sublease”	6
3.	Rent Payments	
3.1	Ground Rent	6
3.2	Other Costs, Expenses and Obligations	6
3.3	Mutual Cooperation	6
4.	Impositions	
4.1	Impositions	7
4.2	Lessor’s Taxes	7
4.3	Notices of Impositions	7
4.4	Right to Contest Impositions	7
4.5	Tax Parcel Divisions	8
5.	Ownership of the Project	
5.1	Title to Buildings and Improvements	8
6.	Development of the Premises	
6.1	Declaration	8
6.2	Covenants of Condominium Association	8
6.3	Subleases with Unit Owners and Assignments	9
	to Condominium Associations	
6.4	Unit Owners	9
6.5	Condominium Association of Lessee; Unit Owners ...	10

UNOFFICIAL COPY

7.	Use of Premises; Compliance with Requirements; Maintenance and Repair	
7.1	Use of Premises.....	10
7.2	No Violation of Applicable Law.....	10
7.3	Conformity with Legal and Insurance Requirements....	10
7.4	Operation, Maintenance and Repair of Premises.....	11
8.	Insurance	
8.1	Property Insurance.....	11
8.2	Liability Insurance.....	11
8.3	Responsibility for Obtaining and Maintaining Insurance	12
8.4	Approval and Evidence of Insurance.....	12
8.5	Additional Insureds.....	12
8.6	Notice of Cancellation.....	12
8.7	Adjustment of Losses; Use of Proceeds.....	12
8.8	Waiver of Subrogation.....	12
9.	Liens	
9.1	No Authority To Create Liens Against Lessor's Interest..	13
9.2	No Liens, Charges, or Encumbrances Against..... Lessor's Estate	13
9.3	Lessee's Duty To Obtain Discharge Of Liens..... Against Lessor's Estate	13
10.	Assignments, Subleases, Mortgages and Sales	
10.1	Assignment by Lessee.....	13
10.2	Mortgage by Lessee or Sublessors.....	14
10.3	Mortgage by Lessor.....	15
10.4	Sale by Lessor.....	15
11.	Condemnation	
11.1	Condemnation of Entire Premises.....	15
11.2	Partial Condemnation.....	15
11.3	Termination of Residential Ground Lease.....	16
12.	Casualty	
12.1	Damage of less than 10% of the Project.....	16
12.2	Damage of 10% or More of the Project..... Allowing Lessee an Option to Terminate	16
12.3	Insurance Proceeds.....	16
12.4	Restoration Obligation.....	16
12.5	Termination of Residential Ground Lease.....	17
13.	Changes and Alterations	
13.1	Conditions Governing Changes and Alterations.....	17
13.2	Changes and Alterations Constitute a Part of Project....	17
14.	Section 501(c)(3) Status.....	18
15.	Indemnification by Lessor and Lessee	
15.1	Indemnification.....	18
15.2	Notice of Claim or Potential Claim.....	18

UNOFFICIAL COPY

15.3	Defense of Claims.....	18
15.4	Failure to Defend; Separate Representation.....	19
15.5	Survival of Indemnities.....	19
16.	Covenant Against Waste	19
17.	Exhibition of Premises by Lessor	20
18.	Defaults; Remedies	
18.1	Defaults.....	20
18.2	Events of Default	20
18.3	Lessor's Remedies	20
18.4	Liens; Default; Limit on Unit Owner's Liability.....	21
18.5	Lessor's Right to Cure Lessee's Defaults.....	22
18.6	Lease Interest Rate	22
19.	Environmental Compliance and Indemnification Agreement	
19.1	Compliance with Environmental Laws	22
19.2	Remediation	22
20.	Restriction of Record.....	23
21.	Subordination and Attornment	
21.1	Subordination to Fee Mortgage	23
21.2	Attornment to Successor-Lessor	23
22.	Estoppel Certificates	24
22.1	By Lessor	24
22.2	Reliance	24
23.	Surrender of Premises	24
24.	Quiet Enjoyment	24
25.	Lessor's Options Upon Expiration	24
26.	Notices	
26.1	Manner of Providing Notices	25
26.2	Changes of Address or Addressee.....	26
26.3	Obligation to Provide Copies of Third Party Notices	26
26.4	Performance and Notice on Non-Business Days ...	26
27.	Rights of Leasehold Mortgagees	
27.1	Notices of Leasehold Mortgagees	26
27.2	Right to Cure Default	26
27.3	Rights Inure to Leasehold Mortgagee.....	26
28.	Rights of Unit Mortgagees	
28.1	Notices to Unit Mortgagees	27
28.2	Right to Cure Default	27
28.3	Rights to Inure to Unit Mortgagee	27

UNOFFICIAL COPY

29. Representations and Warranties

29.1 Authority 27

29.2 No Broker 27

30. Miscellaneous Provisions

30.1 Partial Invalidity 28

30.2 Consents, Amendments and Waivers 28

30.3 Special Amendment 28

30.4 Article and Section Headings 28

30.5 Table of Contents 28

30.6 Executed Counterparts 28

30.7 Governing Law 28

30.8 Sundays and Holidays 29

30.9 Successors and Assigns 29

30.10 Rules of Construction 29

30.11 Excuse of Performance by Reason of Unavoidable Delays 29

30.12 Time of Essence 29

30.13 Recording of Lease 29

30.14 Lessor and Lessee Not Partners 29

31. Right of First Offer

31.1 First Offer Right 29

31.2 Failure to Exercise First Offer Right 30

31.3 Further Documentation 30

31.4 Effectiveness of First Offer Right 30

31.5 Mechanics of Purchase 30

EXHIBIT A **Legal Description of Land**

EXHIBIT B **Permitted Exceptions**

EXHIBIT C **Form of Unit Sublease**

EXHIBIT D **Form of Association Assignment**

EXHIBIT E **Legal Description of Residential Premises**

UNOFFICIAL COPY

GROUND LEASE

PREAMBLE

THIS GROUND LEASE is dated as of May 20, 2004 ("Commencement Date"), and is by and between NORTHWESTERN UNIVERSITY, an Illinois corporation ("Lessor"), and 270 EAST PEARSON, L.L.C., an Illinois limited liability company ("Lessee").

WHEREAS, Lessor holds fee simple title to certain Premises (as hereinafter defined);

WHEREAS, Lessor desires to lease the Premises to Lessee and Lessee desires to lease the Premises from Lessor on the terms and conditions herein set forth; and

WHEREAS, the Premises is improved with a 5-level above-ground garage containing approximately ninety-two (92) parking spaces and ramps, driveways and walkways related thereto;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1

Premises and Term

1.1 **Premises; Term.** In consideration of the Rent (hereinafter defined) paid and the terms, covenants, conditions, agreements and obligations to be performed and observed by Lessee as herein provided, Lessor does hereby demise and lease to Lessee, and Lessee does hereby take and hire, the following described premises ("Premises") consisting of (a) that certain land, property and space located in the City of Chicago, Cook County, Illinois legally described on Exhibit A attached hereto and made a part hereof ("Land"), subject only to the terms of this Lease and the title exceptions listed on Exhibit B attached hereto and made a part hereof, and (b) Lessor's right, title and interest, if any, in and to (i) all public or private infrastructure improvements which may now or hereafter be located thereon or thereunder, (ii) all private easements or rights of way appurtenant thereto, (iii) all privileges, rights, easements, hereditaments, and appurtenances thereunto belonging, (iv) all streets, passages and other rights of way included therein or adjacent thereto, (v) all air rights (including, without limitation, the right to proceeds from condemnation or eminent domain relating to such rights), and (vi) all rights below the surface of the Land (those items described in subsection (b) being collectively defined as, "Appurtenant Rights"), to have and to hold unto Lessee for and during a term commencing on the Commencement Date and expiring on July 31, 2099 ("Expiration Date"), unless sooner terminated on such date as may be provided in this Lease (said Expiration Date or, if applicable, sooner termination date being defined herein as the "Termination Date"); provided, however, that the parties acknowledge that Lessor shall have the right to extend the term of this Lease pursuant to the provisions of Article 25 below (whereupon the Termination Date will be the end of the term of this Lease as so extended).

1.2 **Delivery of Possession; Condition of Premises.** Lessor shall deliver possession of the Premises to Lessee on the Commencement Date, free of all interests of any third parties other than those interests disclosed on Exhibit B attached hereto. Lessor has made no representations under this Lease as to the condition of the Premises, and, for purposes of this Lease, Lessee shall take possession of the Premises in its "as is" condition.

ARTICLE 2

Definitions

UNOFFICIAL COPY

2.1 **"Additional Rent"** shall mean any or all of the sums due and payable by Lessee, or required to be reimbursed to Lessor, under this Lease (other than Ground Rent), including, but not limited to, any Impositions and any costs or expenses (including reasonable attorneys' fees) incurred by Lessor in connection with the discharge or removal of any lien filed against Lessor's Estate or by reason of the non-payment by Lessee of any Imposition, tax, debt or other obligation for which Lessee is liable under this Lease.

2.2 **"Affiliate"** shall mean, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity. A person or entity shall be deemed to control another person or entity if such person or entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or general partnership or limited liability company interests, or other equity ownership interests, and shall include, with respect to any so called "Illinois land trustee" that is at any time the Lessor or Lessee under this Lease, such land trustee's sole beneficiary, but shall not include any Leasehold Mortgagee, Unit Mortgagee or mortgagee permitted pursuant to Section 10.3 hereof.

2.3 **"Appurtenant Rights"** shall have the meaning set forth in Section 1.1.

2.4 **"Building" or "Buildings"** shall mean any building or buildings or portions thereof heretofore or hereafter constructed by Lessee on the Land, together with any renewals or replacements thereof, additions thereto and substitutions therefor.

2.5 **"Business Day" or "Business Days"** shall mean a Day or Days other than a Saturday, Sunday or national banking holiday.

2.6 **"By-Laws"** shall have the meaning set forth in Section 6.1.

2.7 **"Casualty"** shall mean any event or occurrence resulting in loss or damage to any portion of the Premises and/or the Project, including, but not limited to, fire, lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike or civil commotion, collision with aircraft and vehicles, vandalism and malicious mischief, sprinkler leakage, collapse, earthquake, war or public emergency, whether or not covered by insurance and regardless of the identity of the person or persons causing or otherwise responsible for the same.

2.8 **"Changes and Alterations" or "Change or Alteration"** shall have the meaning set forth in Section 13.1.

2.9 **"City"** shall mean the City of Chicago, Illinois or any successor or successors to such City having the rights and obligations referred to herein.

2.10 **"Claim" or "Claims"** shall have the meanings set forth in Section 15.1(a).

2.11 **"Commencement Date"** shall be the date set forth in the Preamble for the commencement of the term of this Lease.

2.12 **"Common Area"** shall mean all of the Premises and Improvements except the Units, but including the Limited Common Area.

2.13 **"Condemnation Proceeding"** shall have the meaning set forth in Section 11.1.

2.14 **"Condominium Act"** shall mean the Illinois Condominium Property Act (765 ILCS 605/1 et seq. (1994) as such act may be amended from time to time to the extent any such amendment would be binding on the parties hereto.

UNOFFICIAL COPY

- 2.15 **"Condominium Association"** shall have the meaning set forth in Section 6.1.
- 2.16 **"Day"** or **"Days"** shall mean a calendar day or days whether or not a Business Day or Business Days.
- 2.17 **"Declaration"** shall have the meaning set forth in Section 6.1.
- 2.18 **"Default"** shall have the meaning set forth in Section 18.1.
- 2.19 **"Environmental Event"** shall have the meaning set forth in Section 19.2(a).
- 2.20 **"Environmental Laws"** shall have the meaning set forth in Section 19.1.
- 2.21 **"Event of Default"** shall have the meaning set forth in Section 18.2.
- 2.22 **"Expiration Date"** shall have the meaning set forth in Section 1.1.
- 2.23 **"Fee Mortgage"** shall have the meaning set forth in Section 10.3.
- 2.24 **"Fee Mortgagee"** shall mean the holder or holders at any time or from time to time of the note evidencing the debt and other obligations secured by any Fee Mortgage.
- 2.25 **"First Leasehold Mortgage"** shall mean, when there is more than one Leasehold Mortgage, the Leasehold Mortgage that is a first mortgage lien on Lessee's interest hereunder and the leasehold estate created hereby or, if there is only one Leasehold Mortgage, then that Leasehold Mortgage.
- 2.26 **"First Leasehold Mortgagee"** shall mean the holder or holders at any time or from time to time of the note or other documents evidencing the debt and other obligations secured by any First Leasehold Mortgage.
- 2.27 **"Governmental Authority"** or **"Governmental Authorities"** shall have the meaning set forth in Section 7.2.
- 2.28 **"Government Requirements"** shall have the meaning set forth in Section 7.3.
- 2.29 **"Ground Rent"** shall have the meaning set forth in Section 5.1.
- 2.30 **"Hazardous Substances"** shall mean and include (a) any friable asbestos or asbestos-containing material, polychlorinated biphenyls, dioxins, or urea formaldehyde foam insulation; (b) any petroleum or petroleum-derived products; (c) any waste, substance, material, pollutant or contaminant defined as hazardous or toxic in (or for purposes of) any Environmental Laws; and (d) any waste, substance, material, pollutant or contaminant, the presence, disposal, release or threatened release of which on, onto or from any premises (including the Premises and the Land), is or would constitute an Environmental Event or is governed by any applicable Environmental Laws.
- 2.31 **"Imposition"** or **"Impositions"** shall have the meanings set forth in Section 4.1.
- 2.32 **"Improvements"** shall mean any and all buildings, structures and improvements of any nature (including, without limitation, all machinery, equipment, fixtures and apparatus attached thereto) now or hereafter constructed on the Land, which definition shall include, without limitation, the Building or Buildings.
- 2.33 **"Indemnitee"** shall have the meaning set forth in Section 15.3.

UNOFFICIAL COPY

2.34 **"Indemnitor"** shall have the meaning set forth in Section 15.3.

2.35 **"Land"** shall have the meaning set forth in Section 1.1.

2.36 **"Lease"** shall mean this Ground Lease instrument executed by Lessor and Lessee, as the same may hereafter be supplemented or amended.

2.37 **"Lease Interest Rate"** shall mean four percent (4%) plus (i) the rate announced from time to time by Bank One or its successor in Chicago, Illinois as its "corporate base rate," "prime rate," "reference rate" or other similar rate and in effect on the date interest first begins to accrue with respect to any sum that becomes payable pursuant to any provision or provisions of this Lease, or (ii) in the event such bank has ceased announcing any such rate, then such rate as may be announced by Harris Trust and Savings Bank or its successor as its "prime rate" "reference rate" or other similar rate, or (iii) if both such banks shall cease announcing any such rate, then the rate of interest on 90-day Treasury Bills issued by the United States government having an issue date as near as may be practicable to and preceding such date, unless prohibited by law, in which case "Lease Interest Rate" shall mean the maximum contract rate permitted by law at such time.

2.38 **"Leasehold Mortgage"** shall have the meaning set forth in Section 10.2(a) and shall include only a Leasehold Mortgage with respect to which the requirements of Section 10.2(b) have been met. For purposes hereof, the term "Leasehold Mortgage" shall not include any "Unit Mortgage", as such term is defined below.

2.39 **"Leasehold Mortgagee"** shall mean the holder or holders from time to time of any note or other documents evidencing the debt and other obligations secured by any Leasehold Mortgage.

2.40 **"Lessee"** shall mean Lessee, and each and every assignee or transferee of all or any portion of Lessee's interest under this Lease permitted pursuant to Article 6 and Section 10.1. In addition, for all purposes under this Lease (except the applicability of Section 10.1(a) and except as otherwise set forth in Section 10.1(b)), Lessee shall also include any Leasehold Mortgagee or other purchaser, assignee or transferee who acquires all or any portion of Lessee's interest in and to this Lease and of the leasehold estate created hereby in any proceedings for the foreclosure of any Leasehold Mortgage, or pursuant to any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage.

2.41 **"Lessor"** shall include the named Lessor identified in the Preamble and, to the extent permitted hereunder, each and every assignee or transferee of Lessor's interests hereunder in the Premises or of Lessor's Estate and any Successor-Lessor.

2.42 **"Lessor's Estate"** shall mean (i) Lessor's fee interest in or to the Land, and (ii) Lessor's reversionary interest in or to any Improvements located at the Land as of the Termination Date (but, as to clause (ii) of this Section 2.42, only if and to the extent any such Improvements exist at the Land as of said Termination Date).

2.43 **"Limited Common Area"** shall have the meaning ascribed to it in any Declaration.

2.44 **"Mortgage"** shall mean any instrument, including any instrument in the nature of an indenture, mortgage, deed of trust, collateral assignment of lease, collateral assignment of beneficial interest in a land trust or other similar instrument, creating a lien as security for any debt on Lessor's Estate, on Lessee's interest hereunder, on any Unit Owner's or other sublessee's leasehold estate, or on the

UNOFFICIAL COPY

leasehold estate created hereby, which may be foreclosed upon the occurrence of a default in the repayment of any debt, and any supplement thereto or any renewal, modification, consolidation, replacement or extension thereof.

2.45 "**Notice of Claim**" shall have the meaning set forth in Section 15.2.

2.46 "**Notice of Potential Claim**" shall have the meaning set forth in Section 15.2.

2.47 "**Potential Claim**" shall have the meaning set forth in Section 15.2.

2.48 "**Premises**" shall have the meaning set forth in Section 1.1.

2.49 "**Project**" shall mean all Improvements from time to time constructed at the Land.

2.50 "**Protected Persons**" shall mean Lessor or Lessee, and any or all of Lessor's or Lessee's respective members, managers, partners, officers, directors, employees, trustees and Affiliates, and with respect to Lessee only, shall include also the Unit Owners and, as the context so requires, such parties' respective members, managers, partners, officers, directors, employees, trustees, advisors, attorneys, consultants and Affiliates.

2.51 "**Remediation**" shall mean cleanup activity or other remedial action required by any Environmental Laws or any applicable Governmental Requirements.

2.52 "**Rent**" shall be deemed to include all Ground Rent, and any adjustments or modifications thereto in accordance with the provisions of this Lease and all Additional Rent payable by Lessee to Lessor under this Lease.

2.53 "**Residential Ground Lease**" shall mean that certain Ground Lease between Lessor and Lessee dated as of July 31, 2000 and recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder") on August 2, 2000 as Document No. 00584667 and re-recorded with the Recorder on August 11, 2000 as Document No. 00614549, as amended by that certain Amendment to Lease recorded with the Recorder on March 2, 2001 as Document No. 0010169900, and as further amended by that certain Second Amendment to Ground Lease dated on or about the date of this Lease and recorded with the Recorder on or about the date of the recording of this Lease with the Recorder, and as the same may be further amended, assigned, supplemented, modified, extended, and amended and restated from time to time. Under the Residential Ground Lease, Lessor leases to Lessee the land, property and space legally described on Exhibit E attached hereto and made a part hereof (the "Residential Premises").

2.54 "**Restoration**" shall mean any and all work necessary to repair any damage to the Project or the Premises as nearly as possible to the same value, condition and character as existed immediately prior to any loss due to Casualty or any taking in any Condemnation Proceeding, as the case may be, lien-free and ready for use.

2.55 "**Successor-Lessor**" shall have the meaning set forth in Section 21.2.

2.56 "**Termination Date**" shall have the meaning set forth in Section 1.1.

2.57 "**Termination Notice**" shall have the meaning set forth in Section 12.2.

2.58 "**Unavoidable Delays**" shall mean delays due to strikes, lock-outs, acts of God, inability to obtain materials or commercially reasonable substitutes for such materials, governmental restrictions, enemy action, civil commotion, fire, casualty or similar causes, provided such similar causes are beyond the reasonable control of Lessee or Lessor, as the case may be.

UNOFFICIAL COPY

2.59 "**Unit**" shall mean that portion of a Building permitted to be used as a residence, a retail facility or that portion of a parking structure or area permitted to be used as a parking space in accordance with the zoning requirements of the City, all as more fully described in the applicable Declaration.

2.60 "**Unit Mortgage**" shall have the meaning set forth in Section 6.4(b).

2.61 "**Unit Mortgagee**" shall mean the holder or holders from time to time of any note or other documents evidencing the debt and other obligations secured by any Unit Mortgage.

2.62 "**Unit Owner**" or "**Unit Owners**" shall mean the person(s), party or parties that hold title to a fee, leasehold and/or subleasehold interest in a Unit, including, without limitation, the Lessee as applicable.

2.63 "**Unit Sublease**" shall have the meaning set forth in Section 6.3.

ARTICLE 3

Rent Payments

3.1 **Ground Rent** Lessor and Lessee hereby acknowledge that the full ground rent due and owing from Lessee to Lessor for the full initial term of this Lease ("Ground Rent") has been heretofore paid in full by Lessee to Lessor.

3.2 **Other Costs, Expenses and Obligations**. The Ground Rent heretofore paid to Lessor under this Lease is intended to have been net to Lessor for the term of this Lease, and, accordingly, Lessee shall be responsible under the Lease for the payment of all costs and expenses and the performance of all obligations of every kind relating to the Premises and the Buildings or Improvements that may arise or accrue during the term of this Lease, including, but not limited to, (i) all Impositions, and (ii) all charges for gas, electricity, light, heat, power, telephone and other utilities and services. Lessee shall indemnify Lessor against and hold Lessor harmless from all such charges, costs, expenses and obligations. In addition, Lessee shall be responsible, at its sole cost and expense, for the procurement of any and all necessary permits, licenses or other authorizations required for the lawful and proper construction and operation of the Project and the Premises and for the lawful and proper installation and maintenance upon the Project and Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any service or utility described herein to, in or upon the Project and Premises.

3.3 **Mutual Cooperation**. Lessor and Lessee shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Lease. Lessor hereby agrees that it (a) shall execute such instruments (including, without limitation, each Declaration and various subdivision plats) to comply with applicable Governmental Requirements for the completion of the Project, and (b) shall execute such easement or other instruments granting rights in the real estate owned by Lessor as may be reasonably necessary from time to time in connection with the development of the Project (provided, however that with respect to any items executed by Lessor under this subclause (b), Lessor may require that such instruments terminate as of the Termination Date hereof). Lessee shall reimburse Lessor for all documented out-of-pocket fees and costs (including, without limitation, reasonable attorneys' fees) incurred by Lessor as a result of any actions taken by Lessor pursuant to this Section 3.3, and, in addition, Lessee shall pay Lessor a reasonable administrative charge (not exceeding, in any event, the sum of \$500 in any one instance), to the extent imposed by Lessor in connection with any instrument executed by Lessor pursuant to this Section 3.3. Lessee shall indemnify, defend and hold harmless Lessor and its Protected Persons from and against any and all Claims imposed upon, asserted against or incurred by

UNOFFICIAL COPY

Lessor or its Protected Persons resulting from any actions so taken by Lessor under this Section 3.3 as and to the extent provided in Section 15.1 below. Lessee shall use good faith efforts to minimize the number and scope of the requests made of Lessor under this Section 3.3.

ARTICLE 4

Impositions

4.1 **Impositions.** Until such time (if ever) as a Declaration becomes effective and taxes are assessed on the individual Units (after which time the applicable Unit Owners and/or Condominium Association shall pay any Impositions with respect to the portion of the Project which is subject to said Declaration in accordance with said Declaration), Lessee shall be responsible for the payment, when due, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, of any and all real property taxes, assessments, water and sewer rates and charges, and all occupancy or similar taxes, and all other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever including, but not limited to, assessments for public improvements or benefits, that accrue (irrespective of when such amounts are payable) during the term of this Lease with respect to all or any portion of the Premises and the Project, and any and all taxes imposed on Lessor that are demonstrably enacted, in whole or in part, in substitution for or in lieu of any of the foregoing taxes (all of which are collectively referred to herein as "Impositions" or anyone of which is individually referred to herein as an "Imposition"); provided, however, that if, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee shall or may elect, as the case may be, to pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, interest or cost may be added thereto for the non-payment of any such installment and interest; and provided, further, that any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the term of this Lease, and a part of which is included in a period of time either after the Termination Date or prior to the Commencement Date, shall be adjusted as between Lessor and Lessee as of the Termination Date or the Commencement Date, as the case may be, in order that Lessor shall pay that proportion of such Imposition which accrues during the part of such fiscal period included in the period of time after the Termination Date or prior to the Commencement Date, as the case may be, bears to such fiscal period, and Lessee shall pay the remainder thereof. Notwithstanding the foregoing, from and after the date of recording of each Declaration, the applicable Unit Owners and/or Condominium Association shall be responsible for any Impositions (or portion thereof) which are assessed against the portion of the Premises which is subject to the Declaration, whether or not taxes are assessed on the individual Units, and Lessee shall not be liable therefor.

4.2 **Lessor's Taxes.** Nothing contained in this Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax imposed on Lessor, or any income, excess profits, rent or revenue tax imposed on Lessor, except that Lessee shall pay any such tax which is demonstrably enacted, in whole or in part, in substitution for or in lieu of any other Imposition which Lessee is obligated to pay under Section 4.1.

4.3 **Notices of Impositions.** Lessor shall send to Lessee, within fifteen (15) Days of Lessor's receipt thereof, copies of any notices of Impositions (and notices of assessment and any other information concerning Impositions) received by Lessor from any Governmental Authority.

4.4 **Right to Contest Impositions.** Lessee, the Unit Owners and each Condominium Association shall have the sole and exclusive right to contest the amount or validity of any Imposition by appropriate legal proceedings so long as Lessor's Estate is not subject to a final forfeiture, sale or other seizure as a result thereof, and provided that Lessor does not incur any liability therefor which is not assumed and/or discharged, in full, by Lessee. Lessor shall cooperate in all reasonable respects relative to any such contest, to the extent such cooperation is required by applicable Governmental Requirements in

UNOFFICIAL COPY

order to so contest the amount and validity of any such Imposition; provided that any such cooperation by Lessor shall be subject to the terms of Section 3.3 hereof.

4.5 **Tax Parcel Divisions**. If, at the time of the filing of any Declaration or plat of subdivision, a division or consolidation of tax parcel permanent index numbers is required or otherwise desired by Lessee, Lessee shall file the necessary petitions, applications or other instruments with the applicable Governmental Authority and Lessor, without limiting the generality of Section 3.3 above, shall cooperate in good faith in filing or making any petitions, applications or other instruments necessary to effect such division or consolidation.

ARTICLE 5

Ownership of the Project

5.1 **Title to Buildings and Improvements**. At all times during the term of this Lease, the Buildings and all other Improvements (exclusive of water, sanitary sewer or storm water trunk lines, mains and laterals and other similar infrastructure improvements to be dedicated to and accepted by the City of Chicago or other Governmental Authority, title to which shall remain in Lessee only until accepted by such municipality or other Governmental Authority) shall, whether or not affixed to the Land, be the property of Lessee, its sublessees or assigns, as applicable, subject always to the terms of this Lease. Notwithstanding the foregoing, upon the Termination Date, title to the Buildings and all Improvements (specifically excluding any items of personalty which are not affixed to the Buildings or other Improvements, all of which shall remain the property of Lessee, the respective Condominium Associations, the sublessees, or the Unit Owners, as the case may be) shall automatically vest in Lessor without any act or the recording of any instrument on the part of Lessor or Lessee, subject however to the provisions of Article 25 below. Lessee makes no representation or assurances respecting and Lessor is not relying in any manner whatsoever upon, the existence, condition or value (if any) of the Improvements as of the Termination Date.

ARTICLE 6

Development of the Premises

6.1 **Declaration**. The parties hereby acknowledge that Lessee is contemplating the creation of a condominium at the Premises for parking purposes. If and to the extent that any portion of the Project is a condominium, prior to the sale and/or sublease of any Unit to an individual Unit Owner, Lessee shall execute, acknowledge and record in the Office of the Recorder of Cook County, Illinois, a condominium declaration for said condominium (each such declaration, a "Declaration", shall cause the incorporation and organization of a condominium association (each such association, a "Condominium Association") and shall cause such Condominium Association to adopt by-laws (each such set of bylaws, the "By-Laws"), in each case to the extent necessary to be in full compliance with the provisions and requirements of the Condominium Act. Lessor agrees to execute and acknowledge each such Declaration, and any and all other documents necessary to create the parking area development, for the purpose of consenting to the recording of each such Declaration and such other documents and the creation of the parking area development. To the extent elected by Lessee, portions of the Premises, the Project and/or any adjacent properties may be subjected to such Declarations from time to time. Lessor agrees to execute and acknowledge amendments or supplements to any such Declarations and such other documents as are reasonably necessary to subject any such portions of the Premises to the respective Declarations, as requested by Lessee.

6.2 **Covenants of Condominium Association**. If and to the extent that a Condominium Association succeeds to any interest of Lessee hereunder, such Condominium Association, as Lessee, covenants and agrees that, from and after the date of the recording of the applicable

UNOFFICIAL COPY

Declaration, unless Lessor otherwise agrees in writing:

(a) Said Condominium Association shall at all times conduct its business in accordance with the requirements of the Condominium Act.

(b) Said Condominium Association shall monitor the payment of any Impositions attributable to the individual Units which are the subject of a Declaration by the respective Unit Owners. In the event of a failure by a Unit Owner to pay such Impositions when due, the applicable Declaration shall provide that if such failure would give rise to a lien on Lessor's Estate, then (to the extent permitted by law) the Condominium Association will have the obligation to redeem or purchase any defaulted taxes and specially assess the cost of such redemption or purchase against the Unit to which such defaulted taxes are attributable. If the Condominium Association does not or cannot so proceed to redeem or purchase such defaulted taxes, then Lessor shall have the right, after giving notice to the Condominium Association in the manner provided in Article 26 of this Lease, to redeem or purchase any such defaulted taxes and to assess the cost of such redemption or purchase against the Condominium Association as Additional Rent; provided, however, that Lessor shall only have such right if both (i) the failure to pay Impositions would give rise to a lien on Lessor's Estate and (ii) the Condominium Association has not commenced and continued to pursue the redemption or purchase of such defaulted taxes as described above.

6.3 Subleases with Unit Owners and Assignments to Condominium Associations. To the extent any portion of the Project is established as a condominium project pursuant to the Condominium Act, Lessee shall have the right, from time to time, without Lessor's consent, to (a) enter into a sublease for each Unit (each "Unit Sublease") by and between the Lessee, as sublessor, and the Lessee (or its designee) or a Unit Owner, as sublessee, which Unit Sublease shall be in the form attached hereto as Exhibit C with such changes thereto as deemed appropriate by Lessee, and/or (b) assign all or any portion of its interest as lessee under this Lease (and, if applicable, as sublessor under the Unit Subleases) to a Condominium Association, the form of which assignment is attached hereto as Exhibit D, with such changes thereto as may be requested by Lessee and reasonably acceptable to Lessor (each such assignment, an "Association Assignment"), the terms of which shall provide, among other things, that the original named Lessee hereunder shall be released of any and all liability hereunder with respect to matters arising or accruing from and after the effective date of said assignment with respect to the interest in this Lease so assigned. Lessee shall have the right, without consent from Lessor, to assign its interest as sublessee under any applicable Unit Sublease to any purchaser or transferee thereof. Lessor hereby acknowledges and agrees that any Unit Sublease or other instrument of conveyance may contain transfers by Lessee, any sublessor under a Unit Sublease and/or any Condominium Association of title to the Improvements (or any portion thereof), it being further understood, however, that such transfers are subject to the reversionary rights of Lessor described in Section 5.1 above. Each Association Assignment shall contain, among other things, an express assumption by the Condominium Association of both Lessee's rights and obligations pursuant to this Lease which arise or accrue from and after the effective date of the Association Assignment and which relate to the interests in the Lease being so assigned, and all of the related duties and obligations of the Condominium Association set forth in this Lease. Upon the execution and delivery of each Association Assignment in accordance with this Section 6.3, Lessee, together with each guarantor of Lessee's obligations hereunder, shall be released automatically from its obligations under this Lease which are assigned pursuant to said Association Assignment and which arise or accrue from and after the effective date of the Association Assignment.

6.4 Unit Owners. (a) From time to time during the term of this Lease upon request of Lessor, but not more often than once during each calendar year, each Condominium Association shall give written notice to Lessor identifying (by name or names and mailing address) the Unit Owner of each Unit to the extent the Condominium Association has such information.

(b) A Unit Owner shall have the right, without consent from Lessor or Lessee but

UNOFFICIAL COPY

subject to the terms and conditions of the applicable Declaration and By-Laws, to sell or assign to a purchaser such Unit Owner's interest in its Unit Sublease and any interest it may have in the leasehold estate under this Lease, and upon such sale or assignment the assignor Unit Owner shall be released automatically from any obligations it may have under the Unit Sublease or under this Lease. A Unit Owner shall also have the right, without consent from Lessor or Lessee but subject to the terms and conditions of the applicable Declaration and By-Laws, to sub-sublease such Unit Owner's subleasehold estate with respect to such Unit Owner's Unit. A Unit Owner shall also have the right, without consent from Lessor or Lessee but subject to the terms and conditions of the applicable Declaration and By-Laws, to assign and mortgage such Unit Owner's subleasehold estate with respect to such Unit Owner's Unit. Such assignment may be by means of a Mortgage on its subleasehold estate for any amounts and upon any terms, including term of loan, interest rates, payment terms (including balloon or amortizing loans), prepayment privileges or other restrictions as may be desired by the Unit Owner (any such Mortgage meeting the foregoing requirements and any supplement thereto or any modification, renewal, replacement or extension thereof is referred to herein as a "Unit Mortgage"). Notwithstanding the foregoing, no Unit Mortgage shall purport to grant any fee interest in or grant any lien upon all or any portion of Lessor's Estate.

6.5 **Condominium Association as Lessee; Unit Owners.** From and after the date of an Association Assignment, the applicable Condominium Association shall be responsible for performing and causing the performance of all obligations, rights and responsibilities of Lessee under this Lease which are assigned pursuant to said Association Assignment. Except as provided in Section 18.4 below or as may otherwise be reasonably necessary under the circumstances, no Unit Owner (other than Lessee) shall communicate directly with Lessor with respect to matters pertaining to the Premises or to the subject matter of this Lease, nor shall Lessor communicate directly with any Unit Owner (other than Lessee) with respect to matters pertaining to the Premises or the subject matter of this Lease; any such communications shall be made by, to or through the applicable Condominium Association.

ARTICLE 7

Use of Premises; Compliance with Requirements; Maintenance and Repair

7.1 **Use of Premises.** At all times during the term of this Lease, the Premises may be developed and used by Lessee for any legal purpose, in Lessee's sole and absolute discretion, without any right of Lessor to approve same or consent thereto.

7.2 **No Violation of Applicable Law.** Lessee shall not make or permit any use of the Premises that violates any applicable statute, ordinance, regulation or other requirement of each and every federal, state and local governmental or quasi-governmental body having jurisdiction over the Premises and/or the Project (each such body is herein referred to as a "Governmental Authority" and any two or more of such bodies are herein referred to collectively as "Governmental Authorities"). Lessee shall, at Lessee's sole cost and expense, procure any and all necessary permits, licenses, or other authorizations from time to time required for the lawful conduct of its business on the Premises.

7.3 **Conformity with Legal and Insurance Requirements.** Lessee shall keep or cause to be kept the Premises and the Project in a condition conforming to the requirements (i) of all applicable statutes, ordinances, rules, regulations, codes and other requirements of any Governmental Authority ("Governmental Requirements"), and (ii) of all policies of insurance maintained in force by Lessee on or with respect to the Premises and the Project pursuant to the provisions of this Lease. Lessee shall have the sole and exclusive right to contest by appropriate legal proceedings the order or directive of any Governmental Authority requiring compliance with Governmental Requirements so long as the Lessor's Estate is not subject to a final forfeiture, sale or other seizure as a result thereof, and provided that Lessor does not incur any liability therefor which is not assumed and/or discharged, in full, by

UNOFFICIAL COPY

Lessee. At Lessee's request, Lessor shall cooperate in all reasonable respects relative to any such contest, to the extent such cooperation is required by applicable Governmental Requirements in order to so contest such order or directive; provided that any such cooperation shall be subject to the terms of Section 3.3 hereof.

7.4 **Operation, Maintenance and Repair of Premises.** Lessee shall maintain, or cause to be maintained, the Premises and the Project in a clean and orderly condition, free of material accumulations of rubbish, snow, ice and unlawful obstructions. Lessee shall also make or cause to be made to the Premises and the Project all repairs, interior and exterior, structural and non-structural, extraordinary as well as ordinary, foreseen as well as unforeseen, in order to maintain the Premises in the aforesaid condition.

ARTICLE 8

Insurance

8.1 **Property Insurance.** At all times during the term of this Lease, Lessee shall keep, or cause to be kept, the Buildings and Improvements insured against risk of physical loss in such amounts and with such coverages as deemed appropriate by Lessee.

8.2 **Liability Insurance.** At all times during the term of this Lease, Lessee shall maintain, at Lessee's sole cost and expense, but for the purpose of affording insurance coverage to Lessor and Lessee as required hereunder, the following kinds and amounts of insurance (with changes to such kinds of insurance from time to time as may be customary and reasonable for similar buildings and uses in the Chicago metropolitan area, based upon changes in types of insurance coverages being offered over time, with the intent of providing comparable coverage as that described in this Section 8.2, all subject to the reasonable approval of Lessor):

(a) Commercial general liability insurance with a broad form endorsement providing insurance against claims for bodily injury (including death) and property damage occurring upon or in the Premises or the Project and contractual liability (including an endorsement specifically acknowledging that this Lease is an "insured contract" under such policy), and having limits of liability not less than the limits that are customary and reasonable for similar buildings and uses in the Chicago metropolitan area as reasonably determined from time to time by Lessor, but in no event less than \$1,000,000 as the combined single limit per occurrence;

(b) At any time that a Condominium Association or similar organization is in existence, directors and officers liability insurance for the directors and officers of each such association or organization having limits of liability of not less than \$1,000,000;

(c) Umbrella liability insurance providing excess coverage above the limits of the insurance required to be provided in Section 8.2(a) and 8.2(b) above and 8.2(e) below, and having limits of liability not less than the limits that are customary and reasonable for similar buildings and uses in the Chicago metropolitan area as reasonably determined from time to time by Lessor, but in no event less than \$10,000,000;

(d) Worker's compensation insurance in an amount not less than the required statutory limits and including employer's liability insurance with limits of not less than \$500,000 per occurrence; and

(e) Comprehensive automobile liability insurance covering owned automobiles, automobiles under long-term lease, hired automobiles, employer's non-ownership liability, medical payments and uninsured motorist coverage for limits not more than limits that are customary and reasonable for owners of similar buildings with similar uses in the Chicago metropolitan area, but in no

UNOFFICIAL COPY

event less than \$500,000 (with a special limit of \$5,000 with respect to medical payments) as the combined single limit per occurrence.

The foregoing policies of insurance referenced in Sections 8.2(a), 8.2(c) and 8.2(e) shall be primary with respect to Lessor's Protected Persons.

8.3 **Responsibility for Obtaining and Maintaining Insurance.** From and after the date of an Association Assignment, the applicable Condominium Association, as Lessee, shall be solely responsible for obtaining and maintaining all insurance required pursuant to this Article 8 on account of the portion of the Premises which is then leased to said Condominium Association pursuant to said Association Assignment; provided, however, Lessor hereby acknowledges that the property insurance described in Section 8.1 may be obtained and maintained, with respect to each Unit, by the Unit Owner of that Unit and each Condominium Association may, in such circumstances, only maintain insurance described in Section 8.1 with respect to the applicable Common Area.

8.4 **Approval and Evidence of Insurance.** All insurance required to be maintained pursuant to this Article 8 shall be secured from insurers licensed by the Insurance Department of the State of Illinois (or its successor agency) and holding a Best Insurance Guide rating of at least B++ (or any reasonably equivalent successor form of rating). Lessee shall deliver to Lessor true and correct copies of the original, renewal or replacement policies, as applicable, required to be maintained by Lessee under Section 8.2 so that Lessor, at all times, has a copy of the insurance then in effect as required hereunder. In the event actual policies are not available at such time, Lessee shall deliver binders or certificates evidencing such insurance upon Lessor's request.

8.5 **Additional Insureds.** All policies of insurance required to be maintained pursuant to Section 8.2: (a) shall name Lessor and Lessor's Protected Persons as additional insureds (except, however, for the coverage described in Sections 8.2(b) and 8.2(d), which shall not name Lessor as an additional insured), and (b) shall provide that any loss shall be payable as therein provided notwithstanding any act or negligence of Lessor, Lessee or any Unit Owner or other occupant of the Premises or the Building which might otherwise result in a forfeiture of said insurance.

8.6 **Notice of Cancellation** All policies of insurance required to be maintained pursuant to Section 8.2 shall contain an agreement by the insurers that neither the policies nor any particular coverage thereof shall be canceled or not renewed without at least thirty (30) Days prior written notice to Lessor (except that only ten (10) Days' prior written notice to Lessor shall be required for cancellation due to non-payment of premiums).

8.7 **Adjustment of Losses; Use of Proceeds.** The loss, if any, under any insurance maintained pursuant to Section 8.1 shall be adjusted and agreed to with the insurers by Lessee; provided, however, that if required under any Leasehold Mortgage or any Unit Mortgage, then, subject to the limitations which may be contained in any applicable Declaration, the aforesaid loss shall be adjusted and agreed to with the First Leasehold Mortgagee and such Unit Mortgagees. In the case of any loss, the proceeds of any applicable insurance, after the loss is so adjusted, shall be paid to Lessee for use in the Restoration of the Premises if and to the extent required under Section 12.1 below.

8.8 **Waiver of Subrogation.** To the fullest extent permitted by law, Lessor and Lessee each hereby waive any and every claim for recovery from the other for any and all loss of or damage to the Building and Improvements or to the contents thereof to the extent such loss or damage could be insured against under standard fire and extended coverage or special perils insurance policies, regardless of cause or origin, including negligence of the other party hereto. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee shall give to each insurance company that has issued, or in the future may issue, a policy of the type required from time to time pursuant to Section 8.1, written notice of

UNOFFICIAL COPY

the terms of this mutual waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

ARTICLE 9

Liens

9.1 **No Authority To Create Liens Against Lessor's Interest.** Lessee shall have no right, authority or power to bind Lessor for the payment of any claim for labor or material or for engineering or architect's fees, or for any charge or expense incurred in the erection, construction, alteration, restoration, maintenance, operation or management of the Premises or the Project, nor to render Lessor's Estate liable for any lien or right of lien for any labor, material services (including management services) or for any other charges for expenses incurred in connection therewith. In addition, Lessee shall not under any circumstances be considered the agent of Lessor in conducting any work undertaken in connection with any erection, construction, repair, renewal, replacement, reconstruction, alteration, restoration or maintenance of the Premises or the Project or in the operation of the Premises or the Project.

9.2 **No Liens, Charges or Encumbrances Against Lessor's Estate.** Subject to the provisions of Section 9.3 below, Lessee shall, at all times, keep the Lessor's Estate free and clear of mechanics', material men's, and other liens, and all charges, claims, and encumbrances caused or created by Lessee or anyone claiming through or under Lessee.

9.3 **Lessee's Duty To Obtain Discharge Of Liens Against Lessor's Estate.** If any mechanics' or other lien, charge, or order for the payment of money or other encumbrance shall be filed against Lessor or any portion of Lessor's Estate, Lessee shall promptly, at its own cost and expense, either (a) cause same to be discharged of record, (b) cause same to be bonded over, (c) cause same to be insured over, or (d) provide Lessor with such security as may be reasonably acceptable to Lessor, and in the case of an election under (b), (c) or (d) above, to otherwise diligently contest the same; and Lessee shall indemnify and hold harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable attorneys' fees, resulting therefrom. If Lessee fails to comply with the foregoing provisions, Lessor shall have the option of discharging or bonding any such lien, charge, order, or encumbrance, and Lessee agrees to reimburse Lessor for all costs, expenses, and other sums of money in connection therewith (as Additional Rent) with interest at the Lease Interest Rate from the date such costs, expenses or other sums of money are incurred. The remedies provided to Lessor under this Section 9.3 shall be in addition to all of the other remedies provided to Lessor under this Lease.

ARTICLE 10

Assignments, Subleases, Mortgages and Sales

10.1 **Assignment by Lessee.** (a) Except as provided in Article 6, (i) this Lease or (ii) the leasehold estate hereby created, shall not, under any circumstance, whether voluntary or involuntary, or by operation of law (except as otherwise provided in Section 10.1(b) with respect to assignments or transfers by or through a Leasehold Mortgage or a Unit Mortgage or by assignment or transfer in lieu of foreclosure of any such Leasehold Mortgage or a Unit Mortgage), be assigned or transferred by Lessee, in whole or in part, without in each case first obtaining the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that if the Improvements are not subject to the Condominium Act, then no such consent shall be required (1) in the event that the Lessee which is the prospective "assignor" remains liable for all obligations and responsibilities of the "Lessee" hereunder which are then being assigned, (2) in the event that the prospective assignee has a comparable net worth as that of the assignor and any guarantor of this Lease at the time of the prospective assignment (and in the case of an assignment to an assignee under this clause (2), upon receiving proof of such fact

UNOFFICIAL COPY

reasonably satisfactory to it, Lessor shall then release the assignor and each such guarantor of all obligations of "Lessee" which are then being assigned accruing from and after the date of such assignment), or (3) in the event that the Lessee which is the prospective "assignor" assigns its interest in the Lease to an Affiliate of said Lessee (provided that in the case of an assignment to an Affiliate under this clause (3), the assignor shall not be released of the obligations of "Lessee" which are then being assigned unless the terms of subclause (2) shall apply or unless Lessor otherwise agrees, at its sole discretion). In the event of any assignment hereunder, the assignee shall be required to assume all obligations under this Lease relating to the interest being assigned that accrue from and after the date of such assignment. Except as otherwise provided in this Section 10.1 or in Article 6 above, Lessee shall not be released from any liability hereunder in the event of any such assignment or transfer.

(b) For purposes of this Section 10.1, the making of a Leasehold Mortgage or a Unit Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate created hereby, nor shall any Leasehold Mortgagee or a Unit Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate created hereby so as to require the Leasehold Mortgagee or Unit Mortgagee, as such, to assume the performance of any of the terms, covenants, conditions, agreements and obligations on the part of Lessee to be performed or met hereunder. In addition, any sale of Lessee's interest in and to this Lease and of the leasehold estate created hereby in any proceedings for the foreclosure of any Leasehold Mortgage or a Unit Mortgage, or the assignment or transfer of this Lease and of the leasehold estate created hereby under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage or a Unit Mortgage, shall not be deemed to be an assignment or transfer within the meaning of Section 10.1(a) for which Lessor's consent shall be required.

(c) The limitations on transfer contained in this Section 10.1 shall not be deemed to apply to or prevent, nor shall Lessor's approval be required in connection with, (i) the granting of licenses or easements in the leasehold estate created hereby to facilitate the development of the Premises or the Project, as contemplated herein; or (ii) the transfer of, granting of security interests in, personal property, trade fixtures and trade equipment; or (iii) the entering into or subsequent assignment of any one or more subleases (including, without limitation, the Unit Subleases contemplated by Article 6); or (iv) any Association Assignment as contemplated by Article 6.

(d) Upon any partial assignment of Lessee's interest in this Lease under this Section 10.1, Lessor shall, upon Lessee's request, enter into an amendment to this Lease and a new Lease with the assignee such that each of Lessee and said assignee shall be a party to a separate and distinct ground lease with Lessor for the applicable portion of the Premises. Each such separate and distinct ground lease shall be substantially in the form of this Lease, with such non-material changes thereto as may be necessary to make the document applicable only to the portion of the Premises which is the subject of such ground lease, provided, however, that based upon the full prepayment of Ground Rent described in Section 3.1 above, any new ground lease shall not require the payment of Ground Rent (subject, however, to the terms of Article 25 below).

10.2 Mortgage by Lessee or Sublessees. (a) Lessee and any sublessee hereunder shall have the right, without Lessor's consent, to mortgage its interest under this Lease and in the Premises and the Project (or any part thereof) by means of a Mortgage for any purpose related to the financing of the development and construction of the Project, or for any other purpose, for any amounts and upon any terms, including term of loan, interest rates, payment terms (including balloon or amortizing loans), prepayment privileges or other restrictions as may be desired by Lessee or such sublessee (as the case may be), provided that (i) at the time of making such Mortgage, there is no existing or unremedied Event of Default, and (ii) within ten (10) Days after the execution and delivery of any such Mortgage, the requirements of Section 10.2(b) are satisfied (any Mortgage, other than a Unit Mortgage, meeting the foregoing requirements and any supplement thereto or any modification renewal, replacement or extension thereof is referred to herein as a "Leasehold Mortgage"). Notwithstanding the foregoing, no

UNOFFICIAL COPY

Leasehold Mortgage shall purport to grant any interest in Lessor's Estate.

(b) Lessor shall not be deemed to have notice of any Leasehold Mortgage, of any amendment to supplement, modify, renew, replace or extend the same or of any assignment thereof, nor shall Lessor have any duty or obligation with respect thereto, unless and until (i) a copy of the original of such Leasehold Mortgage, amendment or assignment, as the case may be, is delivered to Lessor, and (ii) written notice containing the name and address of the Leasehold Mortgagee or assignee of such Leasehold Mortgagee, as the case may be, is given to Lessor in the manner provided in Article 26.

(c) The terms and requirements of this Section 10.2 shall not apply with respect to Unit Mortgages, which instead shall be governed by Section 6.4(b) above.

10.3 **Mortgage by Lessor.** Without Lessee's prior written consent, which consent may be withheld by Lessee for any reason or no reason whatsoever, Lessor shall not enter into any Mortgage of all or any portion of Lessor's Estate or Lessor's interest in the Premises (any such Mortgage which is entered into with Lessee's written consent being referred to herein as a "**Fee Mortgage**").

10.4 **Sale by Lessor.** Subject to the terms of Article 20 and Article 31 hereinbelow and the conditions set forth below in this Section 10.4, Lessor shall have the right to sell or transfer, directly or indirectly, all or any portion of Lessor's Estate, but only to an entity which, under the Condominium Act (as amended from time to time) is permissible as the lessor under a ground lease of real property upon which condominiums may be built and operated. In no event may Lessor sell or transfer directly or indirectly, all or any portion of Lessor's Estate in any way which would result in the Improvements not being able to be operated as a leasehold condominium pursuant to the terms of the Condominium Act. Notwithstanding anything contained in this Section 10.4 to the contrary, and without limiting the restrictions set forth above in this Section 10.4, Lessor shall not sell the Lessor's Estate or any portion thereof, except to an entity that acquires fee title to the "Lessor's Estate" under the Residential Ground Lease simultaneously with the closing of the purchase of the Lessor's Estate under this Lease.

ARTICLE 11

Condemnation

11.1 **Condemnation of Entire Premises.** If at any time during the term of this Lease (a) the entire Premises or Project shall be taken as a result of the exercise of any power of eminent domain of any Governmental Authority or by agreement between Lessor, Lessee and such Governmental Authority (a taking by either of such methods is herein called a "Condemnation Proceeding"), or (b) less than the entire Premises or Project shall be taken, but Lessee shall determine, in its sole judgment, that in any such case the Project cannot be repaired, restored or replaced in a manner that permits the remaining portions thereof to be operated as economically useful and architecturally complete units, Lessee shall have the right, to be exercised by written notice to Lessor, to terminate this Lease, whereupon all rights and obligations hereunder of the parties shall cease and be of no further force and effect (except for those rights and obligations which survive the expiration or earlier termination of this Lease pursuant to the express provisions hereof) on the date title is vested in the condemning Governmental Authority under such Condemnation Proceeding. Notwithstanding any judicial allocation of any award made in the Condemnation Proceedings, Lessor shall be entitled to receive the amount of such award attributable to the value of Lessor's Estate (assuming, for purposes of determining such award, that the "Land" component of Lessor's Estate remains subject to and bound by the terms of this Lease) and Lessee shall be entitled to the balance of the award.

11.2 **Partial Condemnation.** (a) If at any time during the term of this Lease less than the entire Premises or Project shall be taken in any Condemnation Proceeding and Lessee does not

UNOFFICIAL COPY

otherwise terminate this Lease pursuant to Section 11.1 above, then this Lease shall not terminate but shall continue in full force and effect for the remainder of the stated term, and Lessee shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of Lessee to be performed under this Lease as though such taking had not occurred, subject to the provisions of this Section 11.2.

(b) In the case of any partial condemnation as described in Section 11.2(a) above, notwithstanding any judicial allocation of any award in the Condemnation Proceedings, Lessor shall be entitled to receive the amount of such award allocable to the value of Lessor's Estate (assuming, for purposes of determining such award, that the "Land" component of Lessor's Estate remains subject to and bound by the terms of this Lease), and Lessee shall be entitled to the balance of the award.

11.3 Termination of Residential Ground Lease. If the lessee under the Residential Ground Lease has the right to terminate the Residential Ground Lease under Article 11 of the Residential Ground Lease and exercises such termination right, then Lessee shall have the right to terminate this Lease effective simultaneously with the termination of the Residential Ground Lease, and shall be required to exercise such right and to so terminate this Lease. Lessee shall exercise its termination right under this Section 11.3 by delivering written notice thereof to Lessor. If Lessee terminates this Lease under this Section 11.3, then all rights and obligations hereunder of the parties shall cease and be of no further force and effect on the effective date of such termination (except for those rights and obligations which survive the expiration or earlier termination of this Lease pursuant to the express provisions hereof).

ARTICLE 12

Casualty

12.1 Damage of less than 10% of the Project. If less than 10% of the then fair market value of the Project shall be damaged or destroyed by a Casualty (regardless of the amount of the loss or the existence of insurance to cover such loss), this Lease shall not terminate but shall continue in full force and effect for the remainder of the stated term, and Lessee shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of Lessee to be performed under this Lease as though such Casualty had not occurred, subject to the provisions of this Article 12.

12.2 Damage of 10% or More of the Project Allowing Lessee an Option to Terminate. If 10 % or more of the then fair market value of the Project shall be damaged or destroyed by a Casualty (regardless of the amount of the loss or the existence of insurance to cover such loss), then Lessee shall have the right to terminate this Lease effective as of the date of the occurrence of the Casualty by giving notice to Lessor of its intent to terminate ("Termination Notice") within ninety (90) Days after the Casualty. Upon the exercise of such an option, the Termination Date shall be thirty (30) Days after the date of the receipt of the Termination Notice, as if this Lease had expired by lapse of time as of such termination date.

12.3 Insurance Proceeds. Notwithstanding anything to the contrary contained in this Lease, Lessee shall have the sole right to any and all insurance proceeds payable on account of all insurance policies maintained by Lessee hereunder or pursuant hereto (other than direct claims of Lessor under the insurance policies maintained under Section 8.2 hereof).

12.4 Restoration Obligation. In the event of any partial or full condemnation or Casualty, Lessee shall have no obligation to repair or restore the Premises or the Project, or any portion thereof; provided, however, that Lessee shall be obligated to promptly take such actions as may be necessary to ensure that the Premises and the Project remain in an enclosed, safe, sightly and lawful condition following such Condemnation Proceeding or Casualty in accordance with applicable

UNOFFICIAL COPY

Governmental Requirements, and to otherwise ensure that the Premises and the Project continue to meet the standards for maintenance and repair as set forth in Section 7.4 hereof.

12.5 **Termination of Residential Ground Lease.** If the lessee under the Residential Ground Lease has the right to terminate the Residential Ground Lease under Article 12 of the Residential Ground Lease and exercises such termination right, then Lessee shall have the right to terminate this Lease effective simultaneously with the termination of the Residential Ground Lease, and shall be required to exercise such right and to so terminate this Lease. Lessee shall exercise its termination right under this Section 12.5 by delivering written notice thereof to Lessor. If Lessee terminates this Lease under this Section 12.5, then all rights and obligations hereunder of the parties shall cease and be of no further force and effect on the effective date of such termination (except for those rights and obligations which survive the expiration or earlier termination of this Lease pursuant to the express provisions hereof).

ARTICLE 13

Changes and Alterations

13.1 **Conditions Governing Changes and Alterations.** Lessee (including each Condominium Association upon succeeding to any interest of Lessee hereunder), each sublessee and the Unit Owners each shall have the right at any time and from time to time during the term of this Lease to make or perform such construction, repairs, maintenance, replacements, renewals, additions, betterments, changes and alterations (including any Restoration or other restoration work), structural or otherwise, of and to the Premises, Buildings or Improvements, as Lessee, each sublessee and the Unit Owners each shall deem necessary or desirable in its sole and absolute discretion (provided that any such actions of Unit Owners shall be subject to the terms of the applicable Declaration) (all of the foregoing are collectively referred to herein as "Changes and Alterations" or anyone of which is individually referred to herein as a "Change or Alteration"), subject to the following covenants and conditions that Lessee each sublessee and the Unit Owners shall observe and perform.

(a) Lessee shall not undertake or commence or permit or suffer any Unit Owner or sublessee to undertake or commence any Change or Alteration until Lessee, such Unit Owner or sublessee, as the case may be, shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all Governmental Authorities having jurisdiction. Lessor agrees to join in the application for such permits or authorizations whenever such action is necessary to comply with applicable Governmental Requirements; provided that any such cooperation by Lessor shall be subject to the terms of Section 3.3 hereof.

(b) All work shall be conducted at all times in material compliance with (i) all applicable building and zoning codes or laws of the place in which the Premises and the Project are located, and (ii) all laws, ordinances, codes, orders, rules, regulations and requirements of all Governmental Authorities.

(c) The Land component of Lessor's Estate shall not, at any time, be subjected to any liens for labor and materials supplied or claimed to have been supplied to the Premises, all as more fully described in Article 9 hereof.

13.2 **Changes and Alterations Constitute a Part of Project.** At all times during the course of any work in connection with any Changes and Alterations that are made or installed in or on the Premises, such work shall immediately be and become a part of the Project and shall remain the property of Lessee, but, subject to the provisions of Article 25 below, upon the Termination Date title to all Changes and Alterations (other than non-affixed items of personality) shall vest in Lessor without any act on the part of or the recording of any instrument by Lessor or Lessee.

UNOFFICIAL COPY

ARTICLE 14

Section 501(c)(3) Status

Lessor hereby agrees that during the term of this Lease (including any extension thereof), (a) Lessor shall not take any action to terminate its status as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (as amended from time to time), and (b) Lessor shall, from time to time upon Lessee's request therefor (but not more than once in any calendar year), provide to Lessee and/or any title company engaged by or on behalf of Lessee or any Unit Owner evidence of Lessor's exempt status under said Section 501(c)(3).

ARTICLE 15

Indemnification by Lessor and Lessee

15.1 **Indemnification.** (a) To the fullest extent not prohibited by applicable law, and except as provided in Section 15.1(b) below, Lessee shall protect, indemnify, save harmless and defend Lessor and its Protected Persons, from and against any and all liabilities, obligations, losses, claims, demands, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (individually a "Claim" or collectively, "Claims") imposed upon, asserted against or incurred by Lessor or any of its Protected Persons arising from or in any way related to (i) the conduct, management or occupancy of, or from any work or thing whatsoever done in and on, the Premises and/or the Project, or any part thereof, during the term of this Lease; (ii) any breach or default on the part of Lessee in the performance of any term, covenant, condition, obligation or agreement on the part of Lessee to be performed or met under this Lease; (iii) any negligence of Lessee, any Unit Owner or any of the foregoing entities' agents, contractors, servants, employees or licensee's; (iv) any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the term of this Lease, in or on the Premises and/or the Project, or any part thereof; or (v) the presence, disposal, release or threatened release of any Hazardous Substances on, over, under, from or affecting the Premises or the Project; except to the extent any of the foregoing results from the negligent acts or omissions of Lessor or to the extent any of the foregoing results from conditions existing at the Land prior to the Commencement Date hereof.

(b) To the fullest extent not prohibited by applicable law, Lessor shall protect, indemnify, save harmless and defend Lessee and Lessee's Protected Persons from and against any and all Claims, imposed upon, asserted against or incurred by Lessee or Lessee's Protected Persons arising from or in any way related to (i) any breach or default on the part of Lessor in the performance of any term, covenant, condition, obligation or agreement on the part of Lessor to be performed or met under this Lease; or (ii) any negligent acts or omissions of Lessor.

15.2 **Notice of Claim or Potential Claim.** Promptly upon obtaining actual knowledge of any Claim or of any occurrence or event which could give rise to a Claim ("Potential Claim"), which is the subject of indemnification obligations under Section 15.1 above. Lessor or Lessee, as the case may be, shall deliver written notice to the other party ("Notice of Claim" or "Notice of Potential Claim", as the case may be) of such Claim or Potential Claim. A Notice of Claim or Notice of Potential Claim shall specify, in reasonable detail, the nature and estimated amount of any such Claim or Potential Claim. Notwithstanding the foregoing, Lessor's or Lessee's failure to give such notice shall not relieve any Indemnitor of its indemnification obligations under this Lease, except to the extent that such Indemnitor is materially prejudiced as a result of such failure.

15.3 **Defense of Claims.** The party to whom a Notice of Claim or Notice of Potential Claim is given ("Indemnitor") shall, at its expense, undertake the defense of each Claim or Potential Claim with attorneys of its own choosing reasonably satisfactory to the Protected Persons who are the

UNOFFICIAL COPY

subject of such Claim or Potential Claim ("**Indemnitee**"). Indemnitor shall keep Indemnitee informed of all significant developments and shall provide Indemnitee and its attorneys with copies of all documents relating to such Claim or Potential Claim. Indemnitee shall have the right, at Indemnitee's expense, to monitor and be present at, either through its representatives or its attorneys, all proceedings, hearings, testimony and depositions and to receive copies of all pleadings, motions, orders, transcripts, interrogatories and other discovery or other documents relating to any Claim or Potential Claim. Indemnitor shall not pay, compromise or settle any Claim or Potential Claim without first consulting Indemnitee respecting the same and seeking Indemnitee's consent to such payment, compromise or settlement, which consent shall not be unreasonably withheld or delayed. Indemnitor shall not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the person or persons asserting such Claim or Potential Claim to Indemnitee of a release from all liability with respect to such Claim or Potential Claim; provided that prior to terminating or settling any administrative or judicial proceeding or consenting to the entry of a judgment in a case for which a complete release has been offered, Indemnitor shall provide Indemnitee with an opportunity, at Indemnitee's expense, to assume the defense of any such proceeding. In such event, Indemnitor's liability with respect to any proceeding as to which Indemnitee has assumed the defense pursuant to the preceding sentence shall be limited to the liability that Indemnitor would have incurred had such proceeding been terminated or settled on the terms proposed by Indemnitor prior to the assumption thereof by Indemnitee.

15.4 **Failure to Defend; Separate Representation.** In the event Indemnitor, within a reasonable time after receiving a Notice of Claim or a Notice of Potential Claim under Section 15.2 hereof, fails to defend the Claim or Potential Claim, Indemnitee may, at Indemnitor's expense and after giving notice to Indemnitor of such action, undertake the defense of the Claim or Potential Claim and may, without the consent of Indemnitor being required, compromise or settle the Claim or Potential Claim, all for the account of Indemnitor. Notwithstanding any of the preceding provisions of and in addition to its other rights under this Article 15, Indemnitee shall have the right to employ counsel to represent it with respect to any Claim or Potential Claim if, in Indemnitee's reasonable judgment, it is advisable for Indemnitee to be represented by separate counsel, and in that event, the fees and expenses of such separate counsel shall be paid by Indemnitee, unless in any action where both Indemnitee and Indemnitor are joined as parties, Indemnitee reasonably determines that material conflicts of interest arise from being represented by the same counsel, in which case Indemnitee shall be entitled to retain separate counsel to represent it at the expense of Indemnitor.

15.5 **Survival of Indemnities.** The provisions of this Article 15 and the respective rights and obligations of Indemnitor and Indemnitee hereunder shall continue in full force and effect without regard to the expiration or earlier termination of this Lease; provided, however, that unless a Notice of Claim or Notice of Potential Claim shall be given by Lessor or Lessee, as the case may be, within one year after the date on which such Protected Person first obtains actual notice of such Claim or Potential Claim, such Protected Person shall be deemed to have waived the right to assert such Claim or Potential Claim and shall have no further rights with respect thereto. Nothing contained in this Article 15 shall be deemed or construed in any way to extend the applicable statute of limitations with respect to any Potential Claim or Claim that has arisen or arises out of or from, or is in any way related to, the matters described in Section 15.1.

ARTICLE 16**Covenant Against Waste**

Lessee covenants, not willfully to do or willfully to suffer any waste or damage to, or otherwise willfully to do or willfully to suffer or permit to be done any act that would substantially impair the value of the Land component of Lessor's Estate or any part thereof.

ARTICLE 17

UNOFFICIAL COPY

Exhibition of Premises by Lessor

Lessor is hereby given the right, during the last twelve (12) months of the term of this Lease, at reasonable hours and upon reasonable prior notice to Lessee, to enter the Premises and/or the Project or any part thereof (other than within a Unit Owner's individual Unit) and to exhibit the same, for purposes of the sale of Lessor's Estate and/or the entering into a new lease, or for other lawful purposes, subject, however, to the terms of this Lease and the possessory and ownership rights of any occupant(s) of all or portions of the Project.

ARTICLE 18

Defaults; Remedies

18.1 **Defaults.** The occurrence of any of the following shall constitute a "Default" under this Lease:

- (a) Lessee fails to pay Rent when due, including any Additional Rent; or
- (b) Lessee fails to provide evidence of the insurance required pursuant to Section 8.2 on the date or dates required in Section 8.4; or
- (c) Any lien attaches to the Lessor's Estate and Lessee fails (i) to provide Lessor with any security or insurance therefor as provided in Article 9 or (ii) to obtain the complete cancellation and discharge of such lien within the time period provided in Section 9.3; or
- (d) Lessee fails to perform or meet any other material term, condition, covenant, agreement or obligation on the part of Lessee to be performed or met under this Lease.

18.2 **Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" under this Lease:

- (a) A Default specified in Section 18.1(a) or 18.1(b) occurs and continues for five (5) Business Days after notice thereof is given by Lessor to Lessee; or
- (b) A Default specified in Section 18.1(c) occurs and continues for thirty (30) Days after notice thereof is given by Lessor to Lessee; or
- (c) A Default specified in Section 18.1(d) occurs and continues for thirty (30) Days after notice thereof is given by Lessor to Lessee (provided that if such Default cannot reasonably be cured with thirty (30) Days, then an Event of Default shall not be deemed to have occurred hereunder if Lessee promptly commences such cure within such thirty (30) Day period and thereafter diligently pursues the cure of such Default to completion).

18.3 **Lessor's Remedies.** Upon the occurrence of an Event of Default hereunder, in addition to the remedy set forth in Section 18.5 below, Lessor shall have as its only remedies: (a) a claim against Lessee for the actual provable damages suffered by Lessor on account of such Event of Default, and (b) the right to enjoin Lessee or obtain specific performance of the obligations of Lessee hereunder, and (c) a lien against Lessee's interest in the Improvements (which lien shall also attach to the Units, subject to the terms of Section 18.4 below), and the right to foreclose such lien, all as more fully described in Section 18.4 hereof. Accordingly, and without limitation of the foregoing, Lessor hereby waives the right to pursue any right to terminate this Lease or Lessee's right to possession hereunder on account of an Event of Default by Lessee hereunder. Notwithstanding anything to the contrary contained herein, Lessor hereby acknowledges and agrees that Lessor is not relying, in any respect, upon the

UNOFFICIAL COPY

existence, condition or value of the Improvements as of the Termination Date and, accordingly, any loss or diminution in the value of the Improvements will not be included in any damage claim by Lessor hereunder or in any other claim for indemnification under this Lease.

18.4 Liens; Default; Limit on Unit Owner's Liability.

(a) Without limiting the provisions of Section 18.3 above, in the event there is an Event of Default by Lessee, then, in addition to any other rights or remedies available to Lessor hereunder, Lessor shall have a lien against Lessee's interest in the Improvements (which lien shall also attach to the Units, subject to the terms of this Section 18.4), to secure the repayment of such sums of money and all interest on such sums accruing pursuant to the provisions of this Article 18, including any interest component described in Section 18.6 below. Such liens shall arise immediately upon the recording of a notice by Lessor with the Cook County Recorder of Deeds and may be enforced by a proceeding to foreclose such lien in accordance with applicable laws. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full. The liens provided for in this Section 18.4 shall be subject and subordinate to the lien of any first priority mortgage, trust deed or other similar encumbrance on Lessee's interest in the Improvements (including, but not limited to, a first priority mortgage, trust deed or other similar encumbrance on a Unit) recorded prior to the time of the recording of the notice of lien, for all amounts secured by said mortgage, trust deed or other encumbrance, and are subject to termination and defeat as provided below in this Section 18.4.

(b) In addition to the limitations set forth in Section 18.4(c) hereof, but without limiting any remedies to which Lessor may be entitled under Section 18.3(b) above, so long as the Land and Improvements remain subject to the provisions of the Condominium Act, each Unit Owner shall be liable for an amount equal to the amount of any claim against Lessee hereunder resulting from an Event of Default by Lessee, multiplied by the percentage of ownership interest in common elements allocated to such Unit Owner's Unit as set forth in the applicable Declaration, but no amount in excess thereof. No Unit Owner shall be in default hereunder by virtue of any other Unit Owner violating the terms and provisions imposed upon Lessee under this Lease. Upon receipt by Lessor of such amount for which a Unit Owner may be liable, (i) any lien arising against such Unit Owner's Unit (including its corresponding percentage interest in common elements) on account of such claim shall be released by Lessor against such Unit Owner's Unit without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, Lessor shall deliver to such Unit Owner an instrument, in recordable form, evidencing the release of such lien, but only with respect to said Unit Owner's Unit (including its corresponding percentage interest in common elements).

(c) Notwithstanding anything to the contrary contained herein, each Unit Owner's liability hereunder on account of any Event of Default by, or other liability of, Lessee hereunder shall be limited to and enforceable solely against such Unit Owner's interest in its Unit as provided in this Section 18.4 and, accordingly, Lessor hereby acknowledges and agrees that the Unit Owners shall never be personally liable on account thereof.

(d) No conveyance or other divestiture of title shall in any way terminate or defeat any lien arising pursuant to this Section 18.4, other than a divestiture resulting from a foreclosure or deed in lieu of foreclosure of a mortgage lien that, pursuant to Section 18.4(a) hereof, is superior to the lien arising pursuant to this Section 18.4.

(e) The holder(s) of a Leasehold Mortgage or a Unit Mortgage as the case may be, shall have the right to an assignment of any lien affecting the property secured by its mortgage or trust deed, upon payment by such holder of the amount secured by such lien, and shall in the event of said payment or satisfaction be subrogated to the applicable lien of Lessor hereunder. Such holder of a

UNOFFICIAL COPY

Leasehold Mortgage or a Unit Mortgage, as the case may be, may at any time give to Lessor a written notice of its election to pay such amount. Upon said payment by the holder of Leasehold Mortgage or a Unit Mortgage, as the case may be, Lessor shall deliver to such holder an instrument in recordable form assigning the corresponding lien of Lessor together with the debt secured thereby.

(f) The exercise by Lessor of any right or remedy to which it is entitled under this Section 18.4 shall not preclude or restrict the exercise of any other right or remedy expressly provided under Section 18.3 and Section 18.5 hereof.

(g) Any lien or claim of lien under this Section 18.4 shall be recorded by Lessor within two (2) years following an Event of Default by Lessee as described in Section 18.4(a) above, or such other shorter period as may be provided by law or statute.

18.5 **Lessor's Right to Cure Lessee's Defaults.** If any Default shall occur, and after the expiration of any applicable notice and cure or grace period applicable to such Default as provided in Section 18.2, Lessor shall have the right, but shall have no obligation, upon ten (10) Business Days prior notice to Lessee, to cure any such Default and all amounts expended by Lessor in connection therewith, together with interest thereon at the Lease Interest Rate from the date incurred or paid by Lessor to the date of payment by Lessee, shall be Additional Rent due from Lessee upon demand.

18.6 **Lease Interest Rate.** Any Rent, inclusive of any Additional Rent or other amounts payable hereunder by Lessee to Lessor, that are not paid when due hereunder, shall accrue interest from the date such payment was due until the date paid, at the Lease Interest Rate, and Lessee shall be required to pay such interest together with the original amount due, in order to cure any Event of Default resulting therefrom.

ARTICLE 19

Environmental Compliance and Indemnification Agreement

19.1 **Compliance with Environmental Laws.** During the entire term of this Lease, Lessee shall comply, in all material respects, with all federal, state and local laws, ordinances, rules and regulations now or at any time hereafter in effect which regulate, relate to or impose liability or standards of conduct concerning any Hazardous Substances (all such laws, ordinances, rules and regulations and any future amendments thereto being herein collectively referred to as the "Environmental Laws") including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*) and the Illinois Responsible Property Transfer Act (765 ILCS 90/1 *et seq.*), and which directly or indirectly affect the use or occupancy of the Premises and/or the Project by Lessee, any Unit Owner, or anyone claiming by, through or under any of them. Lessee shall not willfully permit the Premises and/or the Project to contain, be used to store or otherwise used to generate, treat or handle in any manner Hazardous Substances in violation of any Environmental Laws. Lessor shall not take any actions that conflict with or impair Lessee's ability to comply with its obligations set forth in this Article 19.

19.2 **Remediation.** (a) If any environmental audit or any other environmental test, inspection or evaluation of the Premises and/or the Project conducted by or on behalf of Lessee, any Leasehold Mortgagee, any Unit Mortgagee or any Governmental Authority discloses a disposal, release, threatened release or the presence of Hazardous Substances on, over, under, from or affecting the Premises and/or the Project in violation of any Environmental Laws that did not occur prior to, or was not in existence as of, July 31, 2000 and that requires Remediation (any such event or circumstance being referred to herein as an "Environmental Event"), Lessee shall, as promptly as practicable in light of the

UNOFFICIAL COPY

nature of such Environmental Event, the requirements of any applicable Governmental Authorities or Environmental Laws and other relevant circumstances, cause such Remediation to be conducted and completed in accordance with and to the extent required by all applicable Environmental Laws and any orders and directives of any Governmental Authorities charged with responsibility or authority pursuant to any Environmental Laws. Should an Environmental Event occur, Lessee shall immediately notify Lessor thereof, upon Lessee becoming aware of such Environmental Event

(b) Lessee's failure to perform any Remediation required pursuant to Sections 19.2(a) or 19.2(b) shall entitle Lessor, after expiration of the applicable notice and cure period referred to in Section 18.2(d), to cause such Remediation to be conducted, and Lessee shall, immediately upon demand by Lessor, pay to Lessor all costs and expenses paid or incurred by Lessor as a result thereof.

(c) Notwithstanding the foregoing, Lessee shall have the right to contest by appropriate legal proceedings the order or directive of any Governmental Authority requiring Remediation at the Premises and/or the Project under any Environmental Laws and, during such contest, to delay or suspend such Remediation so long as Lessee is legally entitled to do so and provided that (A) the Lessor's Estate is not subject to a final forfeiture sale or seizure as a result thereof and (B) Lessor does not incur any liability therefor which is not assumed and/or discharged, in full, by Lessee; provided further, however that this right shall not be deemed or construed in any way to relieve, modify or extend Lessee's obligations under this Article 19.

(d) Nothing in this Article 19 shall limit or affect, in any manner, any indemnification obligations of the parties provided under Article 15, to the extent relating to Claims pertaining to Environmental Events or alleged violations of Environmental Laws.

ARTICLE 20

Restriction of Record

The parties hereby acknowledge that the Premises is currently encumbered by that certain instrument recorded with the Office of the Recorder of Cook County in Book 35549 at Pages 83 through 85 (the "Deed"), which Deed contains a restriction (the "Restriction") prohibiting the owner of the fee title to the Premises from conveying its fee interest in the Premises. Lessor hereby acknowledges and agrees that, so long as said Restriction remains in effect, Lessor shall not transfer or convey its interest in the Premises during the term hereof in any manner which is in violation of said Restriction.

ARTICLE 21

Subordination and Attornment

21.1 **Subordination to Fee Mortgage.** Unless Lessee otherwise agrees in writing, in its sole and absolute discretion, any Fee Mortgage consented to by Lessee pursuant to the terms hereof shall, at all times, be subject and subordinate to this Lease. Accordingly, if a Fee Mortgagee or any other person shall succeed to the interest of Lessor under this Lease, this Lease and Lessee's possession of the Premises and the Project shall not be disturbed in the exercise of any rights under the Fee Mortgage by such Fee Mortgagee or by any other party claiming under or through such Fee Mortgagee and the Fee Mortgagee or any other party claiming under or through such Fee Mortgagee shall not have the right to terminate this Lease in the exercise of any rights under the Fee Mortgage by such Fee Mortgagee.

21.2 **Attornment to Successor-Lessor.** If the holder of a Fee Mortgage consented to by Lessee pursuant to the terms hereof or any other person permitted hereunder shall succeed to the interest of Lessor under this Lease, whether through possession or foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, then at the request of such party so succeeding to Lessor's rights (herein sometimes called "Successor-Lessor"), Lessee shall attorn to and recognize such Successor-Lessor as the

UNOFFICIAL COPY

Lessor under this Lease, and shall promptly execute and deliver any instrument that such Successor-Lessor may reasonably request to evidence such attornment, provided that such Successor Lessor shall agree in such instrument not to disturb the quiet and peaceful possession of the Premises by Lessee and the Unit Owners. From and after such attornment, this Lease shall continue in full force and effect as, or as if it were, a direct lease between the Successor-Lessor and Lessee upon all of the same terms, conditions, covenants, agreements and obligations as are set forth in this Lease.

ARTICLE 22

Estoppel Certificates

22.1 **By Lessor.** Lessor shall execute, acknowledge and deliver to Lessee from time to time, upon request by Lessee made at least twenty (20) Days prior to the requested date for delivery, a statement certifying to any existing or prospective assignee, sublessee, Leasehold Mortgagee, Unit Mortgagee or any other party designated in Lessee's request (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, stating the modifications), (ii) that the Ground Rent has been paid in full, (iii) whether any notices of a Default have been given to Lessee, (iv) whether, to the knowledge of Lessor, any Default or Event of Default has occurred and if so, specifying each such known Default or Event of Default and whether any such alleged Default by Lessee has been cured by or on behalf of Lessee, and (v) such other matters as may be reasonably requested by Lessee. Any request of Lessor hereunder shall be subject to the terms of Section 3.3 hereof (except, however, that (1) the indemnification obligations described thereunder, shall not apply with respect to actions of Lessor under this Section 22.1, and (2) in lieu of the fees, costs and administrative charges described in said Section 3.3, Lessee shall instead pay Lessor an administrative charge of \$30.00 for each estoppel certificate delivered by Lessor under this Section 22.1).

22.2 **Reliance.** Certificates delivered by Lessor pursuant to this Article 22 may be relied upon by the party or parties to whom the certification is made.

ARTICLE 23

Surrender of Premises

Subject to the provisions of Article 25 below, Lessee shall, upon the Termination Date, surrender the Premises and the Project to Lessor in its then "as-is" condition, without any representation or warranty as to physical condition, express or implied, of any nature whatsoever.

ARTICLE 24

Quiet Enjoyment

Lessor covenants that Lessee, its sublessees and the Unit Owners, upon paying all amounts required to be paid by Lessee hereunder and performing, observing and keeping all of the terms, covenants, conditions, agreements and obligations of this Lease on its part to be performed, shall lawfully and quietly hold, occupy and enjoy the Premises and the Project during the term of this Lease without hindrance or interference of anyone claiming by, through or under Lessor, subject, however, to the provisions of this Lease.

ARTICLE 25

Lessor's Options Upon Expiration

On or before the date which is three (3) years prior to the Expiration Date, Lessor shall deliver written notice to Lessee of Lessor's election, effective as of the Expiration Date, to either (a)

UNOFFICIAL COPY

purchase the Improvements from Lessee at the "Purchase Fair Market Value" (as hereinafter defined), or (b) enter into a new lease with Lessee, for an additional ninety-nine (99) year term commencing on the Expiration Date, on the same terms hereof, except that the Ground Rent during said term shall be equal to the "Rental Fair Market Value" (as hereinafter defined) and shall be payable by Lessee in full on or before the first day of the term of such new lease. Lessor's failure to timely notify Lessee of either election under this Article 25 shall be deemed an election under subclause (b) hereinabove. Notwithstanding anything contained in this Article 25 to the contrary, Lessor shall make (or shall be deemed to have made) the same election under this Article 25 (e.g., to purchase the Improvements or to enter into a new lease) that Lessor makes under Article 25 of the Residential Ground Lease with respect to the Residential Premises and the improvements thereon. For purposes hereof, (i) the term "Purchase Fair Market Value" shall mean an amount calculated prospectively as of the Expiration Date, equal to the fair market value of the Improvements existing at the time such determination, and (ii) the term "Rental Fair Market Value" shall mean an amount, calculated prospectively as of the Expiration Date, equal to the capitalized fair market rental value of the Land for a 99 year lease (i.e., excluding any improvements thereto or thereon). If the parties cannot agree on the Purchase Fair Market Value or the Rental Fair Market Value, as applicable, on or before the date which is two (2) years prior to the Expiration Date, then such dispute shall be determined by appraisal as hereinafter provided. Lessor and Lessee will each select an appraiser who shall be disinterested and shall be a person that is an MAI (or other comparable professional association if the MAI association no longer exists) appraiser licensed in the State of Illinois for a period not less than ten (10) years immediately preceding his or her appointment and experienced in appraising lakefront property in the City of Chicago. The appraisers shall be directed, within forty-five (45) days after appointment, to determine the Purchase Fair Market Value or the Rental Fair Market Value, as applicable. If the two appraisers so appointed fail to agree as to the Purchase Fair Market Value or the Rental Fair Market Value, as applicable, the two appraisers shall appoint a third appraiser, using the criteria described above, to determine the Purchase Fair Market Value or the Rental Fair Market Value, as applicable. In the event the two appraisers are not able to so agree upon a third appraiser, the third appraiser shall be appointed by the MAI association (or other comparable appraiser association if the MAI association no longer exists), using the criteria described above. The cost of the foregoing appraisal process shall be shared equally by Lessor and Lessee. Notwithstanding the foregoing, if there is an uncured Event of Default as of the Expiration Date of this Lease, then any damages suffered by Lessor on account of such Event of Default shall either (A) be deducted from the "Purchase Fair Market Value" as otherwise determined under this Article 25, in the event Lessor has elected to purchase the Improvements pursuant to subclause (a) of this Article 25, or (B) added to the "Rental Fair Market Value" as otherwise determined under this Article 25, in the event Lessor has elected to enter into a new lease with Lessee pursuant to subclause (b) of this Article 25.

ARTICLE 26**Notices**

26.1 **Manner of Providing Notices** All notices and other communications in connection with this Lease shall be in writing, and any notice or other communication shall be deemed delivered to the addressee thereof (i) when actually delivered at the address set forth below for such addressee, or (ii) one (1) Business Day after deposit with a reputable overnight courier service providing delivery receipts, delivery charges prepaid, or (iii) three (3) Days after deposit thereof in any main or branch United States post office certified or registered mail, postage prepaid, return receipt requested in each case, properly addressed to the parties, respectively, as follows:

For notices and communications to Lessor:

Northwestern University
633 Clark Street
Evanston, Illinois 60208
Attention: Senior Vice President for Business and Finance

UNOFFICIAL COPY

with a copy to:

Northwestern University
633 Clark Street
Evanston, Illinois 60208
Attention: General Counsel

For notices and communications to Lessee:

270 East Pearson, LLC
350 West Hubbard Street, Suite 301
Chicago, Illinois 60610
Attention: General Counsel

26.2 **Changes of Address or Addressee.** By notice complying with the requirements of Section 26.1, each party shall have the right to change the address or addressee, or both, for all future notices and communications and payments to such party or for copies of notices provided for above, but no such notice or a change of an addressee or address, or both, by notice given hereunder shall be effective until actually received by the other party.

26.3 **Obligation to Provide Copies of Third Party Notices.** Lessor and Lessee shall use reasonable efforts to deliver promptly to the other party a copy of any notice received by either party from third parties that would have a material effect on the Premises and/or the Project or Lessor's Estate, including, but not limited to, a copy of any such notice from the City.

26.4 **Performance and Notice on Non-Business Days.** If the date for giving any notice required or contemplated to be given pursuant to the terms of this Lease hereunder or the performance of any obligation hereunder falls on a Day other than a Business Day, then said notice or obligation may be given or performed on the next Business Day after such Day.

ARTICLE 27

Rights of Leasehold Mortgagees

27.1 **Notices to Leasehold Mortgagees.** So long as any Leasehold Mortgage shall remain a lien on Lessee's or any sublessee's leasehold estate hereunder, Lessor, simultaneously with the giving of any notice to Lessee of any Default, or any other material notice given under this Lease, shall give a duplicate copy thereof to each Leasehold Mortgagee who shall have given notice of its Leasehold Mortgage to Lessor pursuant to Section 10.2(b) and no such notice to Lessee shall be effective as against such Leasehold Mortgagee unless and until a copy of such notice is given to each such Leasehold Mortgagee in the manner provided pursuant to Article 26 with respect to notices to Lessee, except that the address for such notice to such Leasehold Mortgagee shall be the address provided to Lessor pursuant to Section 10.2(b).

27.2 **Right to Cure Default.** Each Leasehold Mortgagee will have a period of time equal to, but commencing immediately following the expiration of the cure period given Lessee pursuant to Section 18.2, if any, for remedying the Default or causing the same to be remedied pursuant to Article 18, and Lessor shall accept such performance on the part of such Leasehold Mortgagee as though the same had been done or performed by Lessee.

27.3 **Rights Inure to Leasehold Mortgagee.** Notwithstanding anything to the contrary contained in this Article 27, this Article 27 and all rights and benefits hereunder shall be solely

UNOFFICIAL COPY

for the benefit of any Leasehold Mortgagee hereunder, its successors and assigns, and no such rights or benefits shall inure to Lessee or its successors and assigns. The provisions of this Article 27 are intended for the benefit of each Leasehold Mortgagee and to the extent, if at all, that any other provisions of this Lease conflict with the provisions of this Article 27, the provisions of this Article 27 shall control.

ARTICLE 28

Rights of Unit Mortgagees

28.1 **Notices to Unit Mortgagees.** So long as any Unit Mortgage shall remain a lien on any interest in the leasehold estate created hereby or on any subleasehold estate permitted to be created hereunder, Lessor, simultaneously with the giving of any notice to Lessee of any Default, shall give a duplicate copy thereof to each Unit Mortgagee who shall have given notice of its Unit Mortgage to Lessor in the manner provided in Article 26 which notice shall include the name and address of such Unit Mortgagee and a certified copy of such Unit Mortgagee's Unit Mortgage, and no such notice to Lessee shall be effective unless and until a copy of such notice is given to each such Unit Mortgagee in the manner provided pursuant to Article 26 with respect to notices to Lessee, except that the address for such notice to such Unit Mortgagee shall be the address provided to Lessor pursuant to this Section 28.1.

28.2 **Right to Cure Default.** Each Unit Mortgagee will have a period of time equal to, but commencing immediately following the expiration of, the cure period given Lessee pursuant to Section 18.2, if any, for remedying the Default or causing the same to be remedied pursuant to Article 18, and Lessor shall accept such performance on the part of such Unit Mortgagee as though the same had been done or performed by Lessee.

28.3 **Rights Inure to Unit Mortgagee.** Notwithstanding anything to the contrary contained in this Article 28, this Article 28 and all rights and benefits hereunder shall be solely for the benefit of any Unit Mortgagee hereunder, its successors and assigns, and no such rights or benefits shall inure to Lessee or its successors and assigns. The provisions of this Article 28 are intended for the benefit of each Unit Mortgagee and to the extent, if at all, that any other provisions of this Lease conflict with the provisions of this Article 28, the provisions of this Article 28 shall control.

ARTICLE 29

Representations and Warranties

29.1 **Authority.** Lessor represents and warrants to Lessee that Lessor's execution and delivery of this Lease has been duly authorized and that Lessor has full power and authority to execute and deliver this Lease and to perform Lessor's obligations hereunder. Lessee represents and warrants to Lessor that Lessee's execution and delivery of this Lease has been duly authorized and that Lessee has full power and authority to execute and deliver this Lease and to perform Lessee's obligations hereunder. The parties to this Lease shall provide, each to the other and upon request, reasonable evidence of such power and authority.

29.2 **No Brokers.** Lessor represents and warrants to Lessee that as of the date hereof, except for Mesirow Stein Real Estate, no broker or finder has been engaged by Lessor in connection with the transactions contemplated by this Lease. Any fee, commission or other payment due Mesirow Stein Real Estate by reason of this Lease or the transactions contemplated by this Lease shall be paid by Lessor. Lessee represents and warrants to Lessor that as of the date hereof no broker or finder has been engaged by Lessee nor has Lessee had contact with any broker or finder (other than Mesirow Stein Real Estate) in connection with the transactions contemplated by this Lease. Except as may be otherwise agreed in writing, in the event of any Claim for any broker's or finder's fees or commissions in connection with the negotiation, execution or consummation of this Lease or of any of the transactions contemplated hereby,

UNOFFICIAL COPY

the party whose actions are alleged by the claimant to be the basis for such Claim shall protect, indemnify, save harmless and defend the other party hereto from and against such Claim in the manner provided in Article 15 of this Lease.

ARTICLE 30

Miscellaneous Provisions

30.1 **Partial Invalidity**. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as nearly as possible, the purposes and intent of this Lease to the greatest extent not prohibited by law.

30.2 **Consents, Amendments and Waivers**. The failure of Lessor or Lessee to insist in anyone or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. No waiver, change, amendment, modification or discharge by either party hereto of this Lease or of any provision in this Lease shall be effective unless expressed in writing and signed by both Lessor and Lessee or by the party against whom enforcement of the same is sought. Neither the provisions of Article 27 nor any other provisions of this Lease that grant any rights to Leasehold Mortgagees may be waived, changed, amended, modified or discharged without the prior written consent of all Leasehold Mortgagees. Neither the provisions of Article 28 nor any other provisions of this Lease that grant any rights to the Unit Mortgagees may be waived, changed, amended, modified or discharged without the prior written consent of all Unit Mortgagees.

30.3 **Special Amendment**. Lessor and Lessee agree to record a special amendment ("Special Amendment") to this Lease at any time and from time to time which amends this Lease (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform) functions similar to those currently performed by such entities, in order to induce any of such agencies or entities to make, purchase, sell, insure or guarantee Unit Mortgages; provided that no such amendments limit, restrict or otherwise adversely affect or diminish Lessor's rights under this Lease, as reasonably determined by Lessor. Lessee shall reimburse Lessor for all out-of-pocket fees and costs (including, without limitation, reasonable attorneys' fees) incurred by Lessor in connection with any such Special Amendment.

30.4 **Article and Section Headlines**. The headings, titles and captions of this Lease are inserted only as a matter of convenience and reference and in no way define, extend, limit or describe the scope or intent of this Lease.

30.5 **Table of Contents**. The table of contents preceding this Lease is only for the purpose of convenience and reference and in no way defines, extends, limits or describes the scope or intent of this Lease.

30.6 **Executed Counterparts**. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. In making proofs of this Lease, it shall not be necessary to account for any other counterparts hereof.

30.7 **Governing Law**. This Lease shall be construed and enforced in accordance with the laws of the State of Illinois (without reference to conflicts of laws principles or choice of law

UNOFFICIAL COPY

doctrine).

30.8 **Sundays and Holidays**. Whenever the date for the performance of any term, condition, obligation, covenant, agreement or provision required or provided under this Lease falls on a Day other than a Business Day, such date shall be extended to the next succeeding Business Day.

30.9 **Successors and Assigns**. The covenants and agreements herein contained shall, subject to the provisions of this Lease, bind and inure to the benefit of the successors and assigns of the respective parties hereto, and the same shall be construed as covenants running with the Land.

30.10 **Rules of Construction**. Whenever used in this Lease, the singular number shall include the plural; the plural, the singular; and the use of any gender shall be applicable to all genders. Whenever the word "including" is used in this Lease it shall be construed to mean and be read as "including without limitation".

30.11 **Excuse of Performance by Reason of Unavoidable Delays**. Any delay in commencement or completion of performance by either Lessor or Lessee that is excused only by reason of Unavoidable Delays shall be excused for a time period equal to one Day for each Day of Unavoidable Delays directly related to such performance.

30.12 **Time of Essence**. Time is of the essence with respect to this Lease and each and every term, condition, obligation, covenant, agreement or provision contained herein.

30.13 **Recording of Lease**. Lessor and Lessee shall execute, acknowledge and deliver this Lease and shall cause this Lease to be recorded in the Office of the Recorder of Cook County, Illinois.

30.14 **Lessor and Lessee Not Partners**. Nothing contained in this Lease shall be construed to create a partnership or joint venture between Lessor and Lessee or between Lessor and any other person, or to cause Lessor to be responsible in any way for the debts or obligations of Lessee or any other person.

ARTICLE 31

Right of First Offer

Without limitation of the terms of Section 10.4 or Articles 14 or 20 herein above, in the event Lessor elects to sell all or any portion of Lessor's Estate to a third party purchaser at any time during the term, Lessee shall have the right of first offer to purchase the Lessor's Estate, or applicable portion thereof (herein, the "First Offer Right"), in accordance with the following terms and conditions.

31.1 **First Offer Right**. If, during the term hereof, Lessor desires to sell Lessor's Estate, or any portion thereof, then Lessor shall notify Lessee in writing (herein, "Lessor's Notice") setting forth (i) the proposed closing date, (ii) the proposed purchase price, and (iii) all other material economic terms upon which Lessor is prepared to sell the Lessor's Estate, or applicable portion thereof, to a prospective purchaser.

Upon Lessee's receipt of any such Lessor's Notice, Lessee shall have a period of forty-five (45) Days following receipt of such Lessor's Notice (herein, "Lessee's Election Period") to exercise Lessee's First Offer Right hereunder. If Lessee so exercises its First Offer Right, then the Lessor's Estate, or applicable portion thereof, shall be sold to Lessee upon the terms set forth in Lessor's Notice. Notwithstanding anything contained in this Article 31 to the contrary, Lessee may not exercise its First Offer Right unless the lessee under the Residential Ground Lease exercises its First Offer Right under

UNOFFICIAL COPY

Article 31 of the Residential Ground Lease with respect to the "Lessor's Estate" under the Residential Ground Lease, and Lessee shall be required to exercise its First Offer Right if the lessee under the Residential Ground Lease exercises its First Offer Right under the Residential Ground Lease.

To the extent not otherwise set forth in Lessor's Notice, the closing procedures described in Section 31.5 below shall apply with respect to the sale of the Lessor's Estate, or applicable portion thereof, under this Article 31.

31.2 Failure to Exercise First Offer Right. In the event Lessee fails to notify Lessor, in writing, within Lessee's Election Period, that Lessee has exercised its First Offer Right hereunder, then Lessee's rights under this Article 31 shall terminate and be null and void as to the applicable portion of the Lessor's Estate which was the subject of Lessor's Notice; provided, however, that in the event Lessor thereafter fails to close on the sale of Lessor's Estate, or applicable portion thereof, within a period of three hundred sixty-five (365) Days following the expiration of Lessee's Election Period, then Lessee shall thereafter again have a First Offer Right with respect to the Lessor's Estate, or applicable portion thereof, as provided in this Article 31. Further, if after Lessee has failed to exercise its First Offer Right hereunder, Lessor makes substantially more advantageous to a purchaser the basic business terms of the sale from that specified in Lessor's Notice, then Lessor shall thereafter deliver a new Lessor's Notice to Lessee, and Lessee shall thereafter again have a First Offer Right with respect to the Lessor's Estate, or applicable portion thereof, all in accordance with the terms hereof.

31.3 Further Documentation. If Lessee has validly exercised its First Offer Right, then within fifteen (15) Business Days after the request by either party, Lessor and Lessee shall enter into a written agreement confirming the terms, conditions and provisions applicable to the sale of Lessor's Estate, or applicable portion thereof, including the proposed closing date and purchase price with respect to such transaction. Such agreement shall contain identical terms as those specified in the applicable Lessor's Notice and in addition, shall contain such other terms and procedures as referenced in Section 31.5 below. Each party further agrees to execute such documents and to take such actions as may be reasonably requested by the other party in order to effectuate the sale transaction contemplated by any such Lessor's Notice.

31.4 Effectiveness of First Offer Right. In the event Lessee fails to exercise its First Offer Right hereunder, Lessee shall continue to have all rights and obligations as otherwise set forth in this Lease (including, without limitation, all rights under Article 20 and Article 25 hereof), and nothing in this Article 31 shall affect, in any manner whatsoever, Lessee's continued rights and obligations as otherwise set forth in this Lease.

31.5 Mechanics of Purchase. If Lessee's First Offer Right is exercised, the following closing procedures shall apply (except to the extent expressly addressed otherwise in Lessor's Notice):

(a) Payment of the purchase price and the delivery of the deed (the "Closing") shall be made at the office of Lessor or its attorneys or at such other place as the parties may agree. At the request of either party, the Closing shall be effected through a deed and money escrow, the cost of which escrow shall be borne equally by Lessor and Lessee. The purchase price shall be payable to Lessor on the date of Closing in cash or by certified or cashier's check upon delivery of the deed to Lessee and performance of Lessor's other obligations as set forth herein. Notwithstanding anything to the contrary contained in this Article 31 or in the Lessor's Notice, the Closing shall occur simultaneously with (and only simultaneously with) the closing of the purchase of fee simple title to the "Lessor's Estate" under the Residential Ground Lease by the lessee under the Residential Ground Lease pursuant to Article 31 of the Residential Ground Lease.

(b) The conveyance of Lessor's Estate, or applicable portion thereof, shall be made by recordable special warranty deed to Lessee (or its designee) and other documentation necessary to transfer

UNOFFICIAL COPY

fee simple title to Lessor's Estate, or applicable portion thereof, to Lessee, subject only to (A) the lien of current general real estate taxes and special assessments not then due and payable; (B) any acts or doings caused or suffered by Lessee; and (C) such other liens and encumbrances which were in effect on the Commencement Date of the term hereof (collectively, the "Permitted Title Exceptions").

(c) Lessor, at its expense, shall deliver or cause to be delivered to Lessee, not later than twenty (20) Days prior to the Closing, as evidence of Lessor's title to Lessor's Estate, or applicable portion thereof, a commitment for a standard owner's title insurance policy in the aggregate amount of the purchase price as provided hereunder, issued by a title insurer reasonably acceptable to Lessee. Such title commitment shall name Lessee or its designee as the proposed insured and show title to Lessor's Estate, or applicable portion thereof, in Lessor, subject only to (a) the Permitted Title Exceptions, and (b) other title exceptions pertaining to mortgage liens of a definite or ascertainable amount which may be removed at Closing by the payment of money, and which Lessor shall so remove or cause to be removed concurrently with the Closing. At Closing, Lessor, at its expense, shall cause an owner's title insurance policy to be issued to Lessee or its designee, consistent with the aforescribed title commitment.

(d) Except as expressly provided herein, or in Lessor's Notice, the payment of all prorations, transfer taxes, escrow fees, recording fees and other expenses, fees and charges shall be made by the party from whom such payment is due in accordance with statutory requirements or in accordance with the custom at the time of the Closing for sales of properties similar to the Lessor's Estate located in the downtown, Chicago, Illinois area.

(e) At either party's request the parties shall enter into such other documentation and shall perform such other acts as may be reasonably necessary to effectuate the terms of this Article 31.

31.6 **Right of First Offer Under Residential Ground Lease.** Since pursuant to Section 10.4 hereof, Lessor may not sell the Lessor's Estate or any portion thereof, except to an entity that acquires fee title to the "Lessor's Estate" under the Residential Ground Lease simultaneously with the closing of the purchase of the Lessor's Estate under this Lease, simultaneously with Lessor's delivery of a Lessor's Notice to Lessee under this Article 31, Lessor shall deliver a "Lessor's Notice" to the lessee under the Residential Ground Lease pursuant to Article 31 thereof. Notwithstanding anything contained in this Article 31 to the contrary, Lessee may not exercise Lessee's First Offer Right under this Lease unless the lessee under the Residential Ground Lease validly exercises its First Offer Right under the Residential Ground Lease. If Lessee notifies Lessor of Lessee's exercise of its First Offer Right within Lessee's Election Period, but the lessee under the Residential Ground Lease fails to exercise its First Offer Right within the applicable time period under the Residential Ground Lease, then Lessee's notice and exercise under this Lease shall be null and void.

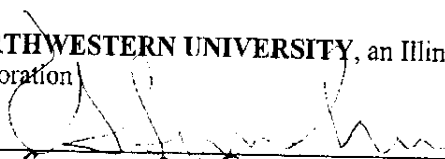
[SIGNATURES ON FOLLOWING PAGE]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.

LESSOR:

NORTHWESTERN UNIVERSITY, an Illinois Corporation

By: 
Name: Eugene S. Sunshine *elg*
Its: Sr. Vice President for Business & Finance

LESSEE:

270 EAST PEARSON, L.L.C., an Illinois limited liability company

By: **Lake Shore, L.L.C.**, an Illinois limited liability company, its sole member

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first above written.

LESSOR:

NORTHWESTERN UNIVERSITY, an Illinois Corporation

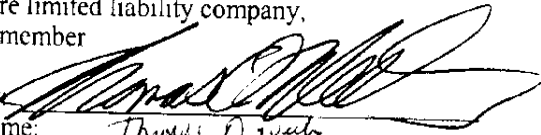
By: _____
Name: _____
Its: _____

LESSEE:

270 EAST PEARSON, L.L.C., an Illinois limited liability company

By: **Lake Shore, L.L.C.**, an Illinois limited liability company, its sole member

LR Development Company, LLC, a Delaware limited liability company, its sole member

By: 
Name: Thomas O'wally
Title: partner

Property of Cook County Clerk's Office

UNOFFICIAL COPY

PARTY ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

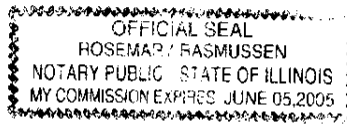
I, ROSEMARY RASMUSSEN, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eugene S. Sushine as Sr. Vice President of NORTHWESTERN UNIVERSITY, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sr. V. P., appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17 day of MAY 2004.

Rosemary Rasmussen
Notary Public

My Commission expires:

June 5, 2005



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

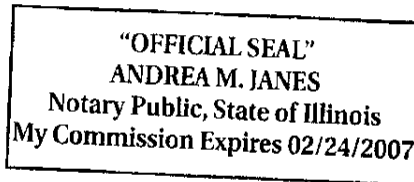
I, ANDREA JANES, a Notary Public, in and for said County, in the State aforesaid. DO HEREBY CERTIFY that Thomas O'Neil, as President of Lake Shore, L.L.C. ("Lake Shore"), being the sole member of 270 East Pearson, L.L.C., an Illinois limited liability company ("270 East Pearson"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she, being thereunto duly authorized, signed and delivered said instrument as the free and voluntary act of Lake Shore, on behalf of 270 East Pearson, and as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20th day of May 2004.

Andrea Janes
Notary Public

My Commission expires:

02/24/07



Property of Cook County Clerk's Office

L.A. Analytical Corp, LLC
13336 N. Lincoln St
Chicago, IL 60632

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF LAND

LOT 3 IN THE RESIDENCES ON LAKE SHORE PARK SUBDIVISION, BEING A SUBDIVISION OF PART OF LOTS 91 TO 98 IN LAKE SHORE DRIVE ADDITION TO CHICAGO, A SUBDIVISION OF PART OF BLOCKS 14 AND 20 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Identification Number: 17-03-228-028-8002 (affects the subject property and other land)

Property Address: 270 East Pearson Street
Chicago, Illinois 60611

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Demise; Use	1
2. Term	2
3. Rent	2
4. Additional Rent; Payments; Interest	2
5. Condition of Unit, Construction of Improvements and Insurance	3
6. The Ground Lease	3
7. Declaration	4
8. Default by Subtenant	4
9. Waiver of Claims and Indemnity	5
10. Successors and Assigns	5
11. Entire Agreement	5
12. Notices	5

UNOFFICIAL COPY**UNIT SUBLEASE**

THIS UNIT SUBLEASE (this "Sublease") is made and entered into as of the ____ day of _____, by and between _____, a _____ (hereinafter called "Sublandlord"), and _____, a _____ (hereinafter called "Subtenant");

WITNESSETH:

WHEREAS, by that certain Ground Lease dated May ____ 2004 (as amended and/or assigned from time to time, the "Ground Lease"), Northwestern University, an Illinois corporation (hereinafter, together with its successors and assigns, called "Landlord"), as lessor, leased to Sublandlord, as lessee, the property legally described in Exhibit A hereto (the "Real Estate"), for a term commencing on May ____, 2004 and ending on July 31, 2099 (subject to extensions or renewals thereof, as set forth in the Ground Lease);

WHEREAS, the Ground Lease was recorded on _____, 2004, as Document No. _____ in the Office of the Recorder of Deeds of Cook County, Illinois;

WHEREAS, 270 East Pearson, L.L.C. has submitted the Real Estate and improvements thereon ("Improvements") to the Condominium Property Act of the State of Illinois;

WHEREAS, effective immediately following the mutual execution and delivery of this Sublease by the parties hereto, Sublandlord shall be assigning all of its right, title and interest as "lessee" under the Ground Lease and as "Sublandlord" under this Sublease, to 270 East Pearson Garage Condominium Association, the association of unit owners established pursuant to the Declaration ("Association"), and from and after such assignment the Association shall be the successor "Sublandlord" hereunder for all purposes hereof;

WHEREAS, Subtenant desires to sublease from Sublandlord, and Sublandlord desires to sublease to Subtenant Parking Unit ____ (hereinafter called the "Unit") in 270 East Pearson Garage Condominium ("Condominium"), as set forth in the plat of survey attached as Exhibit A-2 to the Declaration of Condominium recorded May ____, 2004, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. _____ as amended from time to time ("Declaration"), together with its undivided percentage interest in the Common Elements (as defined in the Declaration); and

WHEREAS, Sublandlord desires to convey to Subtenant all of its right, title and interest to any and all improvements in or constituting the Unit.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. **Demise; Use.** Sublandlord hereby leases to Subtenant and Subtenant hereby leases from Sublandlord the Unit, together with its undivided percentage interest in the common elements, for the term and upon the other terms and conditions hereinafter set forth, to be used and occupied by Subtenant solely for the purposes permitted in the Declaration and Ground Lease and for no other purpose. Sublandlord also hereby grants, bargains, sells and conveys all of its right, title and interest in and to all improvements in or constituting the Unit, subject to the terms and conditions of this Sublease, the Declaration and Ground Lease. Sublandlord also hereby grants to Subtenant, its successors and assigns, as rights and easements appurtenant to the above leasehold estate, the rights and easements for the benefit of the property set forth in the Declaration, and Sublandlord reserves to itself, its successors and assigns, the rights and easements set forth in the Declaration for the benefit of the remaining property described

UNOFFICIAL COPY

therein. The conveyances described herein shall be subject to the following permitted encumbrances: (1) current, non-delinquent real estate taxes which are not yet due and payable as of the date hereof and real estate taxes for subsequent years; (2) special municipal taxes or assessments for improvements not yet completed and unconfirmed special municipal taxes or assessments; (3) the terms and provisions of the Declaration and any amendments thereto; (4) the terms and provisions of that certain Ground Lease dated May ____, 2004 between Northwestern University and 270 East Pearson, L.L.C., recorded on _____ as Document No. _____ including any amendments thereto or assignments or subleases thereof (herein, the "Ground Lease"); (5) public, private and utility easements, including without limitation (a) any easements established by, or implied from, the Declaration and any amendments thereto and/or (b) that certain Reciprocal Easement Agreement dated _____ and recorded on _____ as Document No. _____ and any amendment thereto (herein, the "Reciprocal Easement Agreement"), and/or (c) the various easement agreements which are described in the Property Report delivered to Subtenant in connection with the conveyance being effectuated hereby and any amendments to such easement agreements; (6) covenants, conditions and restrictions of record; (7) applicable zoning and building laws, ordinances and restrictions; (8) roads and highways, if any; (9) limitations and conditions imposed by the Illinois Condominium Property Act, as amended from time to time; (10) encroachments, if any, which do not materially, adversely impair the use and enjoyment of the Unit as a parking area for the parking of one passenger vehicle; (11) installments due after the date hereof for assessments established pursuant to the Declaration; (12) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of delivery of this instrument and which Sublandlord shall so remove at that time by using the funds to be paid upon delivery of this instrument; (13) matters over which _____ Title Insurance Company has insured over in its owner's policy issued to Subtenant; (14) acts done or suffered by Subtenant or anyone claiming by, through or under Subtenant; (15) Subtenant's mortgage, if any; (16) leases, licenses and management agreements affecting the Common Elements (as defined in the Declaration); and (17) the terms and provisions of this Sublease.

2. **Term.** The term of this Sublease shall commence (the "Commencement Date") on the later to occur of (a) _____, _____ and (b) the date upon which Sublandlord delivers possession of the Unit to Subtenant and, unless sooner terminated pursuant to the provisions hereof, shall terminate on the earlier of (i) the date of termination of the term of the Ground Lease and (ii) the date of any withdrawal of the Unit from the Condominium pursuant to the terms of the Declaration. This Sublease shall not otherwise be terminable by Subtenant or Sublandlord.

3. **Rent.** Subtenant shall not be obligated to pay to Sublandlord rental for the Unit for any portion of the term hereof falling within the initial stated term of the Ground Lease. In the event that the Ground Lease is extended or renewed beyond the initial stated term thereof, then Subtenant shall be responsible for payment of its allocable share of rental due under the Ground Lease for such renewal or extension period, all as more particularly described in the Ground Lease and the Declaration.

4. **Additional Rent; Payments; Interest.**

(a) Subtenant shall also pay to Sublandlord all other amounts payable by Sublandlord under the Ground Lease which are (i) attributable to the Unit (as distinguished from the entire premises subject to the Ground Lease) and which are not a common expense under the Declaration, or (ii) attributable to Subtenant, its agents, employees, or invitees, including amounts expended or incurred by Landlord on account of any default by Subtenant which gives rise to a default under the Ground Lease.

(b) Each amount payable by Subtenant under this Sublease, unless a date for payment of such amount is provided for elsewhere in this Sublease or Declaration, shall be due and

UNOFFICIAL COPY

payable on the fifth day following the date on which Landlord or Sublandlord has given notice to Subtenant of the amount thereof, but in no event later than the date on which any such amount is due and payable under the Ground Lease or the Declaration, as the case may be.

(c) All amounts payable to Sublandlord under this Sublease shall be deemed to be additional rent due under this Sublease. All additional rent shall be paid without setoff or deduction whatsoever and shall be paid to Sublandlord at its office at _____, _____ or at such other place as Sublandlord may designate by notice to Subtenant. All past due additional rent shall bear interest at the Lease Interest Rate under the Ground Lease in effect from time to time from the date due until paid.

5. **Condition of Unit, Construction of Improvements and Insurance.**

(a) No promise of Sublandlord to alter, remodel or improve the Unit, and no representation respecting the condition of the Unit or the Condominium shall have been made by Sublandlord to Subtenant. Upon the expiration or termination of the Ground Lease or the Sublease, Subtenant shall surrender the Unit in the condition required under the Ground Lease.

(b) Subtenant shall perform all improvements, alterations and changes to the Unit only in accordance with the terms of the Declaration and the Ground Lease and shall not permit any mechanic's liens to attach to the Unit, Real Estate, or Improvements.

(c) Subtenant hereby agrees to carry insurance of the kinds and amounts required by the Declaration and Ground Lease. All policies of liability insurance shall name as additional insureds the Landlord and Sublandlord and their respective officers, directors or partners, as the case may be, and the respective agents and employees of each of them.

6. **The Ground Lease.**

(a) This Sublease and all rights of Subtenant hereunder and with respect to the Unit are subject to the terms, conditions and provisions of the Ground Lease, as amended from time to time. The term "Ground Lease" shall include any amendments or restatements of the Ground Lease or any new ground lease under Article 25 of the Ground Lease. Subtenant hereby assures and agrees to perform and be bound by, with respect to the Unit, all of Sublandlord's obligations, covenants, agreements and liabilities under the Ground Lease and all terms, conditions, provisions and restrictions contained in the Ground Lease which are stated to be the obligation of the Unit Owner (defined in the Ground Lease) or which relate to the Unit, are capable of being performed by a Unit Owner and which are not the obligation of the Association under the Declaration. In addition, the following provisions shall also apply relating to the Ground Lease:

(i) If Subtenant desires to take any other action and the Ground Lease would require that Sublandlord obtain the consent of Landlord before undertaking any action of the same kind, Subtenant shall not undertake the same without the prior written consent of Sublandlord. Sublandlord may condition its consent on the consent of Landlord being obtained. Subtenant shall not contact Landlord directly for such consent;

(ii) All rights given to Landlord and its agents and representatives by the Ground Lease to enter the premises covered by the Ground Lease shall be binding upon Subtenant and shall inure to the benefit of Sublandlord and their respective agents and representatives with respect to the Unit;

UNOFFICIAL COPY

(iii) Sublandlord shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Landlord under the Ground Lease;

(iv) Subtenant shall not do anything or suffer or permit anything to be done which could result in a default under the Ground Lease;

(v) Subtenant may assign, mortgage or otherwise transfer or permit the transfer of this Sublease or any interest of Subtenant in this Sublease, or permit the use of the Unit by persons other than Subtenant, or sublet the Unit or any part thereof in accordance with Article 6 of the Ground Lease, but subject to the terms of the Declaration; and

(vi) Subtenant shall not have any right to any portion of the proceeds of any award for a condemnation or other taking, or a conveyance in lieu thereof, of all or any portion of the Condominium, the premises subject to the Ground Lease or the Unit, or with respect to any insurance proceeds payable to Subtenant except as may be provided in the Declaration.

(vii) Subtenant shall not be entitled to exercise any rights of first offer or refusal or to receive any payments for improvements except as may be provided in the Declaration.

(b) Sublandlord does not assume and shall not have any of the obligations or liabilities of Landlord under the Ground Lease.

7. **Declaration.** This Sublease is subject to all rights, easements, covenants, conditions, restrictions and reservations contained in the Declaration, as amended from time to time, the same as though the provisions of the Declaration were recited in full in this Sublease. Subtenant hereby assumes and agrees to perform faithfully and be bound by, with respect to the Unit, all terms, conditions, provisions and restrictions contained in the Declaration which are stated to be the obligation of the Unit Owner (as defined in the Declaration).

8. **Default by Subtenant.**

(a) Upon the happening of any of the following:

(i) Subtenant fails to pay any other amount due from Subtenant hereunder and such failure continues for three (3) days after notice thereof from Sublandlord to Subtenant;

(ii) Subtenant fails to perform or observe any other covenant or agreement set forth in this Sublease and such failure continues for seven (7) days after notice thereof from Sublandlord to Subtenant; or

(iii) any other event occurs which involves Subtenant or the Premises and which would constitute a default under the Ground Lease if it involved Sublandlord or the premises covered by the Ground Lease;

UNOFFICIAL COPY

Subtenant shall be deemed to be in default hereunder, and Sublandlord may exercise all rights and remedies available to it under this Sublease or the Declaration and all rights and remedies of Landlord set forth in the Ground Lease in the event of a default by Sublandlord thereunder which remedies shall be exclusive.

(b) If Subtenant fails to make any payment or perform any covenant or agreement to be performed hereunder by Subtenant, Sublandlord may make such payment or undertake to perform such covenant or agreement (but shall not have any obligation to Subtenant to do so). In such event, amounts so paid and amounts expended in undertaking such performance, together with all costs, expenses and attorneys' fees incurred by Sublandlord (including interest from the date expended by Sublandlord until repaid by Subtenant at the Lease Interest Rate under the Ground Lease in effect from time to time) shall be additional rent payable by Subtenant.

(c) Sublandlord may amend the terms of the Ground Lease or extend the term of the Ground Lease without the consent of Subtenant.

9. **Waiver of Claims and Indemnity.** The provisions of Section 8.8 of the Ground Lease and Article 15 of the Ground Lease shall apply to Sublandlord and Subtenant in the same manner as to Landlord and Sublandlord, respectively, thereunder.

10. **Successors and Assigns.** This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublandlord and shall be binding upon and inure to the benefit of the successors and assigns of Subtenant.

11. **Entire Agreement.** This Sublease, together with the Ground Lease and the Declaration, contains all the terms, covenants, conditions and agreements between Sublandlord and Subtenant relating in any manner to the rental, use and occupancy of the Unit. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sublease cannot be amended except by a written instrument signed by Sublandlord and Subtenant.

12. **Notices.**

(a) In the event any notice from the Landlord or otherwise relating to the Ground Lease is delivered to the Unit or is otherwise received by Subtenant, Subtenant shall deliver such notice to Sublandlord within two (2) days of such delivery or receipt.

(b) Notices and demands required or permitted to be given by either party to the other with respect to this Sublease shall be in writing and shall be served pursuant to the terms of the Declaration.

UNOFFICIAL COPY

IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

SUBLANDLORD:

SUBTENANT:

a _____

By: _____

Its: _____

a _____

By: _____

Its: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT D****FORM OF ASSOCIATION ASSIGNMENT**

THIS ASSIGNMENT, ASSUMPTION AND ACKNOWLEDGMENT AGREEMENT (the "**Assignment**") is made this ___ day of May ___, 2004 by and among 270 East Pearson, L.L.C., an Illinois limited liability company ("**Assignor**"), _____, a _____ ("**Assignee**"), and Northwestern University, an Illinois corporation ("**Landlord**").

RECITALS:

A. Assignor, as lessee, and Landlord, as lessor, are parties to that certain Ground Lease dated May ___, 2004 (as amended and/or assigned from time to time, the "Ground Lease") recorded as Document No. _____ in the Office of the Recorder of Deeds of Cook County, Illinois, pertaining to the leasing of certain leased premises ("Premises") more particularly described in the Ground Lease. The Premises include, among other things, certain land, property and space more particularly described in Exhibit A hereto, together with all improvements and fixtures thereon and certain appurtenant rights relating thereto, all as more particularly described in the Ground Lease (all capitalized terms used but not otherwise defined in this Assignment shall have the same meaning as set forth in the Ground Lease).

B. Assignor desires to assign to Assignee all of Assignor's right, title and interest in, to and under the Ground Lease and with respect to the Premises effective from and after the date hereof, and Assignee desires to accept such assignment and assume all obligations and liabilities of Assignor under said Ground Lease arising or accruing from and after the date hereof.

C. Assignor and Assignee have requested Landlord to acknowledge the aforescribed assignment and to release Assignor from liability under the Ground Lease for liabilities arising or accruing from and after the date hereof, and Landlord has agreed to acknowledge such assignment and to so release Assignor of such liability, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Assignment.** Assignor hereby assigns to Assignee all of Assignor's right, title and interest in, to and under the Ground Lease and with respect to the Premises effective from and after the date hereof ("Effective Date"). Such assignment specifically includes an assignment of the right of first offer under Article 31 of the Ground Lease and of the rights of the "Lessee" under Article 25 of the Ground Lease inuring upon the expiration of the initial term of the Ground Lease, subject in each instance to the respective terms and conditions therein set forth.

2. **Acceptance.** Assignee hereby accepts such assignment and assumes the obligations and liabilities of "Lessee" (as such term is used in the Ground Lease) under the Ground Lease arising or accruing from and after the Effective Date, and Assignee agrees to make all payments and to keep and perform all conditions and covenants to be kept and performed by the Lessee under the Ground Lease arising or accruing from and after the Effective Date. Assignee agrees that such assumption and agreement is made for the benefit of Assignor and Landlord.

3. **Release.** Landlord hereby releases Assignor and Assignor's respective partners, members, officers, shareholders, directors, and the respective agents and employees of each of them, from

UNOFFICIAL COPY

any and all obligations and liabilities of Lessee under the Ground Lease arising or accruing from and after the Effective Date hereof. The foregoing release of Assignor is a release of Assignor only with respect to obligations of Lessee under the Ground Lease arising or accruing from and after the date hereof, and shall not limit Assignor's obligations under the Ground Lease arising or accruing prior to the date hereof, nor shall it limit any obligations or liabilities of Assignor arising or accruing under this Assignment. Nothing herein shall be deemed to limit, in any manner, the liability of Assignee for all obligations and responsibilities of "Lessee" under the Ground Lease arising or accruing from and after the date hereof.

4. **Association Assignment.** Landlord, Assignor and Assignee each hereby acknowledge and agree that this Assignment constitutes an "Association Assignment", as described in Section 6.3 of the Ground Lease, and shall be subject to all terms and conditions set forth in the Ground Lease with respect thereto.

5. **Acknowledgment of Landlord.** Subject to the terms set forth herein, Landlord hereby acknowledges the foregoing assignment to Assignee, provided that the foregoing acknowledgment shall not be deemed to otherwise modify any of the terms and provisions set forth in the Ground Lease.

6. **Entire Agreement.** This Assignment and the Ground Lease contain all the terms, covenants, conditions and agreements between Landlord, Assignor and Assignee relating to the assignment of the Ground Lease and other matters provided for in this instrument. No prior or other agreement or understanding pertaining to such matters shall be valid or any force and effect.

[Signature Page Follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date above set forth.

ASSIGNOR:

270 East Pearson, L.L.C., an
Illinois limited liability company

By: Lake Shore, L.L.C. its sole member

By: _____
Name: _____
Title: _____

ASSIGNEE:

_____, a

By: _____
Name: _____
Title: _____

LANDLORD:

NORTHWESTERN UNIVERSITY, an
Illinois corporation

By: _____
Name: _____
Title: _____

[NOTE: NOTARIES TO BE ADDED]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT E

LEGAL DESCRIPTION OF RESIDENTIAL PREMISES

LOT 2 IN THE RESIDENCES ON LAKE SHORE PARK SUBDIVISION, BEING A SUBDIVISION OF PART OF LOTS 91 TO 98 IN LAKE SHORE DRIVE ADDITION TO CHICAGO, A SUBDIVISION OF PART OF BLOCKS 14 AND 20 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Identification Number: 17-03-228-028-8002 (affects the subject property and other land)

Property Address: 270 East Pearson Street
Chicago, Illinois 60611

Property of Cook County Clerk's Office