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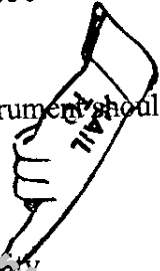
Ground Lease - Commercial - ABLA

This instrument was prepared by:

Jay Gilbert, Esq.  
Kutak Rock LLP  
1 S. Wacker Dr., Suite 2050  
Chicago, IL 60606

After recording this instrument should  
be returned to:

Cherie Strong, Esq.  
Chicago Housing Authority  
200 W. Adams St., Suite 2100  
Chicago, IL 60606



**Near North National Title Corp**  
**222 North LaSalle Street**  
**Chicago, Illinois 60601**      **GROUND LEASE**

This Ground Lease (this "Lease") is made as of the 1st day of September, 2004, by and between:

Chicago Housing Authority, an Illinois municipal corporation ("Landlord"), having an office at 626 W. Jackson Blvd., Chicago, Illinois 60661

and

Roosevelt Square I Limited Partnership, an Illinois limited partnership ("Tenant"), having an office at 350 West Hubbard Street, Chicago, Illinois 60610.

**RECITALS:**

A. Landlord is the owner of fee simple title to that certain parcel of land located in the City of Chicago, Illinois, more particularly described in Exhibit A attached hereto (the "Real Estate"). In accordance with appropriate resolutions adopted by Landlord, Landlord desires to facilitate the development on the Real Estate and the other Development Parcels (as that term is defined in Article 2) of residential rental housing containing up to 184 (but not less than 181) dwelling units, retail space, and related improvements in a development to be known as "Roosevelt Square Phase I" (the "Development").

B. Tenant desires to develop on the Real Estate a Building and related improvements (the "Project"), which will have retail and other uses permitted under the Planned Development Ordinance (as that term is defined in Article 2) on the first floor, and residential uses on the floors above the first floor (collectively, the "Upper Floors"). It is anticipated that, upon

**Near North National Title Corp**  
**222 North LaSalle Street**  
**Chicago, Illinois 60601**

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Handwritten initials/signature

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completion of construction of the Project, this Lease, which relates to a portion of the first floor only, will be assigned by Tenant to the Commercial Tenant (as that term is defined in Article 2).

C. Landlord and Tenant are, concurrently herewith, entering into a Ground Lease (the "Mixed Use Residential Lease"), of even date herewith, for the Upper Floors and other portions of the Real Estate and Project that are not included in the Property and the residential portions of the four other mixed-use buildings in the Development. The tenant, from time to time, under the Mixed Use Residential Lease is referred to herein as the "Mixed Use Residential Lease Tenant". That portion of the Real Estate that is leased to the Mixed Use Residential Lease Tenant under the Mixed Use Residential Lease is described on Exhibit A and referred to herein as the "Mixed Use Residential Land", and that portion of the Project located on the Mixed Use Residential Land, from time to time, is referred to herein as the "Mixed Use Residential Improvements".

D. In connection with the creation of this so-called "vertical subdivision", Tenant, in its capacities as tenant under this Lease and under the Mixed Use Residential Lease has, concurrently with the execution of this Lease, executed that certain Declaration of Covenants, Conditions, Restrictions and Easements relating to the Project, dated of even date herewith (the "REA"), which is being recorded after the recording of this Lease and the Mixed Use Residential Lease.

E. Landlord and Tenant have agreed to enter into this Lease in order to implement the Development and to facilitate the construction and operation and financing thereof.

## AGREEMENT:

### ARTICLE 1

#### Lease of the Land-Term of Lease

**1.01 Lease; Term.** Landlord, for and in consideration of the rents to be paid and of the covenants and agreements hereinafter contained to be kept and performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, the Land (as that term is defined in Article 2);

Together with all right, title and interest of Landlord, if any, in and to any Improvements (as that term is defined in Article 2) now existing on the Land, and in and to any streets, driveways, sidewalks, parkways or alleys adjacent thereto or included within the Land; and

Together with all right, title and interest of Landlord, if any, in, to and under all agreements, easements, rights of way, gores of land, air rights, sewer rights, water courses and water rights, and all privileges, liberties, tenements, and appurtenances whatsoever in any way belonging, relating or appertaining to the Real Estate or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Landlord, and the estate, rights, title, interest, property, possession, claims and demands whatsoever, at law or in equity of Landlord in and to the same;

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Subject, however, to all agreements, easements, encumbrances and other charges or matters affecting the Real Estate listed on Exhibit B attached hereto (the "Permitted Exceptions"), and subject to the provisions of Section 1.02.

TO HAVE AND TO HOLD the same, subject to the Permitted Exceptions, for a Term of ninety-nine (99) years (the "Term") commencing on the date of this Lease referenced on Page 1 (the "Commencement Date") and ending on August 31, 2103 (the "Expiration Date"), unless this Lease shall sooner be terminated as hereinafter provided, upon and subject to the covenants, agreements, terms, provisions, conditions and limitations hereinafter set forth, all of which Tenant covenants and agrees to perform, observe and be bound by. Tenant acknowledges that the Land leased hereunder is only that portion of the space on and above the portion of the Real Estate that is described on Exhibit A, and that the Mixed Use Residential Lease Tenant has rights to the Mixed Use Residential Land. Tenant further acknowledges that the burdens of the REA, as well as its benefits, run with the Land and the Mixed Use Residential Land, and are binding upon Tenant at all times that Tenant is the tenant under this Lease.

**1.02 Addition of Vacated Public Alleys and Rights-of-Way.** The parties acknowledge that all vacations and dedications necessary for, or contemplated in connection with, the Project have been completed prior to the execution of this Lease. In the future, land lying within or comprising existing public alleys and rights-of-way adjacent to portions of the Real Estate may be vacated by the City of Chicago (the "City") and acquired by Landlord and certain streets, passages and other rights-of-way may be dedicated to Governmental Authorities (as that term is hereinafter defined). In each case, with the prior written approval of Tenant and all Leasehold Mortgagees, which shall not be unreasonably withheld or delayed, the foregoing shall automatically, and without the necessity of amending this Lease, be included (or excluded, in the event of any such dedication of a portion of the Real Estate to Governmental Authorities) in the Land. Upon completion of the alleys and rights-of-way vacation process, however, if requested by Landlord or Tenant or any Leasehold Mortgagee, the parties shall promptly execute an amendment to this Lease to include a revised legal description for the Real Estate conforming to the revised configuration of the Real Estate, including such vacated portions of the alleys and rights-of-way (or such dedicated portions of the Real Estate). Following completion of construction of the Project, no such dedication shall be permitted without the prior written consent of Tenant and all Leasehold Mortgagees, which consent shall not be unreasonably withheld or delayed.

## **ARTICLE 2**

### **Definitions**

**2.01** The terms defined in this Section shall, for all purposes of this Lease, have the following meanings:

(a) "Adjustment Date" shall mean the fifth anniversary of the first day of the first full Lease Year (which shall be the first Adjustment Date), the fifth anniversary of such first Adjustment Date, and the fifth anniversary of each Adjustment Date thereafter. For example, if the Commencement Date is July 1, 2004, then the first day of the first full Lease Year would be

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January 1, 2005, the first Adjustment Date would be January 1, 2010, the second Adjustment Date would be January 1, 2015, the third Adjustment Date would be January 1, 2020, and so on.

(b) "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, general partnership or limited liability company interests, by contract or otherwise and shall include, with respect to any so-called "Illinois land trustee" that is at any time the landlord or tenant under this Lease, such land trustee's beneficiary and all persons or entities having the power of direction under such land trust, but shall not include any Leasehold Mortgagee.

(c) "Base Index" shall mean the Price Index that shall be in effect for the applicable Base Month.

(d) "Base Month" shall mean the month preceding the first FMR Adjustment Date. After each adjustment of Base Rent to the then Fair Market Rent pursuant to Section 3.08, or the escalation of Base Rent pursuant to Section 3.09, the Base Month shall become the month preceding the month for which such adjustment or escalation of Base Rent becomes effective.

(e) "Building" shall mean the building and related improvements comprising the Project.

(f) "CHA" shall mean the Chicago Housing Authority, or any successor thereto.

(g) "City" shall mean the City of Chicago.

(h) "Commercial Tenant" shall mean RS Retail LLC, an Illinois limited liability company, its successors and permitted assigns.

(i) "Construction Completion Deadline" shall mean March 1, 2006, the date by which Tenant must complete the construction of the Project, which date shall be extended by the period of any Unavoidable Delay.

(j) "CPI Adjustment Date" shall mean each of the fifth, tenth and fifteenth anniversaries of each FMR Adjustment Date.

(k) "Deductible" shall have the meaning given in Section 8.01.

(l) "Default" shall mean any condition or event that constitutes or would, after notice or lapse of time, or both, constitute an Event of Default.

(m) "Development" shall have the meaning given in Recital A.

(n) "Development Parcels" shall mean the parcels of land described on Exhibit G, including the Real Estate, on which the Development is to be built.



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- (o) "Encumbrances" shall have the meaning given in Section 9.02.
- (p) "Environmental Agreement" shall mean that certain Remediation Agreement, dated as of September 1, 2004, among CHA, Tenant and LR ABLA LLC, a Delaware limited liability company, relating to the Development.
- (q) "Environmental Laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended; the Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. 1251 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. 655 et seq. and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability or establishing standards of conduct for protection of the environment.
- (r) "Event of Default" shall have the meaning provided in Section 10.01.
- (s) "Excluded Environmental Condition" shall mean: (i) all Pre-Existing Environmental Conditions except to the extent any such Pre-Existing Environmental Condition is exacerbated by the actions or conduct of Tenant and/or its agents, contractors, subcontractors, employees, tenants or invitees; (ii) any environmental conditions in any public streets or rights of way in or adjacent to any portion of the Real Estate or the Project except to the extent such environmental conditions in such public streets or rights of way are caused or exacerbated by the actions or conduct of Tenant and/or its agents, contractors, subcontractors, employees, tenants or invitees; (iii) any migration of Hazardous Materials to the Real Estate or the Project from another site or location not within the Real Estate after the date of this Lease; (iv) any environmental condition at any off-site disposal facility attributable to the Hazardous Materials removed from the Real Estate or the Project pursuant to the Environmental Agreement and for which the CHA and/or the City of Chicago is the generator pursuant to the Environmental Agreement; (v) any environmental condition caused by CHA or its agents or contractors; and (vi) with respect to any Tenant, any environmental condition that occurs after a Terminating Event with respect to such Tenant.
- (t) "Fair Market Rent" shall have the meaning given in Section 3.08.
- (u) "First Leasehold Mortgagee" shall mean the Leasehold Mortgagee whose Leasehold Mortgage is most senior in priority of lien, as identified on Exhibit C attached hereto.
- (v) "FMR Adjustment Date" shall mean each of the fourth Adjustment Date, the eighth Adjustment Date, the twelfth Adjustment Date and the sixteenth Adjustment Date (which, assuming that the Commencement Date is also the first day of the first full Lease Year, would be 20th, 40th, 60th and 80th anniversaries of the Commencement Date).
- (w) "Full Insurable Value" shall mean the replacement cost of the Improvements, as determined, at the request of Landlord (not more frequently than at three-year intervals), at Tenant's expense, by an architect, engineer, contractor, appraiser, appraisal company, or insurance company, selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

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- (x) "Full Restoration" shall have the meaning given in Section 8.01.
- (y) "Governmental Authority" or "Governmental Authorities" shall mean any one or more of the federal, state and local governmental or quasi-governmental body or bodies having jurisdiction at any time or from time to time during the Term over the Real Estate or the Property, or any part thereof, or the construction, repair, maintenance, operation or use thereof.
- (z) "Hazardous Condition" shall have the meaning given in the Environmental Agreement.
- (aa) "HUD" shall mean the United States Department of Housing and Urban Development, or any successor thereto.
- (bb) "Impositions" shall mean all taxes, assessments, special assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed upon or become payable out of or become a lien on the Property or the Real Estate, or any part thereof, or any appurtenances thereto; provided, however, that if at any time during the Term the present method of taxation or assessment shall be so changed that there shall be substituted in whole or in part for the types of taxes, assessments, levies, assessed or imposed on real estate and the Improvements thereon a capital levy or other tax levied, assessed or imposed on the rents received by Landlord from said real estate or the rents reserved herein or any part thereof, then any such capital levy or other tax shall, to the extent that it is so substituted, be deemed to be included within the term "Impositions." Impositions affecting the Property or the Real Estate shall be those attributable to the Land, the Improvements, the Leasehold Estate, and/or the fee simple ownership of the Real Estate. Impositions affecting more than the Property shall be apportioned between Tenant and the Residential Tenant in accordance with the REA.
- (cc) "Improvements" shall mean the buildings, structures and other improvements, including equipment, fixtures, furnishings and appurtenances, now or at any time hereafter erected or located on the Land, and shall include foundations, footings, the roof and other portions of the Building and/or other improvements on the Real Estate that benefit or are used in common by all ground lessees, as more particularly described in the REA.
- (dd) "Investor" shall mean RCC Credit Facility, L.L.C., a Delaware limited liability company, which is the investor in Roosevelt Square I Limited Partnership. The address of RCC Credit Facility, L.L.C. for purposes of notices is 625 Madison Avenue, New York, New York 10022 Attention: Marc D. Schnitzer. For so long as Investor is a partner in Roosevelt Square I Limited Partnership and Roosevelt Square I Limited Partnership is the Tenant under this Lease, a copy of each notice to Investor shall be sent to Proskauer Rose LLP, 2049 Century Park East, Suite 3200, Los Angeles, California 90067, Attention: Kenneth Krug, Esq..
- (ee) "Land" shall mean that portion of the space on and above the portion of the Real Estate that is described on Exhibit A, and all appurtenances thereto, including without limitation the REA. The term "Land" does not include the Improvements.

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(ff) "Landlord" shall mean Chicago Housing Authority, or its successors in interest.

(gg) "Lease Interest Rate" shall mean a floating interest rate equal to (i) 3% plus the rate announced from time to time by Bank One, Chicago Branch (or any successor thereto), 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 the Chicago branch of such other national bank as Landlord shall reasonably designate as its "prime rate" "reference rate" or other similar rate, plus 3%, or (iii) if Landlord fails to designate another bank, 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 plus 6%; provided, however that if the Lease Interest Rate as so determined shall exceed the maximum rate allowed by law, then the "Lease Interest Rate" shall mean the maximum contract rate permitted by law at such time. The Lease Interest Rate shall change concurrently with each announced change in such "corporate base rate," "prime rate," "reference rate" or other similar rate, or Treasury Bill rate.

(hh) "Lease Year" shall mean a calendar year. The first full Lease Year during the Term shall commence on the Commencement Date, or if the Commencement Date is not the first day of a calendar year, on the first day of the calendar year next following the Commencement Date. Each succeeding Lease Year shall commence on the January 1 immediately following the December 31 of the preceding Lease Year. If the Commencement Date is not January 1, that portion of the Term that is prior to beginning of the first full Lease Year shall be a partial Lease Year. If the Expiration Date is not December 31, that portion of the Term that is after the end of the last full Lease Year shall be a partial Lease Year.

(ii) "Leasehold Estate" shall mean the leasehold estate of Tenant created by this Lease.

(jj) "Leasehold Mortgage" shall mean any mortgage, deed of trust, assignment of rents and leases, Uniform Commercial Code security agreement and financing statement, or similar security instrument created by Tenant pursuant to and in accordance with the provisions of Section 9.03 and which constitutes a lien or security interest on the Tenant Property or any part thereof.

(kk) "Leasehold Mortgage Loan" shall mean a loan secured by a Leasehold Mortgage.

(ll) "Leasehold Mortgagee" shall mean the owner or owners, holder or holders from time to time of any Leasehold Mortgage (including trustees under deeds of trust).

(mm) "Lender" shall mean any commercial real estate lender, state or national bank, commercial or savings bank, pension fund, real estate investment trust, or governmental agency or instrumentality, or any HUD-approved mortgagee, or any Affiliate of the foregoing, authorized to make loans secured by real property located in the State of Illinois.

(nn) "Mixed Use Residential Improvements" shall have the meaning given in Recital C.

(oo) "Mixed Use Residential Land" shall have the meaning given in Recital C.

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- (pp) "Mixed Use Residential Lease" shall have the meaning given in Recital C.
- (qq) "Mixed Use Residential Lease Tenant" shall have the meaning given in Recital C.
- (rr) "Mixed Use Residential Property" shall mean the Mixed Use Residential Land and the Mixed Use Residential Improvements.
- (ss) "Net Insurance Proceeds" shall have the meaning given in Section 8.02.
- (tt) "NFR Letter" shall mean a "No Further Remediation" letter issued by the Illinois Environmental Protection Agency pursuant to the Site Remediation Program, 415 ILCS 5/58 et. seq., as amended from time to time, with respect to any portion of the Real Estate.
- (uu) "Organizational Documents" shall mean: (i) with respect to a corporation, its articles of incorporation and by-laws; (ii) with respect to a general partnership, its partnership agreement; (iii) with respect to a limited partnership, its certificate of limited partnership and limited partnership agreement; and (iv) with respect to a limited liability company, its articles of organization and operating agreement; in each case as amended prior to such entity becoming Tenant under this Lease and as amended from time to time thereafter; provided, however, that no amendment to any Organizational Document that materially adversely affects the rights of Landlord may be made after such entity becomes Tenant hereunder except as required by law, consented to in writing by Landlord or is made to effect a transfer or substitution of interests in Tenant which does not otherwise require the consent of Landlord hereunder, and any amendment that contravenes this prohibition shall be null and void.
- (vv) "Partial Restoration" shall mean all work in connection with a Restoration that is less than a Full Restoration (see Article 8). A Partial Restoration may be applicable when the sum of the Net Insurance Proceeds plus Deductible plus all other monies provided by any Person for such Restoration are insufficient to accomplish a Full Restoration.
- (ww) "Permitted Exceptions" shall have the meaning given in Section 1.01. "Permitted Exceptions" shall also include the easements and licenses, if any, hereafter granted or consented to by Landlord in accordance with Section 9.01(d).
- (xx) "Permitted Refinancing" shall mean any loan secured by a Leasehold Mortgage.
- (yy) "Permitted Sublease" shall mean a sublease for the Property, or any part thereof, for a purpose permitted under the Planned Development Ordinance to a subtenant other than a Person who has been prohibited or debarred (or an affiliate of whom has been prohibited or debarred) from doing business with CHA or the City.
- (zz) "Permitted Transfer" shall mean: (a) after the completion of the construction of the Project, a sale or transfer of the Tenant Property, or any portion thereof, to the Commercial Tenant or any other Person that is reasonably acceptable to Landlord; (b) a sale or transfer of interests in Tenant or interests in investors in Tenant; (c) the removal of a general partner, limited partner, member or manager of Tenant pursuant to a Removal Right in accordance with the provisions of Tenant's Organizational Documents, and the substitution of a replacement general partner, limited partner, member or manager, as the case may be, reasonably acceptable



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to Landlord; (d) the transfer of the Tenant Property, or any portion thereof, to a Leasehold Mortgagee (or any nominee of such Leasehold Mortgagee) by foreclosure or deed in lieu of foreclosure or to a third party purchaser at a foreclosure sale in accordance with Section 9.03(a); (e) Permitted Subleases; and (f) any other transfer consented to by Landlord in writing. Landlord's determination under Clause (a) shall be based upon creditworthiness and whether such Person (or an affiliate of such Person) has been prohibited or debarred from doing business with CHA or the City.

(aaa) "Person" shall mean any person, corporation, partnership, limited liability company or other legal entity.

(obb) "Planned Development Ordinance" shall mean that certain Planned Development Ordinance adopted by the City Council of the City on January 14, 2004, as it may be amended hereafter.

(ccc) "Plans and Specifications" shall mean the plans and specifications for the Project, which have been approved by Landlord and the Leasehold Mortgagees, as such plans and specifications are amended from time to time with the written consent of Landlord and the Leasehold Mortgagees, if and as required by the applicable loan documents.

(ddd) "Pre-Existing Environmental Condition" shall mean any Hazardous Condition present on, under or about the Real Estate on the date of execution of the Environmental Agreement, whether known or unknown.

(eee) "Price Index" shall mean the "Consumer Price Index for All Urban Wage Earners and Clerical Workers, City of Chicago, All Items, (1982/84=100), published by the Bureau of Labor Statistics of the United States Department of Labor, or any renamed local index covering the metropolitan Chicago area or any other successor or substitute index appropriately adjusted.

(fff) "Proceeds" shall mean, in the case of damage to or destruction of the Improvements, the sum of the Net Insurance Proceeds plus the Deductible, and, in the case of a condemnation or other taking (or conveyance in lieu thereof), the awards (or compensation paid) therefor.

(ggg) "Project" shall have the meaning set forth in Recital B.

(hhh) "Property" shall mean the Land and the Improvements.

(iii) "Protected Persons" shall mean Landlord or Tenant, as the context so requires, and such party's respective members, managers, partners, officers, directors, agents, employees, advisors, attorneys, consultants and Affiliates, and, in the case of Landlord, shall include its officials and members of its Board.

(jjj) "REA" shall have the meaning given in Recital D.

(kkk) "Real Estate" shall mean the real estate described in Exhibit A.

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(lll) "Receiver" shall mean The Habitat Company LLC and Daniel E. Levin, jointly, as court appointed receiver in Gautreaux et. al. v. Secretary of Housing and Urban Development et. al. 66C1459 and 66C1460.

(mmm) "Remediation" shall mean the cleanup activity or other remedial action required by any Environmental Law or any applicable Governmental Authorities under any Environmental Law.

(nnn) "Removal Right" shall mean the right, if any, given in Tenant's Organizational Documents, to remove an officer, director, general partner, manager or managing member of Tenant, and designate a substitute.

(ooo) "Rent" shall have the meaning given in Section 3.01.

(ppp) "Requirements" shall mean any and all present and future laws, statutes, ordinances, codes, rules, regulations, orders or other requirements of any Governmental Authority and of any applicable fire rating bureau or other body exercising similar functions, applicable to or affecting the Real Estate or the Property, or any part thereof, including without limiting the generality of the foregoing, the ordinances of the City.

(qqq) "Restoration" shall have the meaning given in Section 8.01.

(rrr) "Substantially Commenced" shall mean, with respect to the Project, that the footings and foundation walls of the Building have been completed (including all necessary excavation work).

(sss) "Tenant" shall mean the Tenant identified in the first paragraph of this Lease; provided, however, that whenever this Lease and the Leasehold Estate shall be assigned or transferred in the manner specifically permitted herein, then from and after such assignment or transfer and until the next such assignment or transfer, the term "Tenant" shall mean the permitted assignee or transferee named therein, as if such transferee or assignee had been named herein as Tenant.

(ttt) "Tenant Property" shall mean the Improvements and the Leasehold Estate.

(uuu) "Term" shall mean the term of this Lease described in Section 1.01.

(vvv) "Terminating Event" shall mean: (i) termination of Tenant's obligations under the Environmental Agreement in accordance with Section 14 thereof; (ii) transfer of Tenant's interest in the Tenant Property to another party not affiliated with such Tenant; (iii) transfer of title to such Tenant's interest in the Tenant Property pursuant to foreclosure of, or deed in lieu of foreclosure with respect to, any mortgage or other security instrument securing loans or advances with respect to the Development; (iv) termination of this Lease; or (v) loss of such Tenant's possession of the Tenant Property pursuant to the appointment of a receiver or pursuant to the exercise by any Leasehold Mortgagee of its right to become a mortgagee in possession. In the event that any of the foregoing occur with respect to less than all of the Tenant Property, or if there is a partial termination of this Lease, then a Terminating Event shall be deemed to have

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occurred only with respect to such portion of the Tenant Property or that portion of the Property affected by such partial termination.

(www) "Unavoidable Delay" shall mean a delay beyond the reasonable control of Tenant and without the fault or negligence of Tenant, such as: (1) an act of God; (2) fire; (3) flood; (4) epidemic; (5) quarantine restriction; (6) civil disorder; (7) enemy action; (8) strike, lockout or other labor dispute; (9) unavailability of labor or materials; (10) freight embargo; (11) action or inaction of Landlord; (12) the act or failure to act of a contractor in the performance of a contract with Landlord; (13) the act or failure to act of any Governmental Authority; (14) injunctive relief or other legal proceedings of any court; (15) war; (16) terrorism; (17) the failure of the City to timely complete the Public Improvements necessary for the Tenant to construct the Project; (18) unforeseen soil conditions, such as underground storage tanks and building foundations; (19) delays caused by CHA or the Receiver affecting the construction of the Project; and (20) unusually severe weather.

**2.02** "The words, "herein," "hereof" or "hereunder" and words of similar import refer to provisions contained in this Lease as a whole and not to any particular section or subdivision thereof. All exhibits and riders referred to in the text of this Lease and attached hereto are incorporated into this Lease.

## ARTICLE 3

### Rent

**3.01 Rent.** From and after the Commencement Date through the Term, Tenant shall pay to Landlord at the place for which notices to Landlord are to be sent in accordance with Article 16, or to such other Person and/or at such other place as shall be designated from time to time by written notice from Landlord to Tenant, a base rent that shall initially be at the rate of Eight Thousand Three Hundred Fifty-Seven and 09/100 Dollars (\$8,357.09) for each Lease Year, payable in advance in equal quarterly installments. The base rent that is payable by Tenant from time to time under this Lease (the "Base Rent") shall be adjusted as hereinafter provided and adjusted and escalated as provided in Sections 3.08 and 3.09. Such Base Rent shall be in effect until the next adjustment or escalation, and shall be payable in advance in equal quarterly installments. The Base Rent and all other amounts due from Tenant to Landlord under this Lease is referred to herein as the "Rent". The Base Rent shall be adjusted on the first Adjustment Date to an amount equal to Eight Thousand Six Hundred Seven and 80/100 Dollars (\$8,607.80) per Lease Year. The Base Rent shall be further adjusted on the second Adjustment Date to an amount equal to Eight Thousand Eight Hundred Sixty-Six and 04/100 Dollars (\$8,866.04) per Lease Year. The Base Rent shall be further adjusted on the third Adjustment Date to an amount equal to Nine Thousand One Hundred Thirty-Two and 02/100 Dollars (\$9,132.02) per Lease Year.

**3.02 No Partnership.** Landlord and Tenant agree that they are not partners or joint venturers and that, except in respect to the proceeds of insurance and condemnation awards under the provisions of Articles 8 and 12, they do not stand in any fiduciary relationship to each other.

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**3.03 Payment of Rent.** All payments of Rent due to Landlord hereunder shall be made in lawful money of the United States of America and shall be paid to Landlord or to such other Person and/or at such other place as Landlord may designate from time to time in writing.

**3.04 Net Lease.** Tenant shall pay to Landlord throughout the Term all Rent, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever hereunder or be under any other obligation or liability hereunder except as otherwise expressly set forth herein.

**3.05 No Abandonment.** Except to the extent provided in Section 8.01, no happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay the full Rent, or relieve Tenant from any of its other obligations under this Lease. Tenant waives any rights now or hereafter conferred upon it by statute, proclamation, decree, or otherwise, or to claim any abatement, diminution, reduction or suspension of the Rent on account of any such event, happening, occurrence or situation.

**3.06 Reimbursements to Landlord; Arrearages.** Tenant shall reimburse Landlord for all reasonable expenditures, costs, expenses and fees, including reasonable attorneys' fees, made or incurred by Landlord in curing any Event of Default of Tenant for which Landlord has given Tenant the notice required under Section 10.01, if any. Such amounts shall become due upon delivery by Landlord, after the expiration of the notice and cure period afforded Tenant, if any, of written notice stating the amount of such expenditures, costs, expenses and fees by Landlord. Tenant shall also pay to Landlord upon delivery of notice by Landlord, all amounts payable to Landlord as reimbursements or indemnities pursuant to Sections 6.03 and 6.04.

**3.07 Interest on Overdue Amounts.** All Rent and other amounts due to Landlord hereunder that are not paid prior to the expiration of the applicable cure period, if any, shall bear interest at the Lease Interest Rate from time to time in effect from the due date to the date received by Landlord. Such interest shall be payable by Tenant to Landlord upon demand. The collection of such interest by Landlord shall not limit or modify any other right or remedy of Landlord under this Lease or otherwise available to Landlord by reason of Tenant's failure to pay such amount when due or by reason of any other Event of Default.

**3.08 Adjustment of Base Rent to Fair Market Rent.** The Base Rent shall be adjusted from time to time to an amount equal to the then Fair Market Rent (as that term is hereinafter defined), determined in accordance with the following provisions. As used herein, the term "Fair Market Rent" shall mean the fair market rent for the Land, assuming that it is used for the uses permitted under this Lease, and taking into account the benefits to the Tenant (and any subtenant) of those uses of other portions of the Project and the Real Estate (including, without limitation, the exterior walls, common walls, ceilings, rooftop easement area, dumpster storage areas and the outdoor seating area or sidewalk café area) to which Tenant is entitled under this Lease and the REA. The then Fair Market Rent shall be determined, and the Base Rent payable by Tenant hereunder adjusted, every twenty (20) years, as of each FMR Adjustment Date. The adjusted Base Rent, as so determined, shall be in effect until the next



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CPI Adjustment Date or FMR Adjustment Date, as the case may be ( see Section 3.09), and shall be payable in advance in equal quarterly installments. The Fair Market Rent shall be determined by mutual agreement of Landlord and Tenant, and if Landlord and Tenant cannot agree, then in accordance with the following provisions:

(a) If Landlord and Tenant are unable to agree, Fair Market Rent shall be determined by an arbitrator selected by Landlord and Tenant. If Landlord and Tenant are unable to agree on one arbitrator within thirty (30) days after a request to do so is made under Section 3.08(d), the Fair Market Rent shall be determined as follows: Landlord and Tenant shall each, at their own cost, retain an arbitrator and both arbitrators shall estimate the Fair Market Rent. If the higher of the two determinations does not exceed the lower by more than twenty percent (20%), then the two determinations shall be averaged, and such averages shall be binding on all parties in interest.

(b) If the two determinations differ by more than twenty percent (20%), then the two arbitrators shall promptly select a third arbitrator, or if they are unable, a third arbitrator shall be appointed by the American Arbitration Association, or a successor or similar organization. Such arbitrator shall then provide its determination of Fair Market Rent (the "Independent Rent Determination"). The Independent Rent Determination together with the determination made on behalf of one of the parties which is closest in amount to the Independent Rent Determination shall be averaged, and the Fair Market Rent so determined shall thereupon be binding on all parties in interest. If the Independent Rent Determination differs by the same amount from each of the other two determinations, the Fair Market Rent set forth in the Independent Rent Determination shall thereupon be binding on all parties in interest. The cost and fees of the appointment of such third arbitrator shall be borne equally by Landlord and Tenant.

(c) All arbitrators shall have at least ten (10) years experience in commercial real estate valuation and market and feasibility analysis.

(d) If either party fails to appoint a qualified arbitrator within thirty (30) days after requested to do so in writing by the other party (provided that such request is made not earlier than twelve (12) months prior to the Adjustment Date), such failure shall constitute a waiver by the party of its right to appoint an arbitrator for the adjustment to be made as of such Adjustment Date, and the determination of the valuation by the arbitrator selected by the other party shall be binding on all parties in interest.

(e) The final determination, so long as made as herein defined, shall be binding and conclusive on the parties hereto, and such arbitrators shall not incur any liability for such determinations made in good faith. All determinations shall be supported, in writing, by the underlying data, and shall set forth the reasoning and computations relied on and used by such arbitrators.

**3.09 CPI Escalation of Base Rent.** The adjusted Base Rent determined in accordance with Section 3.08 shall be escalated from time to time in accordance with the provisions of this Section 3.09. Effective as of each CPI Adjustment Date, the annual Base Rent payable under to Lease shall escalate as follows:

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(a) The escalation of Base Rent shall be based on the percentage increase of the Price Index in effect for the month preceding the CPI Adjustment Date over the Base Index ("Percentage Increase"). In the event the Price Index for the month preceding a CPI Adjustment Date exceeds the Base Index, then the Base Rent shall be multiplied by the Percentage Increase, and the resulting product shall be added to the Base Rent. Such sum shall be the escalated Base Rent, effective as of such CPI Adjustment Date. Such escalated Base Rent shall be in effect until the next CPI Adjustment Date or FMR Adjustment Date, whichever shall first occur, and shall be payable in advance in equal quarterly installments. In the event that the Price Index for the month preceding a CPI Adjustment Date is equal to or less than the Base Index, the Base Rent shall not be adjusted as of such CPI Adjustment Date but shall, instead, remain the same until the next CPI Adjustment Date or FMR Adjustment Date, whichever shall first occur.

(b) The foregoing can be expressed mathematically as follows:

$$\text{Percentage Increase} = \frac{(\text{Current Price Index} - \text{Base Index})}{\text{Base Index}}$$

$$\text{Escalated Base Rent} = (\text{Current Base Rent} \times \text{Percentage Increase}) + \text{Current Base Rent}$$

(c) Example. The following example illustrates the adjustments to and escalations of Base Rent provided for in Sections 3.01, 3.08 and 3.09:

(i) Assume that the Commencement Date is July 1, 2004. The first full Lease Year, therefore, will commence on January 1, 2005, the first FMR Adjustment Date will be January 1, 2025 and the first CPI Adjustment Date will be January 1, 2030. Assume further that the initial Base Rent is \$100.00 per year. Under Section 3.01 the Base Rent will become: (1) \$103.00 per year on January 1, 2010 (the first Adjustment Date), which will be in effect through December 31, 2014; (2) \$106.09 per year on January 1, 2015 (the second Adjustment Date), which will be in effect through December 31, 2019; and (3) \$109.27 per year on January 1, 2020 (the third Adjustment Date), which will be in effect through December 31, 2024.

(ii) Assume further that the Fair Market Rent for the Land as of January 1, 2025 (the first FMR Adjustment Date) is determined (either by agreement of Landlord and Tenant or by arbitration as provided in Section 3.08) to be \$120.00 per year. As of January 1, 2025, the Base Rent will be adjusted under Section 3.08 to \$120.00 per year, which will be in effect through December 31, 2029.

(iii) Assume further that the Price Index for the month of December 2024 (the initial Base Month) is 400.0 and the Price Index for the month of December 2029 is 420.0. The Percentage Increase would therefore be 5.0%  $[(420.0 - 400.0) / 400.00]$ , the amount of the increase in the Base Rent would be \$6.00  $[\$120 \times 5.0\%]$  attributable to the increase in the Price Index, and the escalated Base Rent would become \$126.00 per year as of January 1, 2030 (the first CPI Adjustment Date), which would be in effect through December 31, 2034.

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(iv) Assume further that the Price Index for the month of December 2034 is 462.00. The Base Month has become December 2029, so the Percentage Increase is 10.0%  $[(462.0 - 420.0) / 420.0]$ . The amount of the increase in Base Rent attributable to the increase in the Price Index would be \$12.60  $[\$126.00 \times 10.0\%]$ , and the escalated Base Rent would become \$138.60 per year as of January 1, 2035 (the second CPI Adjustment Date), which would be in effect through December 31, 2039.

(v) Assume further that the Price Index for the month of December 2039 is 480.48. The Base Month has become December 2034, so the Percentage Increase is 4.0%  $[(480.48 - 462.0) / 462.0]$ . The amount of the increase in Base Rent attributable to the increase in the Price Index would be \$5.54  $[\$138.60 \times 4.0\%]$ , and the escalated Base Rent would become \$144.14 per year as of January 1, 2040 (the third CPI Adjustment Date), which would be in effect through December 31, 2044.

(vi) The Base Rent would be adjusted to Fair Market Rent under Section 3.08 as of January 1, 2045 (the second FMR Adjustment Date), which would remain in effect through December 31, 2049; that Base Rent would be escalated under Section 3.09 on January 1, 2050, January 1, 2055 and January 1, 2060; that escalated Base Rent would be adjusted to Fair Market Rent under Section 3.08 as of January 1, 2065 (the third FMR Adjustment Date); and so on through the end of the Term

(d) No Waiver. No delay or failure of Landlord in computing or billing Tenant for the adjustment or escalation of Base Rent as provided herein shall constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such adjusted or escalated Base Rent.

(e) Survival. Tenant's obligation to pay the adjusted or escalated Base Rent pursuant to Sections 3.08 or 3.09 shall continue and shall cover all periods up to and including the earlier of the Expiration Date or the date of an earlier termination of this Lease, and shall survive any expiration or termination of this Lease.

## ARTICLE 4

### Impositions

**4.01 Payment.** Throughout the Term, subject to the provisions of Section 4.04, Tenant shall pay or cause to be paid, as and when the same become due, all Impositions, except that:

(a) All Impositions attributable on the accrual basis to a calendar year or other period for which this Lease is in effect for less than the entire calendar year or other period shall be equitably apportioned (taking into account that Landlord may be entitled to exemptions or abatements);

(b) Where any Imposition is permitted by law to be paid in installments, Tenant may pay such Imposition in installments, as and when each such installment becomes due (Tenant acknowledges and agrees that Tenant is obligated to pay all such installments of any Imposition

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from which Landlord is or would be exempt, whether such installment is due prior to or after the Expiration Date); and

(c) Where any Imposition is entitled to an abatement, refund, exemption or other diminution or reduction under law, whether available to Landlord or Tenant, the parties shall use their best efforts, at Tenant's sole expense, to cause such benefits to be afforded to Tenant under this Lease.

## **4.02 Deposit of Impositions.**

(a) Tenant shall timely pay, as additional rent, all Impositions, and all premiums on insurance required to be carried under Article 7, as and when the same are ascertainable, billed, and due and payable without interest, penalty or fine. Within thirty (30) days after Landlord's written request, Tenant shall deliver reasonable proof of such payment to Landlord.

(b) During the continuance of any Event of Default, Tenant agrees to deposit with Landlord on the first day of each and every month thereafter during the Term one-twelfth (1/12) of (a) all Impositions due and payable from Tenant during the next succeeding 12-month period, based on the most recent ascertainable Impositions, plus (b) annual premiums on insurance policies required to be carried by Tenant under Article 7. Further, upon the occurrence of any Event of Default, Tenant shall deposit, as least thirty (30) days prior to the due date of any Imposition, such additional amount as may be necessary to provide Landlord with sufficient funds in such deposit account to pay each such Imposition and annual insurance premium at least thirty (30) days in advance of the due date thereof. The rights granted hereunder to Landlord shall not be exclusive to Landlord's rights and remedies following an Event of Default by Tenant. Landlord shall have no obligation to pay interest to Tenant on any amounts deposited by Tenant. Landlord shall apply any such deposits for the purpose held not later than the last day on which any such charges may be paid without interest or penalty. If, at any time, the amount of any Imposition or insurance premium is increased or Landlord receives reliable information from a Governmental Authority or insurer, as applicable, that an Imposition or insurance premium will be increased, and if the monthly deposits then being made by Tenant for such item (if continued) would not produce a fund sufficient to pay such item thirty (30) days prior to its due date, such monthly deposits shall thereupon be increased and Tenant shall deposit with Landlord, on demand by Landlord, additional sums in an amount which, when added to the monies then on hand for the payment of said item plus the increased one-twelfth (1/12) payments, shall be sufficient to pay such item at least thirty (30) days before the same becomes due and payable. For purposes of determining whether Landlord has on hand sufficient monies to pay any particular Imposition or insurance premium at least thirty (30) day prior to the due date therefor, deposits for each item shall be treated separately, it being the intention that Landlord shall not be obligated to use monies deposited for the payment of any item for the payment of another that is due and payable. Tenant shall not be required to make any specific deposit required under this Section if a deposit for the same purpose is made by Tenant to an escrow or otherwise to persons pursuant to a requirement by any Leasehold Mortgagee or made by the Mixed Use Residential Lease Tenant to Landlord with respect to the entire Project. This Section 4.02(b) shall not apply to any Leasehold Mortgagee that becomes Tenant hereunder through foreclosure or transfer by deed in lieu of foreclosure unless: (i) the Event of Default arises after such Leasehold Mortgagee becomes Tenant hereunder; or (ii) the Event of Default arises prior to such Leasehold Mortgagee



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becoming Tenant hereunder and such Event of Default is not an Incurable Default and is an Event of Default that such Leasehold Mortgagee is obligated to cure under the provisions of this Lease, and such Leasehold Mortgagee fails to commence or cure such Event of Default within the time and in the manner required by this Lease.

**4.03 Contest of Impositions.** Tenant may, if it shall so desire, contest the validity or amount of any Imposition, in whole or in part, by an appropriate proceeding diligently conducted in good faith. Tenant may conduct such a contest only after payment of the challenged Imposition (unless such contest relates to a protest or appeal of the assessed valuation of the Real Estate, the Project or the Property pursuant to Section 4.04 below), or Tenant shall, at least fifteen (15) days prior to the date such Imposition is due: (i) have deposited with the First Leasehold Mortgagee or an escrow agent acceptable to Landlord an amount sufficient to pay such contested Imposition, together with interest and penalties thereon, which amount shall be applied to the payment of such Imposition, interest and penalties when the amount thereof shall be finally fixed and determined; or (ii) have provided to the First Leasehold Mortgagee or to Landlord a bond, letter of credit or other security reasonably acceptable to Landlord. Nothing herein contained, however, shall be construed as to allow such Imposition to remain unpaid for such length of time as shall permit the Property, or any part thereof, or the lien thereon created by such Imposition, to be sold or forfeited for the nonpayment of the same. If the amount so deposited as aforesaid shall exceed the amount of such Imposition, interest and penalties when finally fixed and determined, the excess (or the entire amount if no such payment is required) shall be released from the escrow to Tenant, or in case there shall be a deficiency, the amount of such deficiency shall be forthwith paid by Tenant.

**4.04 Reduction of Impositions.** Tenant, at its expense, may, if it shall so desire, endeavor at any time or times, upon prior written notice to Landlord, to obtain a lowering of the assessed valuation upon the Real Estate, the Project or the Property for the purpose of reducing taxes thereon and, in such event, Landlord will offer no objection and, at the request of Tenant, will cooperate with Tenant, but without expense to Landlord, in effecting such a reduction. Tenant shall be authorized to collect any tax refund payable as a result of any proceeding Tenant may institute for that purpose and any such tax refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant, subject, however, to the apportionment provisions contained in Section 4.01, after deducting from such refund the costs and expenses, including legal fees, incurred in connection with obtaining such refund.

**4.05 Joinder of Landlord.** Landlord shall not be required to join in any action or proceeding referred to in Sections 4.03 or 4.04 unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event, any such action or proceeding may be taken by Tenant in the name of, but without expense to, Landlord. Tenant hereby agrees to indemnify, defend and hold Landlord's Protected Persons harmless from and against all costs, expenses, claims, loss or damage, including reasonable attorney's fees, by reason of, in connection with, on account of, growing out of, or resulting from, any such action or proceeding.

**4.06 Tax Divisions.** Tenant shall, with the cooperation of Landlord, promptly following the execution and delivery of this Lease, file or cause to be filed a petition for a real

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estate tax division segregating the Landlord's fee interest in the Real Estate from: (a) Tenant's Leasehold Estate and ownership of the Improvements; and (b) the Mixed Use Residential Lease Tenant's leasehold estate under the Mixed Use Residential Lease and the Mixed Use Residential Lease Tenant's ownership of the Mixed Use Residential Improvements. Landlord and Tenant acknowledge that portions of the Real Estate are or may be included in tax parcels ("Shared Tax Parcels") that include land owned by Landlord other than the Real Estate ("Other Real Estate"). The parties have heretofore caused to be recorded a plat of subdivision for the Development, the result of which will be the assignment of new, separate tax parcel designations for each new subdivided lot comprising the Real Estate and the other Development Parcels, but excluding the Other Real Estate. Until such tax parcel redesignation occurs, Landlord agrees to pay or cause to be paid, when due, all property taxes assessed against the Other Land and Tenant agrees to pay or cause to be paid, when due (or, if paid by Landlord, to reimburse Landlord upon demand for) any property taxes attributable to the Real Estate, or any portion thereof, and any Improvements thereon that are taxed as part of a Shared Tax Parcel. Landlord or Tenant may, if either shall so desire, contest the validity or amount of any such taxes, in whole or in part, by an appropriate proceeding diligently conducted in good faith. Any such contest by Tenant shall be in accordance with Section 4.01. Tenant will promptly forward on to Landlord copies of any property tax bills it receives covering the Other Real Estate.

## ARTICLE 5

### Improvements

**5.01 Required Improvements.** Tenant hereby covenants and agrees to commence and diligently pursue the construction on the Real Estate of all improvements comprising the Project, complete construction of such improvements in accordance with the Plans and Specifications, and obtain certificates of occupancy for all such improvements from the City. Landlord agrees that, upon receipt of written request from Tenant or a Leasehold Mortgagee, Landlord will cooperate with Tenant in applications for permits, licenses or other authorizations required for such improvements; provided, however, that all expenses in connection therewith shall be borne by the requestor.

**5.02 Other Capital Improvements.** With respect to any Major Capital Improvement other than the Project that Tenant desires to construct on the Real Estate or the Land, Tenant shall not commence construction unless Landlord shall have specifically approved such Major Capital Improvement and Tenant has complied with Section 5.03, provided that Landlord's approval shall not be unreasonably withheld or delayed. A "Major Capital Improvement" is a capital improvement involving an estimated cost of more than \$100,000.00, and shall include additional buildings and additions, alterations, renovations, restorations, replacements or rebuildings, whether or not required to be made in compliance with Tenant's obligations under this Article, or connection with a Restoration made under Article 8 as a result of damage or destruction, or under Article 12 as a result of a Taking. Notwithstanding the foregoing, Landlord's consent under this Article 5 shall not be required in connection with: (i) a Restoration of the Improvements under Article 8 or Article 12 to the condition that existed immediately prior to the casualty or condemnation; (ii) a capital improvement that is required pursuant applicable law; or (iii) the build-out of the interior space of the Land (i.e. tenant build-out).

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**5.03 Major Capital Improvements Requirements.** Prior to the commencement of any Major Capital Improvement, the following shall be submitted to Landlord:

(a) complete plans and specifications for the Major Capital Improvement prepared by a licensed architect which plans shall also include landscaping plans and specifications;

(b) copies of all permits and licenses for the construction of the Major Capital Improvement issued by the appropriate Governmental Authority;

(c) a signed construction contract or contracts for all of the work, material and equipment comprising the Major Capital Improvement in accordance with the plans and specifications delivered pursuant to Section 5.03(a), together with appropriate liability insurance policies; and

(d) a copy of one or more commitments from a Lender or Lenders for loans to be made available to Tenant, on both a construction loan and long-term take-out loan basis, in an amount that, together with equity that is available and specifically allocated thereto, is sufficient to pay the budgeted costs of construction of the Major Capital Improvement.

**5.04 Demolition.** Except in connection with a Restoration under Articles 8 or 12, Tenant shall not demolish the Improvements, including any improvements to such Improvements required under Section 5.01 or any Major Capital Improvements permitted under Section 5.02, without the prior written consent of Landlord; provided, however, that Landlord's consent shall not be required for interior demolition.

## ARTICLE 6

### Use, Maintenance, Alterations, Repairs, Etc.

**6.01 Condition of Land and Property.** Tenant has leased the Land after a full and complete examination thereof and of the Real Estate, as well as the title thereto and its present uses and restrictions, and, except as expressly provided in the Environmental Agreement and except for Excluded Environmental Conditions (for which responsibility shall be determined under applicable law), Tenant accepts the same without any representation or warranty, express or implied, in fact or by law, by Landlord and without recourse to Landlord as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Property or any part thereof may be put; provided, however, that upon the commencement of this Lease, title to the Land shall be subject only to the Permitted Exceptions. Except as expressly provided in the Environmental Agreement and except for Excluded Environmental Conditions (the responsibility for which shall be determined under applicable law), Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Property, throughout the Term. Other than the obligations of Landlord, if any, under the Environmental Agreement and any Public Housing Use Agreement, Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the entire Property; provided, however, that Tenant does not assume responsibility for Excluded Environmental Conditions (the responsibility for which shall be determined under applicable law).

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**6.02 Use of Property.** The Property shall be used and occupied only for uses permitted under the Planned Development Ordinance and other applicable Requirements, and for no other purpose, unless Landlord has consented in writing to such other use, which consent may be granted, withheld or granted with such conditions as Landlord may require, in Landlord's sole and absolute discretion.

**6.03 Prohibited Use.** Tenant shall not use or occupy the Property or the Real Estate, or any part thereof, or permit the same to be used or occupied, nor do or permit anything to be done in, on or to the Property or the Real Estate, or any part thereof, in a manner that would in any way: (a) materially violate any construction permit or certificate of occupancy affecting the Property or any Requirement; (b) make void or voidable any insurance then in force, or make it impossible to obtain fire or other insurance required to be furnished by Tenant hereunder; (c) cause or be apt to cause structural injury to the Property, or any part thereof; or (d) materially violate any material provision of this Lease; provided, however, that the foregoing shall not impose any obligation on Tenant with respect to any Excluded Environmental Condition or with respect to any obligation of Landlord under the Environmental Agreement. Notwithstanding anything to the contrary contained in this Lease, Landlord may not terminate this Lease by reason of an act or omission of a subtenant of the Property, or any part thereof (or an invitee or licensee of such subtenant), if and for so long as Tenant promptly and diligently takes all reasonable steps, in accordance with the provisions of such subtenant's sublease and applicable Requirements, to terminate the sublease of a subtenant who materially violates any material provision of such subtenant's sublease, which violation constitutes a material violation of a material provision of this Lease. Notwithstanding the first sentence of this Section 6.03, Tenant may, in good faith, upon prior written notice to Landlord (and where necessary in the name of, but without expense to, Landlord) and, after having secured Landlord to its reasonable satisfaction against loss or damage, by cash or by a letter of credit or surety bond in an amount, with an issuer or surety, and in form and substance reasonably satisfactory to Landlord, contest the validity of any Requirement and, pending the determination of such contest may postpone compliance therewith, provided that in no event shall such act or omission of Tenant: (i) subject Landlord to any fine or penalty or to prosecution for a crime; (ii) cause the Property or the Real Estate, or any part thereof, to be condemned or to be vacated; or (iii) cause any material interference with the operation of the Real Estate or the Project for the purposes set forth in Section 6.02 or the occupancy, use, benefit and enjoyment thereof by any resident of the Project. Tenant shall indemnify, defend and hold harmless Landlord's Protected Persons from and against any recovery or loss to which any Landlord's Protected Person may be subject or which any Landlord's Protected Person may sustain, including reasonable attorneys' fees and expenses incurred by any Landlord's Protected Person arising from any breach of this covenant or by reason of any action or proceeding which may be brought against any Landlord's Protected Person or against the Property or the Real Estate, or any part thereof, by virtue of any Requirement, which do not arise out of any negligent act or willful misconduct of Landlord, or any event of default by Landlord hereunder. Landlord shall provide notice to Tenant of any action brought against Landlord that affects the Property or the Real Estate, or any part thereof.

**6.04 Maintenance of Property.** Subject to Section 8.01, Tenant shall make all necessary repairs to and replacements of the Improvements, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Improvements in good and safe order, repair and condition. Tenant covenants and agrees



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that throughout the Term: (a) all building systems, facilities and equipment, including HVAC systems, common area lighting and the like, shall be maintained in good operating order and repair, and in accordance with the provisions of the REA; and (b) the Real Estate and the Property shall, at all times, have adequate means of ingress and egress to and from the abutting public streets and alleys. Tenant shall indemnify, defend and hold Landlord's Protected Persons harmless from and against any and all claims and demands arising from the failure of Tenant to perform the covenants contained herein or arising from any accident, injury or damage to any person or property that shall or may happen in or upon the Property or the Real Estate, or any part thereof, however caused, other than Landlord's negligent act or willful misconduct or any Excluded Environmental Condition, and shall keep the Real Estate and the Property free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Property or the Real Estate.

**6.05 Waste.** Tenant shall not do, any waste, damage, disfigurement or injury to or upon the Real Estate or the Project, or any part thereof, and shall not permit or suffer any waste, damage, disfigurement or injury to or upon the Property, or any part thereof, without repairing the same within a reasonable period of time. Tenant shall have the right at any time and from time to time to sell or dispose of any equipment or fixtures subject to this Lease that may have become obsolete or unfit for use or that is no longer useful, necessary or profitable in the conduct of Tenant's or its subtenants' business.

**6.06 Compliance with Requirements.** Except as expressly provided in the Environmental Agreement and except for Excluded Environmental Conditions (for which responsibility shall be determined under applicable law), Tenant shall, at its own expense, comply and cause all of its subtenants to comply with all Requirements during the Term and with the reasonable requests of any insurance company having a policy outstanding with respect to the Real Estate or the Property, or any part thereof, whether or not such Requirements or requests require the making of structural alterations or the use or application of portions of the Real Estate, the Project or the Property for compliance therewith, or interfere with the use and enjoyment of the Property, and shall indemnify, defend and hold harmless Landlord's Protected Persons from and against all fines, penalties, and claims for damages of every kind and nature arising out of any failure to comply with any such Requirement or request. It is the intention of the parties that Tenant during the Term shall discharge and perform all obligations of Landlord, as well as all obligations of Tenant (and any subtenant of Tenant), arising as aforesaid, and hold harmless Landlord's Protected Persons therefrom (except as expressly set forth in the Environmental Agreement and except for Excluded Environmental Conditions), so that at all times the Rent shall be net to Landlord without deductions or expenses on account of any such Requirement or request, whatever it may be. Tenant may, in good faith upon prior written notice to Landlord (and wherever necessary, in the name of, but without expense to, Landlord) and, after having secured Landlord to its reasonable satisfaction against loss or damage, by cash or by a letter of credit or surety bond in an amount, with an issuer or surety, and in form and substance reasonably satisfactory to Landlord, contest the validity of any such Requirement or request and, pending the determination of such contest, may postpone compliance therewith, provided that in no event shall such contest or postponement: (i) subject Landlord to any fine or penalty or to prosecution for a crime; (ii) cause the Real Estate or the Project, or any part thereof, to be condemned or to be vacated; or (iii) cause any material interference with the operation of the Property for the purposes set forth in Section 6.02 or the occupancy, use,

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benefit and enjoyment thereof by Tenant or any subtenant of the Property. Notwithstanding anything to the contrary in this Section 6.06, except as expressly provided for in the Environmental Agreement, Tenant has no compliance responsibility or liability for matters existing prior to the commencement of the Term.

**6.07 Exculpation of Landlord.** Landlord shall not be responsible or liable for any destruction, damage or injury to any property or to any person or persons at any time on the Real Estate or the Project resulting from any casualty, occurrence or condition occurring or existing during the Term of this Lease (except as expressly set forth in the Environmental Agreement and except for Excluded Environmental Conditions), including without limitation those from steam, gas or electricity, or from water, rain or snow, whether the same may leak into, issue or flow from or within any part of the Project or from the pipes or plumbing of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury (including death) to any of Tenant's subtenants, employees, agents, invitees or licensees, or to any person or persons in or about the Real Estate or the Project or the streets, driveways, sidewalks, parkways or alleys adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor (except for actions caused by Landlord's negligent act or willful misconduct) and will further indemnify, defend and hold Landlord's Protected Persons harmless from and against any and all claims, liability, penalties, damages, expenses and judgments arising from injury to persons or property of any nature and also for any matter or thing arising out of or resulting as a direct or indirect consequence from the use or occupancy of the Property or the Real Estate; provided, however, that the foregoing obligations shall not apply to Excluded Environmental Conditions. Nothing herein contained shall be deemed to release Landlord from providing contracted services to Tenant and the Project, or from the consequences to Tenant and the Tenant Property of Landlord's negligent act or breach of its representations, warranties and covenants set forth herein or in the Environmental Agreement or for liability arising from Excluded Environmental Conditions (for which responsibility shall be determined under applicable law).

**6.08 Landlord's Right of Entry.** Landlord shall have the right, upon reasonable advance notice to Tenant and subtenants, when appropriate, on any business day, to enter upon the Property or the Real Estate, or any part thereof, for the purpose of ascertaining the condition thereof, or whether Tenant is observing and performing the obligations assumed by it under this Lease, or to make any repairs or perform any work, all without hindrance or molestation from Tenant, or anyone claiming by, through or under Tenant, whether as subtenant or otherwise. The above mentioned rights of entry shall be exercisable at reasonable times, at reasonable hours and on reasonable advance notice; provided, however, that entry may be made at any time without notice in the event of an emergency (although Landlord shall endeavor to give Tenant prior notice thereof). Nothing contained herein, however, shall impose or imply any duty on the part of Landlord to make any such repairs or perform any such work.

**6.09 No Liens.** Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanics' or other lien for any such labor or material shall attach to or affect the estate or interest of Landlord in and to the Property or any part thereof.

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## ARTICLE 7

### Insurance

**7.01 Maintenance of Insurance.** During the Term, Tenant shall, at its sole expense, obtain and maintain, or cause to be obtained and maintained policies of insurance satisfying the requirements set forth on Exhibit F;

**7.02 Form of Policies.** Except as provided in Section 8.02, any policies of insurance covering the Project during construction, shall expressly provide that any losses thereunder shall be adjusted with Tenant and all Leasehold Mortgagees as their interests may appear (or, absent a Leasehold Mortgagee, with Landlord). All such insurance shall be carried in the name of Tenant and loss thereunder shall be payable to Tenant and the Leasehold Mortgagees, if any, and Landlord as their respective interests may appear. All such insurance may be in the form of a so-called "blanket policy" covering more than two properties, including the Mixed Use Residential Property, provided that the amount of coverage shall be not less than the aggregate of the Full Insurable Values of all covered properties and the policy shall include an "agreed amount" endorsement on a no-coinsurance basis.

**7.03 Evidence of Insurance and Payment.** Upon the execution and delivery of this Lease, and thereafter not later than fifteen (15) days prior to the expiration date of an expiring policy theretofore furnished pursuant to this Article, certificates of insurance evidencing the required coverages, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord. Upon request from Landlord, Tenant shall deliver to Landlord duplicate originals or certified copies of the policies required by this Article.

**7.04 Separate Insurance.** Tenant shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required in this Article to be furnished by or that may reasonably be required to be furnished by Tenant unless Landlord is included therein as an additional insured, with loss payable as required in this Lease. Tenant shall immediately notify Landlord of the obtaining of any such separate insurance and shall deliver duplicate originals or certified copies of the policy or policies so obtained as provided in Section 7.03.

**7.05 Cancellation.** Each policy of insurance delivered hereunder shall contain an agreement by the insurer that such policy shall not be cancelled or materially altered without at least thirty (30) days' prior written notice given to Landlord and to each Leasehold Mortgagee named in such policy.

**7.06 Insurance Under the REA.** Notwithstanding any provision of this Lease to the contrary, Tenant shall not be required to maintain any insurance under this Lease if and to the extent that such insurance is maintained by the Mixed Use Residential Lease Tenant pursuant to the REA.



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## ARTICLE 8

### Damage and Restoration

#### 8.01 Damage or Destruction.

(a) In the event of any damage to or destruction of the Improvements during the Term, Tenant shall give Landlord immediate notice thereof and, unless the Insurance Proceeds are applied by a Leasehold Mortgagee to reduce its debt in accordance with Section 8.05, Tenant shall promptly and diligently restore, replace, rebuild and repair the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction, in accordance with the following provisions of this Article 8. Damage to or destruction of any portion of the Property shall be restored, replaced, rebuilt and/or repaired, as the case may be, in accordance with the REA. Landlord shall in no event be called upon to restore, replace, rebuild or repair the Project, or any portion thereof, or to pay any of the costs or expenses thereof. All work in connection with such restoration, replacement, rebuilding and repairing, including all temporary repairs to the Property or repairs made for the protection of the Property pending the completion of the permanent restoration, replacement, rebuilding and repairing, is hereinafter collectively referred to as "Full Restoration." In the event of any damage to or destruction of the Improvements occurring during the Term, Tenant shall, upon demand, deposit with the First Leasehold Mortgagee (or, if none, with Landlord, or into the Restoration Escrow (as that term is hereinafter defined), the amount of any applicable deductible or self-insurance (the "Deductible"). If the Net Insurance Proceeds (as that term is hereinafter defined) available for a particular Restoration (as that term is hereinafter defined) plus the amount the Deductible, are insufficient to accomplish the Full Restoration, then Landlord may terminate this Lease by written notice to Tenant and all Leasehold Mortgagees, unless: (1) within ninety (90) days after the amount of Net Insurance Proceeds has been determined, Tenant deposits with the First Leasehold Mortgagee (or, if none, with Landlord) cash, a letter of credit and/or evidence satisfactory to the First Leasehold Mortgagee (or, if none, to Landlord) of the availability of funds (from a loan or otherwise) in an amount equal to the Restoration Deficiency (as that term is hereinafter defined); or (2) within ninety (90) days after the expiration of said 90-day period, any one or more of the Leasehold Mortgagees and/or any other Person so deposits the Restoration Deficiency with the First Leasehold Mortgagee (or, if none, with Landlord) or into the Restoration Escrow; or (3) within one hundred eighty (180) days after the amount of Net Insurance Proceeds has been determined, the First Leasehold Mortgagee agrees to a Partial Restoration and agrees to make the Net Insurance Proceeds available for such Restoration; or (4) at least one Leasehold Mortgagee is diligently proceeding to obtain such insurance proceeds and, if applicable, to exercise its rights with respect to the Restoration. The First Leasehold Mortgagee shall consult with all subordinate Leasehold Mortgagees with respect to the application of the Net Insurance Proceeds; provided however that in the event of any disagreement between the First Leasehold Mortgagee and any subordinate Leasehold Mortgagee over the application of the Net Insurance Proceeds, the decision of the First Leasehold Mortgagee, in its sole discretion, shall prevail, subject to Section 8.01(b). The Full Restoration or Partial Restoration, as applicable, is hereinafter referred to as the "Restoration". As used herein, the term "Restoration Deficiency" shall mean additional funds in an amount sufficient, when added to the Net Insurance Proceeds available for a Restoration plus the Deductible, to complete such Restoration. If this Lease is terminated pursuant to this Section



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8.01(a), then, at the option of Landlord, Tenant shall, at Tenant's sole expense, demolish and/or remove such of the Improvements as are designated by Landlord, provided that, if the costs of such demolition and removal exceed the Deductible, sufficient Net Insurance Proceeds are made available to Tenant for that purpose.

(b) The determination of whether the Proceeds are sufficient to rebuild and repair the Improvements so damaged or destroyed to a value, condition and character that is not materially different from what existed immediately prior to such damage or destruction (i.e. a Full Restoration) and that such Restoration is feasible, shall be reasonably made by the First Leasehold Mortgagee in accordance with the requirements of its Leasehold Mortgage (or, if none, by Landlord). The First Leasehold Mortgagee shall consult with all subordinate Leasehold Mortgagees with respect to application of Net Insurance Proceeds; provided however that in the event of any disagreement between the First Leasehold Mortgagee and any subordinate Leasehold Mortgagee over the application of Net Insurance Proceeds, the decision of the First Leasehold Mortgagee, in its sole discretion, shall prevail. If there is to be a Restoration, all Proceeds shall be deposited in an account with First Leasehold Mortgagee or, if there is no First Leasehold Mortgagee, in a construction disbursement escrow among Landlord, Tenant, the Leasehold Mortgagees, if any, and a mutually acceptable title company (the "Restoration Escrow"), and disbursed to pay the costs of such Restoration. By accepting a Leasehold Mortgage, each Leasehold Mortgagee agrees to be bound by such determination and to make the Net Insurance Proceeds available for such Restoration. In the event of any such damage to or destruction of the Improvements, Tenant, Landlord or any Leasehold Mortgagee, shall have the right (but shall not be obligated) to deposit the Restoration Deficiency into the Restoration Escrow. Unless the Restoration Deficiency is deposited with the First Leasehold Mortgagee (or, if none, with Landlord) or into the Restoration Escrow, or all of the Leasehold Mortgagees agree to a Partial Restoration, within the time periods provided in Section 8.01(a), this Lease shall terminate and the provisions of Section 8.05 shall apply.

**8.02 Adjustment of Insurance Claims and Disbursements.** Adjustment of any insurance claim shall, subject to the terms of any Leasehold Mortgage, be negotiated by Tenant. All insurance proceeds shall be deposited with the First Leasehold Mortgagee (or, if none, with Landlord) or into a Restoration Escrow, and administered as hereinafter set forth. All insurance proceeds received by Landlord or Tenant on account of such damage or destruction, less the actual costs, expenses and fees, if any, incurred in connection with the adjustment of the loss (the "Net Insurance Proceeds"), shall be applied in accordance with the terms of this Article. Such Net Insurance Proceeds plus the Deductible shall be paid out from time to time as such Restoration progresses and is approved. All Proceeds held by the First Leasehold Mortgagee shall be held in trust in a separate bank account.

**8.03 Deficiencies.** If, at any time during the course of a Restoration, the projected Restoration Deficiency increases, Tenant shall either, before proceeding with the Restoration, deposit with the First Leasehold Mortgagee (or, if none, with Landlord) cash, a letter of credit and/or evidence satisfactory to Landlord of the availability of funds (from a loan or otherwise) in an amount equal to the increase in the Restoration Deficiency, or deliver to the First Leasehold Mortgagee (or, if none, to Landlord) a surety bond from a company and in form and substance satisfactory to the First Leasehold Mortgagee (or, if none, to Landlord), for such

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increase in the Restoration Deficiency, the premium for which shall have been paid by Tenant. Thereupon, Tenant may proceed with the Restoration.

**8.04 Landlord's Right to Complete.** Subject to any rights of the First Leasehold Mortgagee under Section 8.01, if a Restoration is commenced or required to be commenced, and if Tenant shall fail to promptly and diligently commence and complete such Restoration, Landlord, after first giving all Leasehold Mortgagees written notice and at least sixty (60) days thereafter to commence such Restoration and thereafter promptly and diligently complete such Restoration, may complete the same and apply the Net Insurance Proceeds plus the Deductible and any additional funds provided by Tenant to the cost of Restoration.

**8.05 Leasehold Mortgages.** Except as provided in Section 8.01: (1) all provisions of this Article 8 are subject to the rights of the First Leasehold Mortgagee and the provisions of the Leasehold Mortgage of the First Leasehold Mortgagee; (2) the provisions of such Leasehold Mortgage shall govern in the event of any conflict or inconsistency between the provisions of this Article 8 and the provisions of such Leasehold Mortgage; and (3) application of Net Insurance Proceeds shall be subject to the terms of the Leasehold Mortgages, and the respective priorities of the Leasehold Mortgagees thereunder, including the Leasehold Mortgagees' rights, if any, to apply proceeds of insurance to the payment of outstanding debt owed by Tenant to such Leasehold Mortgagees in lieu of Restoration. In such an event, Landlord and Tenant shall adjust any remaining balance of insurance proceeds as their respective interests may be affected by such damage or destruction, and this Lease shall terminate. No termination of this Lease shall occur under this Article 8 so long as at least one Leasehold Mortgagee is diligently proceeding to obtain such insurance proceeds and, if applicable, to exercise its rights with respect to the Restoration; provided, however, that the foregoing prohibition against termination shall no longer be applicable when the First Leasehold Mortgagee elects to apply such insurance proceeds to repay outstanding debt in lieu of Restoration.

## ARTICLE 9

### Title and Ownership; Leasehold Mortgage

#### **9.01 Restrictions on Transfer.**

(a) Except for Permitted Transfers and Permitted Refinancings: Tenant shall not at any time without the prior written consent of Landlord: (1) sell, assign, transfer, or convey all or any part of its interest under this Lease; or (2) sell, assign, transfer or convey all or any part of any Improvement located on the Land; or (3) sublet all or any part of the Tenant Property except for Permitted Subleases. Landlord's consent to any of the foregoing may be granted, withheld or granted with such conditions as Landlord shall require, in its sole and absolute discretion.

(b) If a Permitted Transfer consisting of a sale, assignment, transfer or other conveyance of the Leasehold Estate occurs (other than a Permitted Sublease), the transferee or assignee shall enter into an assumption agreement with Landlord by which it assumes all of Tenant's rights and obligations under this Lease. Upon the consummation of such Permitted Transfer and the delivery to Landlord of such assumption agreement executed by the transferee or assignee, the

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transferee or assignee shall succeed to all rights and obligations of Tenant under this Lease, and shall be deemed a permitted assignee of Tenant, and Tenant making such sale, assignment, transfer or other conveyance shall be and hereby is relieved of any continuing obligations hereunder arising thereafter. Upon any assignment of the Tenant Property, the assignor shall be relieved of any obligations hereunder arising after such assignment, and the assignee, by accepting such assignment, shall be deemed to have assumed all obligations hereunder arising after such assignment.

(c) Landlord shall not, without the prior written consent of Tenant and all Leasehold Mortgagees, mortgage or create a lien upon (i) all or any part of the Real Estate, or (ii) all or any part of its interest in this Lease or the Project or any part thereof.

(d) The parties acknowledge that it may become necessary to grant easements and/or licenses over, under, upon and across the Real Estate for the provision of gas, electricity, telephone service, cable television, Internet access, water, sewer, and other utilities to serve the Improvements. All such easements and licenses shall be subject to the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. If required, Landlord shall grant or join with Tenant in the grant of such easements and licenses, so as to subject Landlord's interest in the Real Estate to such easements and licenses. All costs in connection with such easements and licenses shall be borne by Tenant.

**9.02 Liens.** Other than the Permitted Exceptions and the encumbrances listed on Exhibit D (the "Encumbrances"), and any Permitted Refinancing, Tenant shall not create or permit to be created or to remain, and shall promptly discharge, any lien (including but not limited to any mechanic's, contractor's, subcontractor's or materialman's lien or any lien, encumbrance or charge arising out of any Imposition, conditional sale, title retention agreement, chattel mortgage, security agreement, financing statement or otherwise) upon the Real Estate or the Project, or any part thereof, or the income therefrom, and Tenant shall not suffer any matter or thing whereby the estate, rights and interests of Landlord in the Real Estate or the Project, or any part thereof, will be impaired. Notwithstanding the foregoing prohibitions, Tenant shall have the right to contest any such lien upon compliance with the same conditions as are applicable to the contest of any Imposition under Section 4.03. If Tenant shall fail to cause any such matter to be discharged of record or contested in the foregoing manner, then Landlord may, but shall not be obligated to, in addition to any other right or remedy, discharge such lien at any time after delivery of notice to Tenant, either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding proceedings or otherwise, and in any such event Landlord shall be entitled, if it so elects, to compel the prosecution of an action for foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs, expenses and fees incurred by Landlord in connection therewith shall be reimbursed by Tenant to Landlord. This Lease shall constitute notice that Landlord shall not be liable for any work performed or to be performed, or any materials furnished or to be furnished, at the Land for Tenant or any subtenant upon credit, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Land, unless such work or materials is specifically ordered by Landlord in writing. Notwithstanding anything to the contrary contained in this Section 9.02, the obligations of Tenant under this Section 9.02 shall not apply to any lien arising from an Excluded Environmental Condition.



**UNOFFICIAL COPY****9.03 Leasehold Mortgage.**

(a) In order to enable Tenant to finance a portion of the cost of construction of the Development, Tenant shall have the right to mortgage its Leasehold Estate, together with its ownership interest in the Improvements, and execute and record a Leasehold Mortgage or Mortgages with respect to both such estates, respectively (collectively, the "Initial Leasehold Mortgages"), to secure the repayment of a loan or loans made to Tenant by a Lender or Lenders (collectively, the "Initial Leasehold Mortgagees") in an aggregate amount not to exceed the estimated cost of the Development, or such other amount as is reasonably approved by Landlord. The Initial Leasehold Mortgagees and their addresses for purposes of notices are listed on Exhibit C. In addition to the Initial Leasehold Mortgages, Tenant shall have the right, at any time and from time to time, to grant one or more Leasehold Mortgages. Landlord's interest in the Real Estate or this Lease shall at no time be encumbered by and shall at no time be subject or subordinate to any Leasehold Mortgage (i.e. the foreclosure of any such Leasehold Mortgage shall not divest Landlord of its fee simple title or reversionary interest), except as to rights expressly granted to any Leasehold Mortgagee in this Lease. For purposes of this Article 9, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. A Leasehold Mortgagee may become the holder of the Leasehold Estate and succeed to Tenant's interest under this Lease by foreclosure of its Leasehold Mortgage (either in its own name or in the name of its nominee) or as a result of the assignment of the Tenant's interest under this Lease in lieu of foreclosure, and any purchaser at any sale of Tenant's interest under this Lease in any proceeding for the foreclosure of any Leasehold Mortgage or the assignee or transferee of Tenant's interest under this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee approved by Landlord and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such assignment, but only for so long as such purchaser, assignee or transferee is the owner of the Leasehold Estate.

(b) In addition to the Initial Leasehold Mortgagees identified on Exhibit C, if Landlord shall be notified in writing of the existence of any other Leasehold Mortgage, and provided that the Leasehold Mortgagee shall have designated in a written notice to Landlord the address of the Leasehold Mortgagee for the service of notices, then notice of any Event of Default by Tenant in the performance of the covenants of this Lease shall simultaneously be given to such Leasehold Mortgagee, and such Leasehold Mortgagee shall have the right, within the respective periods as prescribed in Subsection 9.03(c), to take such action or to make such payments as may be necessary to cure any such default to the same extent and with the same effect as though done by Tenant.

(c) If there shall be an Event of Default by Tenant under this Lease, Landlord agrees that it will not terminate this Lease or invoke its right to take possession of the Tenant Property if: (i) any Leasehold Mortgagee shall cure the default within 180 days after expiration of the time for Tenant to cure said default, or if such default cannot reasonably be cured within said 180-day period, and any Leasehold Mortgagee in good faith commences within said 180-day



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period and thereafter diligently prosecutes all actions required to cure such default, such longer period as may be reasonably necessary; or (ii) within 180 days after notice of such default by Landlord to a Leasehold Mortgagee, such Leasehold Mortgagee commences legal proceedings (herein called "foreclosure proceedings") to foreclose the lien of its Leasehold Mortgage and if such Leasehold Mortgagee diligently proceeds with its foreclosure proceedings (including seeking to be put in possession as mortgagee-in-possession or seeking to obtain the appointment of a receiver in such foreclosure proceedings; or (iii) such Event of Default cannot, by its nature, be cured by any Leasehold Mortgagee. The foregoing 180-day periods shall be extended for so long as such Leasehold Mortgagee is enjoined or stayed in any bankruptcy or insolvency proceedings filed by or against Tenant. Nothing in this Article 9 shall require any Leasehold Mortgagee, as a condition to the exercise of rights provided under this Article 9, to cure any Event of Default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee. The foregoing shall not be deemed to excuse a Leasehold Mortgagee from performing covenants relating to the construction (provided that no Leasehold Mortgagee has elected to discontinue or reduce the funding of its loan) or condition of Improvements on the Real Estate or other similar matters requiring access to and/or control of the Property from and after such time as such Leasehold Mortgagee acquires the Leasehold Estate by foreclosure or otherwise, provided that the Construction Completion Deadline shall be extended accordingly during any such period given to initiate and complete any foreclosure proceeding. Landlord may invoke any or all of its remedies under this Lease, including the remedy of termination, if no Leasehold Mortgagee commences and prosecutes either curative action or foreclosure proceedings as provided above. In the event the purchaser at foreclosure sale or the assignee of such purchaser acquires the Leasehold Estate and Tenant's interest in the Improvements, such purchaser or assignee shall thereupon become Tenant under this Lease and hereby agrees to assume and perform each and all of Tenant's obligations and covenants hereunder from and after the date that such purchaser or assignee acquires the Leasehold Estate and Tenant's interest in the Improvements.

(d) In the event there is a Leasehold Mortgage listed on Exhibit C or a Leasehold Mortgage of which Landlord has received notice as provided in Subsection 9.03(b), Landlord agrees that it will not accept a surrender of the Tenant Property or a cancellation of this Lease from Tenant prior to the expiration of the Term of this Lease and will not amend this Lease without in each case the prior written consent of each such Leasehold Mortgagee.

(e) If Landlord shall terminate this Lease, or if this Lease shall be terminated by reason of the rejection of this Lease by a debtor in possession or a trustee or receiver appointed by a court of competent jurisdiction in bankruptcy or insolvency proceedings involving Tenant, then and in either such event Landlord will make and enter into a new lease with any Leasehold Mortgagee (or the nominee of Leasehold Mortgagee designated by such mortgagee by written notice to Landlord) provided that:

(i) such Leasehold Mortgagee makes written request of Landlord for a new lease within the ninety (90) days following the date of termination of this Lease; and

(ii) at the time of termination of this Lease, and at the time of such Leasehold Mortgagee's written request for a new lease, and at the time of

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execution and delivery of such new lease by and between Landlord and such Leasehold Mortgagee (or the nominee of such Leasehold Mortgagee, as the case may be), such Leasehold Mortgagee shall have cured all defaults of Tenant under this Lease that can reasonably be cured by such Leasehold Mortgagee or shall be proceeding in accordance with Section 9.03(c);

then, concurrently with the execution, delivery and recording of the new lease, this Lease shall be deemed to have terminated. The rights granted Leasehold Mortgagees pursuant to this Section 9.03(e) shall be exercisable by Leasehold Mortgagees in the same priority as the liens of their respective mortgages.

(f) Each Leasehold Mortgagee, by accepting its Leasehold Mortgage, agrees for the benefit of Landlord:

(i) that such Leasehold Mortgagee will use reasonable efforts to give to Landlord notice of all events of default declared by such Leasehold Mortgagee with respect to its Leasehold Mortgage Loan that give such Leasehold Mortgagee the right of acceleration, concurrently with or promptly after notice thereof is given to Tenant; and Landlord shall have the right, but shall not be obligated, to cure any such defaults on the part of Tenant within the time period, if any, allowed by the Leasehold Mortgage; and

(ii) prior to commencing foreclosure proceedings or accepting a deed in lieu of foreclosure, such Leasehold Mortgagee shall give Landlord a written notice describing the action proposed to be taken by such Leasehold Mortgagee and stating the aggregate amount of the indebtedness then due and secured by the Leasehold Mortgage, and setting forth in reasonable detail the respective portions of said indebtedness attributable to principal, interest, attorneys' fees and expenses and other costs, fees and expenses. Landlord shall have a period of twenty (20) days after Landlord receives such notice from such Leasehold Mortgagee within which Landlord, at its election, may purchase from such Leasehold Mortgagee, without representation, warranty or recourse (other than as to the purchase price), the Leasehold Mortgage, the indebtedness secured thereby, and any other security held by such Leasehold Mortgagee for such indebtedness, for a purchase price equal to the amounts due such Leasehold Mortgagee under the Leasehold Mortgage.

(g) So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Land and the Leasehold Estate shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of said fee title and Leasehold Estate by any single owner, other than by termination of this Lease by Landlord in compliance with the provisions of this Article 9.

(h) Upon termination of this Lease pursuant to Section 10.02, Landlord shall immediately seek to obtain possession of the Land and title to the Improvements. Upon acquiring such possession and title, Landlord shall notify all Leasehold Mortgagees. Each of the Leasehold Mortgagees shall have ninety (90) days from the date of such notice of

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acquisition to elect to take a new lease on the Land and a conveyance of title to the Improvements. Landlord shall, subject to applicable bankruptcy laws and/or the order of a court of competent jurisdiction, enter into a new lease with a Leasehold Mortgagee (or with the nominee of such Leasehold Mortgagee) and convey title to the Improvements to such Leasehold Mortgagee (or such nominee) by quitclaim deed, provided that:

(i) such Leasehold Mortgagee has made written request of Landlord for a new lease on the Land and a conveyance of the Improvements within the ninety (90) days next following the date of termination of this Lease aforesaid and either the prior written consent of any superior Leasehold Mortgagee is obtained or the ninety (90) days have expired without such superior Leasehold Mortgagees requesting a new ground lease and conveyance of Improvements hereunder; and

(ii) at the time of termination of this Lease, and at the time of such Leasehold Mortgagee's written request for a new lease and deed, and at the time of execution and delivery of such new lease by and between Landlord and such Leasehold Mortgagee (or the nominee of such Leasehold Mortgagee, as the case may be), such Leasehold Mortgagee shall have cured all defaults of Tenant under this Lease that can reasonably be cured by such Leasehold Mortgagee or shall be proceeding in accordance with Section 9.03(e).

Such new lease shall have a term equal to the unexpired portion of the Term of this Lease and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this Lease. Landlord shall deliver possession of the Land and Improvements immediately upon execution of the new lease. Upon executing a new lease, the Leasehold Mortgagee shall pay to Landlord the amount by which (a) the sum of any unpaid Rent due under this Lease (or which would have been due under this Lease if it had not been terminated) from the date that Landlord obtains possession of the Land and Improvements to the commencement date of the new lease, plus any Impositions that were liens on the Land and/or the Improvements and which were paid by Landlord, exceeds (b) any rent or other income received by Landlord from the Land and/or the Improvements during the period after Landlord obtains possession to (but not including) the commencement date of the new lease. A Leasehold Mortgagee shall not have the right to elect to take a new lease if its Leasehold Mortgage is paid in full prior to the Leasehold Mortgagee notifying Landlord of its election to take a new lease.

(i) Notwithstanding any provisions to the contrary in Sections 6.03, 6.04, 6.06, 9.01, 9.02, 9.03 or 11.02, Landlord agrees (without waiving any rights that Landlord may have against any former Tenant) that: (a) any Leasehold Mortgagee that succeeds to the Leasehold Estate and becomes a successor Tenant hereunder shall not be responsible for any then existing indemnification of the former Tenant; (b) such Leasehold Mortgagee shall not be required to cure a default that cannot be cured by the payment of money or the taking of affirmative action (an "Incurable Default"); and (c) failure by such Leasehold Mortgagee to cure an Incurable Default or to assume such existing indemnification obligations of the former Tenant shall not constitute a basis for not recognizing such Leasehold Mortgagee as the successor Tenant or for terminating this Lease. Notwithstanding any provisions to the contrary in Sections 6.03, 6.04, 6.06, 9.01, 9.02, 9.03, 11.02 or 22.04, Landlord agrees (without waiving any rights that

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Landlord may have against any former Tenant) that any Leasehold Mortgagee that succeeds to the Leasehold Estate and becomes a successor Tenant hereunder shall not be responsible for any then existing environmental remediation obligations of the former Tenant, including without limitation any then existing environmental remediation obligations under the Environmental Agreement.

## ARTICLE 10

### Tenant Default: Rights and Remedies of Landlord

**10.01 Tenant's Event of Default.** Each of the following events shall be an "Event of Default" by Tenant under this Lease:

(a) Tenant's failure to pay, when due, any installment of Rent or any other amount to be paid by Tenant under this Lease, and such failure shall continue for a period of thirty (30) days after written notice from Landlord specifying such failure;

(b) Tenant shall be in default under Section 9.01(a);

(c) if any insurance required to be maintained by Tenant shall lapse without replacement, so that any required coverage is not in effect;

(d) Tenant shall fail to perform or observe any other material obligation, term or provision under this Lease or under the REA, and such failure continues beyond sixty (60) days after written notice from Landlord to Tenant specifying such Event of Default; provided, however, that if Tenant in good faith commences within said 60-day period and thereafter diligently prosecutes all actions required to cure such default, Tenant shall be allowed a reasonable additional period to effect such cure;

(e) a petition in bankruptcy is filed by or against Tenant, or if Tenant makes a general assignment for the benefit of creditors or is adjudged insolvent by any state or federal court, and in the case of any such involuntary petition, action or proceeding not initiated by Tenant such petition, action or proceeding is not dismissed or stayed within ninety (90) days after the commencement of such petition, action or proceeding; and

(f) Tenant shall fail to commence and complete the construction of the Project in accordance with the Plans and Specifications prior to the Construction Completion Deadline, and such failure continues for a period of thirty (30) days after written notice from Landlord specifying such failure; provided, however, that if Tenant in good faith commences within said 30-day period and thereafter diligently prosecutes all actions required to cure any such failure, Tenant shall be allowed a reasonable additional period to effect such cure.

**10.02 Termination.** If an Event of Default shall occur, Landlord may not terminate this Lease for so long as the provisions of Section 9.03, 10.14 or any other provision of this Lease that expressly limits Landlord's ability to terminate this Lease precludes such termination. Otherwise Landlord, at its option, at any time thereafter during the continuance of such Event of Default, may give to Tenant and all Leasehold Mortgagees a notice of termination of this Lease, and, upon the date specified in such notice, which date shall be after all cure periods and



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foreclosure proceeding periods without a cure or foreclosure (or exercise by a Leasehold Mortgagee of other remedies contemplated by Section 9.03(c)) being effected, then this Lease and all of Tenant's rights under this Lease shall expire and terminate as if that date were the date herein originally fixed for the expiration of the Term of this Lease, and on the date so specified, Tenant shall vacate and surrender the Property to Landlord.

**10.03 Transfer of Deposits, etc.** In the event of any termination of this Lease under Section 10.02, all unearned insurance premiums, all deposits theretofore made by Tenant with utility companies, any claims for refund of any Imposition, any pending claims for insurance proceeds or condemnation awards, and all fuel and supplies on the Property owned by Tenant shall, subject to the rights of the Leasehold Mortgagees, be deemed to be and are hereby assigned to and transferred to Landlord to be applied in payment of Tenant's liability under this Lease.

**10.04 Re-entry** In the event of termination of this Lease under Section 10.02 or by operation of law or otherwise, Landlord may without further notice re-enter and repossess the Property.

**10.05 Injunctive Relief** In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to injunctive relief against such breach or threatened breach, and shall have the right to invoke any right or remedy available at law or in equity or by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Lease.

**10.06 Re-letting by Landlord** If Landlord has terminated this Lease in accordance with Section 10.02, Landlord may re-let the Property or any part thereof and receive the rent therefor, whether such rent is in the aggregate greater than or less than the Rent payable hereunder. Landlord shall not be responsible or liable in any way for failure to re-let the Property or any part thereof or for failure to collect any rent due on such re-letting, except as required by law to mitigate Landlord's damages.

**10.07 Receipt of Monies: No Waiver** No receipt of money by Landlord from Tenant after termination of this Lease shall reinstate, continue or extend the term of this Lease or of any notice of termination theretofore given to Tenant, or operate as a waiver of Landlord's right to enforce the payment of Rent and any other payments or charges herein reserved or agreed to be paid by Tenant, then or thereafter falling due, or operate as a waiver of Landlord's right to recover possession of the Property by proper remedy, it being agreed that after service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after final order for the possession of the Property, Landlord may demand and collect any monies due or thereafter falling due in any manner without affecting such notice, proceeding, order, suit or judgment, and all such monies collected shall be deemed paid on account of the use and occupancy of the Tenant Property or, at Landlord's election, on account of Tenant's liability hereunder.

**10.08 No Implied Waivers** Landlord's granting of a consent under this Lease, or Landlord's failure to object to an action taken by Tenant without Landlord's consent under this Lease, shall not be deemed a waiver by Landlord of its right to require such consent for any

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further similar act of Tenant. No waiver by Landlord of any breach of any of the conditions, covenants or agreements of this Lease shall be construed, taken or held to be a waiver of any other breach or be a waiver, acquiescence in or consent to any further or succeeding breach of the same term, condition, covenant or agreement. None of Tenant's covenants, agreements, obligations or undertakings under this Lease, and no breach thereof, may be waived, altered or modified except by a written instrument executed by Landlord.

**10.09 Remedies Not Exclusive.** Subject to provisions of Article 18 and other provisions of this Lease restricting Landlord's right to terminate this Lease, no right, power or remedy conferred upon or reserved to Landlord under this Lease or under law shall be considered exclusive of any other right, power or remedy, but such rights, powers and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder, or now or hereafter existing at law or in equity, or by statute or otherwise, and every right, power and remedy of Landlord may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, without precluding Landlord's simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of Landlord in exercising any right, power or remedy arising from any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein.

**10.10 Waiver of Notice.** Tenant expressly agrees that any notice of intention to re-enter provided in any statute or to initiate legal proceedings to that end shall run concurrently with any applicable notice period provided hereby so that any required notice period shall not be longer than the longer of such statutory notice or notice required under this Lease. Tenant waives, for and on behalf of itself and all persons and parties claiming through or under it (other than any Leasehold Mortgagee), any and all right of redemption provided by any law or now in force or hereafter enacted or otherwise, for re-entry or repossession, or to restore the operation of this Lease, in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge, or in case of re-entry or repossession by Landlord, or in case of any expiration or termination of this Lease.

**10.11 Suits for Damages.** Suits for damages or deficiencies, or for a sum equal to any installments of Rent, Impositions and other charges and payments hereunder shall be subject to the provisions of Article 18.

**10.12 Bankruptcy.** Nothing in this Article contained shall limit or prejudice the right of Landlord to prove and obtain as damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to any of the preceding Sections.

**10.13 Leasehold Mortgagee's Rights.** Notwithstanding the remedies afforded to Landlord under this Article 10, such remedies shall be subject to and subordinate to the Leasehold Mortgagees' rights granted herein.

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**10.14 Investor's Rights in the Event of Tenant Default.** The following provisions shall apply for so long as Investor is a partner of Roosevelt Square I Limited Partnership and Roosevelt Square I Limited Partnership is the Tenant under this Lease:

(a) Landlord shall give Investor a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Lease. No notice by Landlord to Tenant under this Lease shall be effective unless or until a copy of such notice has been provided to Investor.

(b) Investor may, at its option and during the time specified for Tenant to cure any default hereunder, either pay any amount or do any act or thing required of Tenant by the terms of this Lease. All payments made and all acts performed by Investor during the cure period shall be effective to prevent a termination of this Lease to the same extent as if they had been performed by Tenant. Tenant hereby authorizes Investor to take any such action at the Investor's option and does hereby authorize entry upon the Property by Investor for such purpose.

(c) In addition to all other rights of Investor hereunder, Investor's commencement of proceedings to exercise its Removal Right shall be deemed initiation of a cure for purposes of Sections 10.01 and 10.14, provided that each of the following conditions is satisfied:

- (i) the default is one which cannot be cured only by payment of money;
- (ii) in the reasonable opinion of Investor, removal of the General Partner is necessary;
- (iii) Investor notifies Landlord within 30 days following receipt of Landlord's default notice of Investor's intention to exercise the Removal Right and does in fact perform all required activity pursuant thereto; and
- (iv) Investor performs all other good faith commercially reasonable activity necessary to cure the default.

## ARTICLE 11

### Additional Rights and Remedies of Landlord

**11.01 Performance by Landlord.** If Tenant shall at any time fail to make any payment or perform any act to be made or performed by Tenant under this Lease and such failure continues beyond the cure period, if any, applicable thereto under this Lease, and provided that no Leasehold Mortgagee has cured such failure within the time period provided herein for such cure (provided, in the latter case, that any notice of default required by the terms of this Lease to be given to such the Leasehold Mortgagee by Landlord has been given), Landlord may, at its option (but shall not be required to), make any such payment or perform any such act, and for such purpose Landlord may enter upon the Property and take all actions thereon as may be deemed by Landlord necessary or desirable therefor. Any amount paid or incurred by Landlord

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in effecting or attempting to cure such failure shall be additional rent due from Tenant to Landlord, and shall be payable by Tenant upon demand.

**11.02 Tenant to Provide Indemnification.**

(a) Unless arising from Landlord's negligent act or intentional misconduct or a breach of Landlord's obligations under this Lease or the failure of Landlord to perform its obligations under the Environmental Agreement, or until Landlord shall have re-entered the Property upon expiration or termination of this Lease, Tenant agrees to indemnify, defend and save Landlord's Protected Persons harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, charges, costs, expenses and fees (including reasonable attorney's fees) which may be imposed upon, incurred by or asserted against Landlord's Protected Persons by reason of any of the following occurring during the Term:

- (i) any use, non-use, possession, occupation, condition (other than a Pre-Existing Environmental Condition, the indemnification obligations of Tenant for which are set forth in the Environmental Agreement, and other than Excluded Environmental Conditions), operation, repair, maintenance or management of the Property, or any part thereof, or any occurrence of any of the same;
- (ii) any act or omission on the part of Tenant or any subtenant, licensee or invitee, or any of its or their agents, contractors, servants, employees, licensees or invitees relating to the Property or this Lease;
- (iii) any accident, injury (including death) or damage, regardless of the cause thereof, to any person or property occurring in, on or about the Property or any part thereof;
- (iv) any contest permitted pursuant to the provisions of Section 4.03 or 6.06;
- (v) any litigation or proceeding related to the Property or this Lease to which Landlord becomes or is made a party without fault on its part, whether commenced by or against Tenant; and
- (vi) which may be incurred by Landlord in enforcing any of the covenants, agreements, terms and conditions of this Lease (provided Landlord prevails in the enforcement proceeding).

The obligations of Tenant under this Section 11.02(a) do not apply to Excluded Environmental Conditions.

(b) As to claims for which Tenant does not receive timely notice, there shall be no obligation of Tenant to indemnify.

Tenant's obligations under this Section 11.02 shall survive the expiration or termination of this Lease.



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**11.03 Excluded Environmental Conditions.** Except as expressly provided in the Environmental Agreement, all liability and responsibility with respect to Excluded Environmental Conditions shall be determined pursuant to applicable federal, state or local law.

## ARTICLE 12

### Eminent Domain

**12.01 Total Taking.** Subject to Section 12.05, if, during the Term of this Lease, the entire Property or Tenant Property, or such substantial portion of the Property or Tenant Property as shall in the reasonable good faith judgment of Tenant, subject to the approval of the First Leasehold Mortgagee, which shall not be unreasonably withheld, make it economically unfeasible to operate the remaining portion for the purposes herein stated, shall be taken by the exercise of the power of eminent domain, this Lease shall terminate on the date of vesting of title in the condemnor under such eminent domain proceedings, and all Rent and other sums payable by Tenant hereunder shall be prorated to the date of such vesting, and thereafter Tenant shall be relieved of all obligations to pay the Rent and to otherwise perform its agreements, obligations and undertakings under this Lease except those that expressly survive the termination of this Lease. The award granted with respect to such eminent domain proceedings shall be divided between Landlord, Tenant and any Leasehold Mortgagees in the following order:

(a) to the First Leasehold Mortgagee, an amount sufficient to obtain the release and satisfaction of the First Leasehold Mortgage;

(b) to any and all other Leasehold Mortgagees, as their interests appear, an amount sufficient to obtain a release and satisfaction of the Leasehold Mortgages, with payment being made in full to such Leasehold Mortgagees according to the priorities of their Leasehold Mortgages;

(c) to Tenant, an amount equal to the sum of: (y) the greater of: (1) the fair market value of the Improvements and the fair market value of the unexpired Leasehold Estate, reduced by the amount, if any, paid under the preceding Clauses (a) and (b); and (2) the replacement cost of the Improvements and the fair market value of the unexpired Leasehold Estate, reduced by the amount, if any, paid under the preceding Clauses (a) and (b); plus (z) the value of any low-income housing tax credits recaptured or not available in future years as a result of such taking; and

(d) the balance, if any, shall be paid to Landlord.

If this Lease is terminated under this Section, then Tenant shall, if so directed by Landlord, demolish and/or remove any damaged Improvements on any remaining Property at the sole cost and expense of Tenant provided that all condemnation proceeds allocable to the Tenant Property remaining after satisfaction of the indebtedness secured by any Leasehold Mortgages shall be available to Tenant. The obligation under this Lease to demolish and/or remove Improvements under the foregoing sentence shall not apply to any Leasehold Mortgagee that succeeds to

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Tenant's interest under this Lease through foreclosure of its Leasehold Mortgage or deed-in-lieu thereof.

## **12.02 Partial Taking.**

(a) If, during the Term, less than the entire Property or Tenant Property shall be taken by the exercise of the power of eminent domain, and, in the reasonable judgment of the First Leasehold Mortgagee, condemnation proceeds attributable to Tenant's interest in the Property are sufficient to restore that portion of the Property remaining after the taking so as to be not materially different from the value, condition and character of the Property prior to such taking, this Lease shall not terminate but shall continue in full force and effect for the remainder of the Term, subject to the provisions of this Section 12.02. The amount of damages resulting to Landlord and Tenant, respectively, and to their respective interests in the Property and in, to and under this Lease, by reason of such exercise and partial taking under such eminent domain proceedings shall be separately determined and computed by the court having jurisdiction of such proceedings, and separate awards and judgments with respect to such damages to Landlord and Tenant shall be made and entered, and said awards shall, subject to Section 12.05, be paid to Landlord and Tenant, respectively, in accordance therewith; provided, however, that Tenant shall receive that portion of the award made as consequential damages to the Improvements located on the remaining portion of the Property and Tenant, at its expense, shall forthwith restore the remaining portion of the Improvements to substantially the same value, condition and character as existed prior to such taking (to the extent such restoration is possible, taking into account the extent to which a portion of the Improvements have been removed as a result of the taking), using such part of the award received by Tenant in said eminent domain proceeds as may be necessary therefor and, if the amount of such award is not sufficient, Landlord shall make its portion of the award available for such restoration. If Tenant is obligated to restore the Property, the proceeds of the award shall be deposited in the Restoration Escrow and disbursed to pay the costs of such restoration. If the sum of such awards is not sufficient, Tenant shall have the right, but not the obligation, to provide the additional funds required.

(b) If the First Leasehold Mortgagee reasonably determines that condemnation proceeds are insufficient to restore that portion of the Property remaining after the taking so as to be not materially different than the value, condition and character of the Property prior to such taking, and neither Tenant nor any Leasehold Mortgagee deposits into the Restoration Escrow the additional funds necessary to satisfy such deficiency within ninety (90) days after the condemnation award, and Landlord makes no commitment to provide additional funds within such ninety (90) days and deposits into the Restoration Escrow the additional funds necessary to satisfy such deficiency within one hundred twenty (120) days after the condemnation award, then the condemnation proceeds shall be applied as set forth in Section 12.01 and the requirements of Section 8.05 shall apply.

**12.03 Temporary Taking.** In the event of a taking for a temporary use, this Lease and the Term shall continue and the Rent thereafter due and payable shall be equitably reduced or abated. Tenant shall continue to perform and observe all of the other covenants, agreements, terms and conditions of this Lease. The entire amount of any proceeds with respect to such temporary taking shall be paid to Tenant.

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**12.04 Other Governmental Action.** In the case of any governmental action not resulting in the taking of any portion of the Property or Tenant Property but creating a right to compensation therefor, this Lease shall continue in full force and effect without reduction or abatement of any Rent thereafter due and payable. If such governmental action results in any damage to the Improvements, Tenant shall be entitled to receive such portion of the proceeds (or all of the proceeds, if required for such purpose) estimated to be necessary to remedy any such damage, and Tenant shall proceed with reasonable diligence to make all repairs, replacements, restorations and improvements necessary so to remedy such damage to the extent economically feasible, and, if the amount of such proceeds is not sufficient, Tenant shall have the right, but not the obligation, to provide the additional funds required. Any balance remaining from such proceeds, or if no damage is involved then all of such proceeds, shall be divided between Landlord and Tenant as their respective interests may appear.

**12.05 Leasehold Mortgagees.** The rights granted to Landlord and Tenant under this Article 12 shall be subject to the rights and interests of the Leasehold Mortgagees under their respective Leasehold Mortgages (except as provided in Section 12.02(b)).

## ARTICLE 13

### Estoppel Certificates

Upon written request by either party or any Leasehold Mortgagee, the party to whom the request was made will promptly certify to the requesting Person, or to any proposed assignee or grantee or mortgagee or trustee under deed of trust or trust deed or the proposed assignee of such mortgagee, deed of trust or trust deed, whether or not this Lease is valid and subsisting, whether or not it has been modified (and if there are modifications, stating them) and whether or not the party executing the certificate has knowledge of any default or breach by the other party under any of the terms of this Lease (and if any exists, stating them). If the party to whom a written request is directed under the preceding sentence shall fail to furnish the requested certificate within twenty (20) days after the receipt of such request, then by such failure such party shall be deemed to have certified to the requesting Person and to any proposed assignee or grantee or mortgagee or trustee under a deed of trust or trust deed, that this Lease is valid and subsisting, that there have been no modifications to this Lease, and that there are no known defaults or breaches by the other party under the terms of this Lease. Upon the issuance of a certificate of occupancy for the Development by the City in its municipal capacity following completion of the construction of the Improvements, Landlord shall give to Tenant an estoppel certificate (in recordable form) certifying all obligations set forth in Section 5.01 have been satisfied, and Tenant shall cause such certificate to be recorded.

## ARTICLE 14

### Surrender at End of Term; Title to Improvements

**14.01 Surrender at End of Term.** Upon the expiration of the Term, all Improvements then on the Land shall, together with all fixtures and equipment, shall become the property of Landlord without any payment or allowance whatever by Landlord on account of or for such Improvements, fixtures and equipment, whether or not the same or any part thereof shall have

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been constructed by, paid for, or purchased by Tenant. Tenant shall vacate and surrender possession of the Tenant Property to Landlord without delay, free and clear of all lettings, occupancies, and licenses, and free and clear of all liens, claims, encumbrances and security interests other than the Permitted Exceptions and the rights of subtenants in possession under subleases (which shall expire not later than one (1) year after the end of the Term), and those, if any, created by Landlord or those related to Excluded Environmental Conditions. Tenant agrees to execute and deliver to Landlord such quit claim deeds, bills of sale, assignments or other instruments of conveyance as Landlord may reasonably deem necessary to evidence such transfer of title to Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Property at any such termination date.

**14.02 Title to Improvements.** Landlord acknowledges and agrees that throughout the Term and until expiration or earlier termination of this Lease, title to all Improvements on and in the Land shall be in Tenant's name and that Tenant has, and shall be entitled to, all rights and privileges of ownership of such Improvements, including without limitation: (a) the right to claim depreciation or cost recovery deductions; (b) the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Tenant Property; and (c) the right to transfer such Improvements in accordance with the terms of this Lease; provided, however, that Tenant may not remove or substantially alter any of such Improvements (other than the disposition and replacement of equipment, appliances and other personal property in the ordinary course of business or in connection with the performance of its obligations under Section 6.04) without having first obtained the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

**ARTICLE 15****Other Landlord Obligations; Landlord Defaults**

**15.01 (Intentionally Omitted.)**

**15.02 (Intentionally Omitted.)**

**15.03 Landlord's Default.** Each of the following events shall be an event of default by Landlord under this Lease:

(a) Landlord's failure to lease by this Lease, the Land;

(b) Landlord's failure to lease, by this Lease, the Mixed Use Residential Lease and the other leases between Landlord and Tenant for the remaining portions of the Development Parcels, the entirety of the Development Parcels; or

(c) Landlord's failure to perform any other term or provision to be performed by Landlord under this Lease, not otherwise described in subsection (a) hereof, and such failure shall continue beyond sixty (60) days after written notice received by Landlord.



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Upon an event of default by Landlord hereunder, Tenant shall have all of the rights and remedies afforded at law or in equity, subject to Section 18.01.

**15.04 Injunctive Relief.** Upon any event of default by Landlord, Tenant shall, in addition to any other remedies available to Tenant at law or in equity, be entitled to enjoin such breach or threatened breach, and shall have the right of specific performance, it being the agreement of the parties hereto that in certain circumstances of Landlord's event of default, Tenant's remedies at law may be inadequate to afford it the practical realization of the agreements herein made by the parties.

**15.05 Remedies Not Exclusive.** No right, power or remedy conferred upon or reserved to Tenant under this Lease, or under law, shall be considered exclusive of any other right, power or remedy, but such rights, powers and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder, or now or hereafter existing at law or in equity, or by statute. Every right, power and remedy given by this Lease may be exercised from time to time and as often as occasion may arise or may be deemed expedient, without precluding Tenant's simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of Tenant to exercise any right, power or remedy arising from Landlord's event of default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein.

**15.06 Waivers in Writing.** None of Landlord's covenants, agreements, obligations or undertakings, and no events of default of Landlord may be waived, altered, or modified except by a written instrument executed by Tenant and all Leasehold Mortgagees.

**15.07 Landlord's Representations.** Landlord hereby represents and warrants to Tenant that:

(a) the entry by Landlord into this Lease with Tenant, and the performance by Landlord of all of the terms and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Property to which Landlord is a party or by which it is bound;

(b) as of the Commencement Date, there is no tenant or other occupant of the Property having any right or claim to possession or use of the Property other than public or quasi-public utilities; and

(c) as of the Commencement Date, there are no special assessments of which Landlord has received notice for sewer, sidewalk, water, paving, gas electrical, or utility improvements or other capital expenditures, matured or unmatured, affecting the Property.

## ARTICLE 16

### Notices

All notices or demands under this Lease shall be in writing and shall be served and given by personal delivery or by certified mail, return receipt requested, or by nationally-recognized

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overnight courier, addressed (i) if to Landlord, to such person and at such address as Landlord may by notice in writing designate to Tenant, and in the absence of such designation, to:

Chicago Housing Authority  
626 West Jackson Boulevard  
Chicago, Illinois 60661  
Attention: Chief Executive Officer

With a copy to:

Chicago Housing Authority  
200 West Adams Street, Suite 2100  
Chicago, Illinois 60606  
Attention: General Counsel

and (ii) if to Tenant to the address designated by Tenant in writing to Landlord, and in the absence of any such designation then:

c/o I.R. Development Company LLC  
350 West Hubbard Street  
Suite 301  
Chicago, Illinois 60610  
Attention: Stephen F. Galler, Vice President and  
General Counsel

With a copy to:

Applegate & Thorne-Thomsen, P.C.  
322 South Green Street  
Suite 400  
Chicago, Illinois 60607  
Attention: Bennett P. Applegate

With a copy to (for so long as Roosevelt Square I Limited Partnership is the Tenant):

Proskauer Rose LLP,  
2049 Century Park East, Suite 3200  
Los Angeles, California 90067  
Attention: Kenneth Krug, Esq.

In the event that any notice is required or desired to be given to the management agent for Roosevelt Square I Limited Partnership:

Related Management Company, L.P.  
203 East 86<sup>th</sup> Street  
New York, New York 10028

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Attention: Jeffrey I. Brodsky, President

In the event that any notice is required or desired to be given to the initial Leasehold Mortgagee, see Exhibit C.

In addition, concurrently with the giving of any notice or demand by Landlord to Tenant, or by Tenant to Landlord, Landlord or Tenant, as the case may be, shall furnish a copy of such notice to any Leasehold Mortgagee, including the Leasehold Mortgagees listed on Exhibit C, and to any other party listed on Exhibit C. By written notice served in the foregoing manner, any party entitled to receive notices shall have the right to designate another person and another address to which notices and demands shall thereafter be sent. Each such notice or demand shall be deemed served, given and received when received or, when given by mail, shall be deemed served, given and received on the third business day after the mailing thereof.

## ARTICLE 17

### Miscellaneous

**17.01 Covenants Running With Land.** All terms, provisions, conditions, covenants, agreements, obligations and undertakings contained in this Lease shall, except as herein specifically limited or otherwise provided, extend and inure to be binding upon Landlord's successors and assigns and Tenant's successors and permitted assigns, as if such successors and assigns were in each case specifically named, and shall be construed as covenants running with the land. Wherever reference is made in this Lease to either party, it shall be held to include and apply to such successors and assigns.

**17.02 Amendments in Writing.** In no event shall this Lease or any terms, provisions or conditions hereof be deemed to be amended, modified or changed in any manner whatsoever, except and unless set forth and provided for in writing executed by Landlord and Tenant, and consented to in writing by any Leasehold Mortgagee.

**17.03 Quiet Possession.** Landlord represents and warrants that it has full right and power to execute and perform this Lease and to convey the rights and interest demised hereby. Landlord agrees that during the Term and so long as no Event of Default exists and is continuing hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Land demised hereby, subject to the Permitted Exceptions, without molestation or disturbance by or from Landlord or any party claiming by, through or under Landlord, and free of any encumbrance created or suffered by Landlord except those expressly described herein to which this Lease is made subject and subordinate.

**17.04 Time of Essence.** Time is of essence of this Lease and of the performance of the respective obligations, covenants and agreements of Landlord and Tenant hereunder. If the day for the performance of any obligation hereunder occurs on a calendar day other than a business day, the time for such performance shall be extended to the next business day.

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**17.05 Approvals.** All approvals or consents required under the provisions hereof shall be in writing. Unless herein expressly otherwise provided, any approval or consent of Landlord shall be sufficiently given if signed by Landlord's Chief Executive Officer.

**17.06 Condition of Property.** Landlord has made no warranties or representations whatever with respect to the Real Estate or the Land and, except for the obligations of Landlord under the Environmental Agreement and except for Excluded Environmental Conditions (for which responsibility shall be determined under applicable law), Tenant accepts the Real Estate and the Land "as is"; provided, however, that the foregoing shall not affect the obligations, if any, of Landlord under this Lease with respect to matters of title to the Land and liens arising out of labor and/or materials furnished to the Land, or any portion thereof, by or on behalf of Landlord.

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

**17.08 Partial Invalidity.** If any term, provision or condition of this Lease or its application to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease and the application of such term, provision or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, provision and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**17.09 Applicable Law.** This Lease shall be construed and enforced in accordance with the law of the State of Illinois.

**17.10 Recording of Lease.** This Lease shall be recorded in its entirety with the Cook County Recorder of Deeds.

**17.11 Lease Not to be Construed Against Either Party.** The parties have each been represented by counsel in connection with the negotiation and drafting of this Lease. Accordingly, this Lease shall not be construed against or for either party.

**17.12 Cooperation.** Landlord and Tenant agree that they will cooperate with one another in all respects in furtherance of the Property. From time to time, Tenant may request modifications to this Lease to satisfy the requirements of financing sources, including without limitation government agencies and private lenders and equity sources. Landlord will use all reasonable efforts to accommodate such requests and will not unreasonably withhold or delay its approval and execution of modifications to this Lease that do not materially and adversely alter the basic terms hereof or Landlord's rights hereunder. Nothing herein shall impose upon Landlord any requirement to approve any modification or amendment to this Lease that would violate or contravene any applicable law or any contract or agreement to which Landlord is a party or which is binding on Landlord. Landlord agrees that it will, upon request of Tenant, from time to time, enter into an amended and restated lease combining into one document the entire Lease and all modifications and amendments theretofore entered into. Tenant shall pay,



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or reimburse Landlord upon demand, for all reasonable out of pocket expenses incurred by Landlord in connection with any such modification or amendment.

## ARTICLE 18

### Exculpatory Provisions

**18.01 Exculpatory Provision – Landlord.** It is expressly understood and agreed by Tenant, and any Person claiming by, through or under Tenant (including without limitation all Leasehold Mortgagees) that none of Landlord's covenants, undertakings or agreements herein set forth are made or intended as personal covenants, undertakings or agreements of Landlord, but are for the purpose of binding the premises demised hereby, and liability or damage for breach for nonperformance by Landlord shall be collectible only out of the Land demised hereby and no personal liability is assumed by nor at any time may be asserted or enforced against Landlord or any other Landlord's Protected Persons or any of its or their heirs, legal representatives, successors or assigns, all such personal liability, if any, being expressly waived and released by Tenant and each Person claiming by, through or under Tenant. Nothing contained in this Section 18.01, however, shall in any way or manner limit the full recourse of Tenant against Landlord under the Environmental Agreement, or under any non monetary remedy granted Tenant in Section 15.04.

**18.02 Exculpatory Provision – Tenant.** Tenant, but not any partner, officer, director, shareholder, member or manager of Tenant, nor any employee or agent of any of the foregoing, shall be personally liable for payment or performance under this Lease, it being acknowledged that Landlord's exclusive rights and remedies hereunder shall be limited to Tenant's interest in this Lease and the Improvements and any other asset of Tenant and, to the extent provided for in Section 10.2, for the termination of this Lease and re-entry and possession of the Property. No deficiency judgment shall be sought or obtained against Tenant or any partner, officer, director, shareholder, member or manager of Tenant, nor any employee or agent of any of the foregoing (collectively, "Exculpated Parties") for any amount due under this Lease; provided, however, that, except as hereinafter provided in this Section 18.02, nothing contained herein shall either relieve the Exculpated Parties from personal liability and responsibility, or limit Landlord's other rights and remedies against the Tenant hereunder, either at law or in equity: (i) for fraudulent acts; (ii) for waste committed by Tenant with respect to the Real Estate or the Project, or any part thereof; (iii) for insurance proceeds and condemnation awards received by Tenant and not turned over to Landlord or used by Tenant for restoration or repair of the Property to the extent required under this Lease or the REA; and (iv) for any rents or other income from the Tenant Property received by Tenant after an Event of Default under this Lease and not applied to the fixed and operating expenses of the Project in accordance with the REA. Notwithstanding the preceding sentence, if Tenant is a limited partnership, the liability of a limited partner of Tenant shall be limited to extent provided in the Revised Uniform Limited Partnership Act (805 ILCS 210), or any successor thereto.

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## ARTICLE 19

[Intentionally Omitted.]

## ARTICLE 20

[Intentionally Omitted.]

## ARTICLE 21

[Intentionally Omitted.]

## ARTICLE 22

### Hazardous Materials

22.01 **Definitions.** As used herein, the term "Hazardous Materials" shall mean and include any hazardous, toxic or dangerous waste, substance or material defined as such in or for purposes of any of the Environmental Laws.

22.02 **Prohibition Against Hazardous Materials.** Tenant shall not cause any Hazardous Material to be generated, released, stored, buried or deposited over, beneath, in or on (or used in the construction of) the Real Estate or the Project, or any part thereof, from any source whatsoever, other than in accordance with the Environmental Agreement, the applicable NFR Letters and applicable Environmental Laws. Except for Excluded Environmental Conditions, Tenant shall not permit any Hazardous Material to be generated, released, stored, buried or deposited over, beneath, in or on (or used in the construction of) the Real Estate or the Property, or any part thereof, from any source whatsoever, other than in accordance with the Environmental Agreement, the applicable NFR Letters and applicable Environmental Laws.

22.03 **Environmental Agreement.** The Environmental Agreement sets forth the agreement of the parties with respect to any Hazardous Materials present on the Real Estate on the date of this Lease.

22.04 **Indemnity.** The indemnification obligations of Tenant with respect to environmental matters are set forth in the Environmental Agreement. Accordingly, the provisions of this Section 22.04 apply to each Tenant other than Tenant. Tenant shall indemnify, defend and hold harmless Landlord's Protected Persons, and any current or former officer, director, employee or agent of Landlord (collectively, the "Indemnitees") from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way

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related to: (i) a violation of Section 22.02; (ii) any violation of an NFR Letter caused by Tenant or any employee, agent or contractor of Tenant; or (iii) any exacerbation of a pollution condition caused by Tenant or any employee, agent or contractor of Tenant; provided, however, that Tenant's obligations under this Section 22.04 shall not apply to Excluded Environmental Conditions.

22.05 **Survival.** Tenant's obligations under this Article 22 shall survive the expiration or termination of this Lease.

**ARTICLE 23****THE REA**

23.01 **Order by Landlord.** Landlord agrees to join in the REA for the limited purpose of acknowledging and agreeing that: (a) in the event of the termination of this Lease, the REA will continue to be in effect with respect to the Land and the Improvements for the benefit of the Mixed Use Residential Property and the Mixed Use Residential Lease Tenant; (b) in the event of the termination of this Lease, Landlord shall be liable for the obligations of Tenant under the REA that arise or relate to the period from and after the effective date of the termination of this Lease to, but not including, the date that a replacement ground lease for the Land and Improvements commences; and (c) the tenant under each replacement ground lease shall be deemed to be a party to the REA, and shall have the rights, powers, privileges, duties, obligations and liabilities of Tenant thereunder that arise or relate to the period from and after the date such replacement ground lease commences, and such replacement ground lease shall so provide.

23.02 **Amendments.** Except as hereinafter provided in this section, there shall be no amendment to the REA without Landlord's prior written consent, and any amendment without such consent shall be null and void and of no force or effect. No consent of Landlord shall be required for an amendment: (a) to correct clerical or typographical errors; (b) to revise and/or add to the exhibits attached to the REA to reflect "as built" conditions; (c) to grant additional easements that are necessary for the maintenance, operation or administration of the Project, or any portion thereof, provided that such additional easements do not impose financial obligations or undue burdens on the Residential Tenant; or (d) to provide for additional services to be furnished by the Residential Tenant or the Commercial Tenant, provided that such additional services do not impose financial obligations or undue burdens on the Residential Tenant. Tenant shall provide Landlord with a copy of any amendment for which Landlord's consent is not required as set forth in (a) through (d) above. Tenant shall give Landlord written notice of each proposed amendment to the REA that requires Landlord's consent, which notice shall include a copy of the proposed amendment and a request that Landlord consent thereto on or before the date that is thirty (30) days after the date of such notice. Each such notice shall be given to Landlord at the addresses required for notices under this Lease. Landlord shall not unreasonably withhold, condition or delay its consent to any amendment to the REA for which Landlord's consent is required. Within thirty (30) days after receipt of Tenant's notice, Landlord shall provide Landlord's written consent to the proposed amendment or written notice to Tenant of the reasons for which Landlord is withholding or conditioning its consent. If Landlord fails to respond in writing to a request for consent to any such amendment within such thirty (30) day

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period, Landlord's consent thereto shall be deemed to be given if such request includes a notice to Landlord of such deemed consent if Landlord fails to respond within such thirty (30) day period.

23.03 **Performance by Tenant and Subtenants.** Tenant acknowledges that the performance of its obligations under the REA is vital to the proper operation and maintenance of the Project. Accordingly, Tenant agrees to fully perform its obligations under the REA in a timely manner, and to cause all subtenants to comply with the provisions thereof.

[Signatures appear on the following pages.]

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**IN WITNESS WHEREOF**, this Lease is executed as of the date first written above by the duly authorized officers or representatives of the parties hereto.

**LANDLORD:**

**CHICAGO HOUSING AUTHORITY**, an Illinois municipal corporation

By:   
Terry Peterson  
Chief Executive Officer

**TENANT:**

Roosevelt Square I Limited Partnership, an Illinois limited partnership

By: Roosevelt Square I LLC, an Illinois limited liability company, its sole General Partner

By: LR ABLA LLC, a Delaware limited liability company, its sole Manager

By: LR Development Company LLC, a Delaware limited liability company, its Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Property of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  )  
  )     SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the Vice President of LR Development Company LLC, a Delaware limited liability company, sole Member of LR ABLA LLC, a Delaware limited liability company, sole Manager of Roosevelt Square I LLC, an Illinois limited liability company, which is the General Partner of Roosevelt Square I Limited Partnership, an Illinois limited partnership ("Tenant"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President of LR Development Company LLC, he signed and delivered the said instrument pursuant to authority duly given and as his free and voluntary act, and as the free and voluntary act and deed of Tenant for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

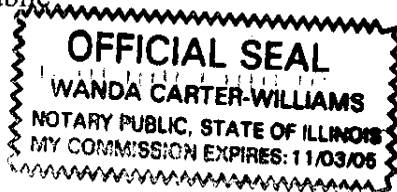
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS     )  
  )  
  )     SS.  
COUNTY OF COOK     )

I, Wanda Carter-Williams, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Terry Peterson, the Chief Executive Officer of Chicago Housing Authority, an municipal corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Executive Officer, appeared before me this day in person and acknowledged that he or she signed and delivered said instrument as his or 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 official seal this 9th day of September, 2004.

Wanda Carter-Williams  
Notary Public



# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Lease is executed as of the date first written above by the duly authorized officers or representatives of the parties hereto.

**LANDLORD:**

**CHICAGO HOUSING AUTHORITY**, an Illinois municipal corporation

By:

\_\_\_\_\_  
Terry Peterson  
Chief Executive Officer

**TENANT:**

Roosevelt Square I Limited Partnership, an Illinois limited partnership

By: Roosevelt Square I LLC, an Illinois limited liability company, its sole General Partner

By: LR ABLA LLC, a Delaware limited liability company, its sole Manager

By: LK Development Company LLC, a Delaware limited liability company, its Sole Member

By: Bradford T. White  
Name: BRADFORD T. WHITE  
Its: VP

Property of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  )     SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Bradford J. White, personally known to me to be the Vice President of LR Development Company LLC, a Delaware limited liability company, sole Member of LR ABLA LLC, a Delaware limited liability company, sole Manager of Roosevelt Square I LLC, an Illinois limited liability company, which is the General Partner of Roosevelt Square I Limited Partnership, an Illinois limited partnership ("Tenant"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President of LR Development Company LLC, he signed and delivered the said instrument pursuant to authority duly given and as his free and voluntary act, and as the free and voluntary act and deed of Tenant for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 1st day of September, 2004.



Debra A. Kleben  
Notary Public

STATE OF ILLINOIS     )  
  )     SS.  
COUNTY OF COOK     )

I, \_\_\_\_\_, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Terry Peterson, the Chief Executive Officer of Chicago Housing Authority, an municipal corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Executive Officer, appeared before me this day in person and acknowledged that he or she signed and delivered said instrument as his or 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 official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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



**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTIONS****I. Legal Description of the Real Estate**

Lot 15 in Plat 1 Roosevelt Square Subdivision, a Resubdivision of Buckley's Subdivision, part of Macalister's Subdivision, and Subdivision of Block 14 of Vernon Park Addition to Chicago, Part of the East Half of the Southwest Quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, City of Chicago, County of Cook, State of Illinois, according to the Plat thereof recorded May 27, 2004 as Document No. 0414831142.

Permanent Index No.: 17-17-323-001

Property Address: 1200-1208 West Taylor Street, Chicago, Illinois

**I. Legal Description of the Land**

All that portion of the following described premises lying above Elevation 14.50 and beneath Elevation 26.83 City of Chicago Datum:

Part of Lot 15 as designated upon Plat 1 Roosevelt Square, a resubdivision of part of Buckley's Subdivision, Part of Macalister's Subdivision and the Subdivision of Block 14 of Vernon Park Addition to Chicago lying within the East Half of the Southwest Quarter of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian, bounded and described as follows to wit: Commencing at the Southeast corner of said Lot 15; thence North 89°58'27" West along the South line of said Lot, a distance of 10.63 to a Point; thence North 45°00'08" West, a distance of 3.67 to the Point of Beginning of this description; thence North 44°59'52" East, a distance of 5.10 to a Point; thence Northeasterly along a non-tangent curve to the right said curve having a radius of 3.15 feet and a central angle of 180°00'00" (the chord of which bears North 44°59'52" East, a distance of 6.29 feet); thence North 44°59'52" East, a distance of 5.10 to a Point; thence North 45°00'08" West, a distance of 2.00 to a Point; thence South 44°59'52" West, a distance of 0.18 to a Point; thence North 45°00'08" West, a distance of 0.61 to a Point; thence North 00°00'08" West, a distance of 31.26 to a Point; thence South 89°59'52" West, a distance of 11.46 to a Point; thence North 00°00'08" West, a distance of 2.99 to a Point; thence South 89°59'52" West, a distance of 29.17 to a Point; thence North 00°00'08" West, a distance of 12.01 to a Point; thence South 89°59'52" West, a distance of 6.18 to a Point; thence South 00°00'08" East, a distance of 2.47 to a Point; thence South 89°59'52" West, a distance of 8.58 to a Point; thence North 00°00'08" West, a distance of 2.47 to a Point; thence South 89°59'52" West, a distance of 38.95 to a Point; thence South 00°00'08" East, a distance of 57.67 to a Point; thence North 89°59'52" East, a distance of 82.93 to a Point; thence South 45°00'08" East, a distance of 0.61 to a Point; thence South 44°59'52" West, a distance of 0.18 to a Point; thence South 45°00'08" East, a distance of 2.00 to the Point of Beginning. Situated in the County of Cook,

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State of Illinois.

Permanent Index No.: 17-17-323-001

Property Address: 1200-1208 West Taylor Street, Chicago, Illinois

**III. Legal Description of the Mixed-Use Residential Land**

Lot 15 in Plat 1 Roosevelt Square Subdivision, a Resubdivision of Buckley's Subdivision, part of Macalister's Subdivision, and Subdivision of Block 14 of Vernon Park Addition to Chicago, Part of the East Half of the Southwest Quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, City of Chicago, County of Cook, State of Illinois, according to the Plat thereof recorded May 27, 2004 as Document No. 0414831142; less and except that part of Lot 15 described below:

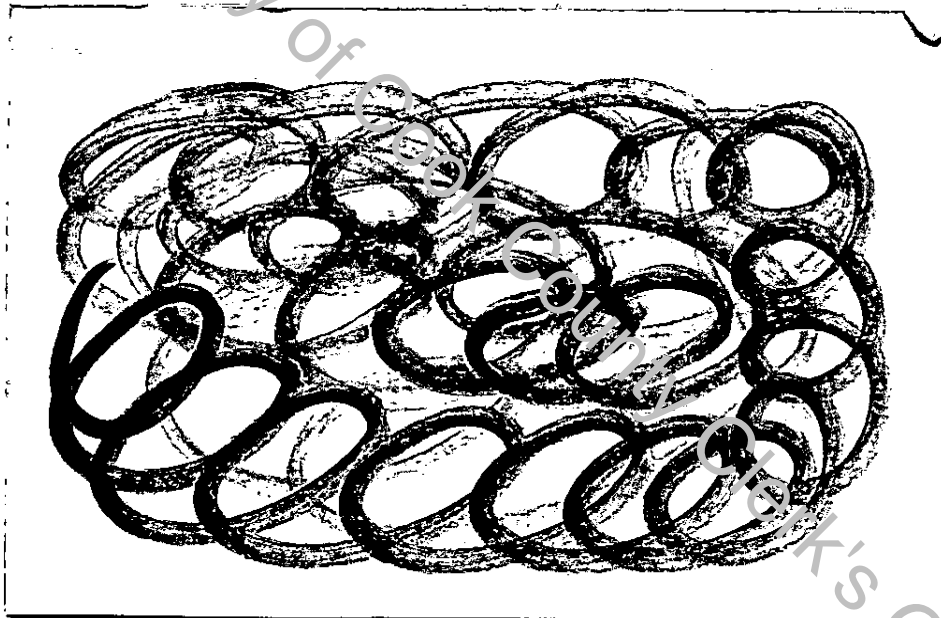
All that portion of the following described premises lying above Elevation 14.50 and beneath Elevation 26.83 City of Chicago Datum:

Part of Lot 15 as designated upon Plat 1 Roosevelt Square, a resubdivision of part of Buckley's Subdivision, Part of Macalister's Subdivision, and the Subdivision of Block 14 of Vernon Park Addition to Chicago lying within the East Half of the Southwest Quarter of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian, bounded and described as follows to wit: Commencing at the Southeast corner of said Lot 15; thence North 89°58'27" West along the South line of said Lot, a distance of 10.63 to a Point; thence North 45°00'08" West, a distance of 3.67 to the Point of Beginning of this description; thence North 44°59'52" East, a distance of 5.10 to a Point; thence Northeasterly along a non-tangent curve to the right said curve having a radius of 3.15 feet and a central angle of 180°00'00" (the chord of which bears North 44°59'52" East, a distance of 6.29 feet); thence North 44°59'52" East, a distance of 5.10 to a Point; thence North 45°00'08" West, a distance of 2.00 to a Point; thence South 44°59'52" West, a distance of 0.18 to a Point; thence North 45°00'08" West, a distance of 0.61 to a Point; thence North 00°00'08" West, a distance of 31.26 to a Point; thence South 89°59'52" West, a distance of 11.46 to a Point; thence North 00°00'08" West, a distance of 2.99 to a Point; thence South 89°59'52" West, a distance of 29.17 to a Point; thence North 00°00'08" West, a distance of 12.01 to a Point; thence South 89°59'52" West, a distance of 6.18 to a Point; thence South 00°00'08" East, a distance of 2.47 to a Point; thence South 89°59'52" West, a distance of 8.58 to a Point; thence North 00°00'08" West, a distance of 2.47 to a Point; thence South 89°59'52" West, a distance of 38.95 to a Point; thence South 00°00'08" East, a distance of 57.67 to a Point; thence North 89°59'52" East, a distance of 82.93 to a Point; thence South 45°00'08" East, a distance of 0.61 to a Point; thence South 44°59'52" West, a distance of 0.18 to a Point; thence South 45°00'08" East, a distance of 2.00 to the Point of Beginning. Situated in the County of Cook, State of Illinois.

Permanent Index No.: 17-17-323-001

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Property Address: 1200-1208 West Taylor Street, Chicago, Illinois



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## EXHIBIT B

### PERMITTED EXCEPTIONS

1. General real estate taxes not delinquent.
2. Rights of public and quasi-public utilities in and to the land for maintenance of the underground and aboveground utility facilities located in, on and under the land.

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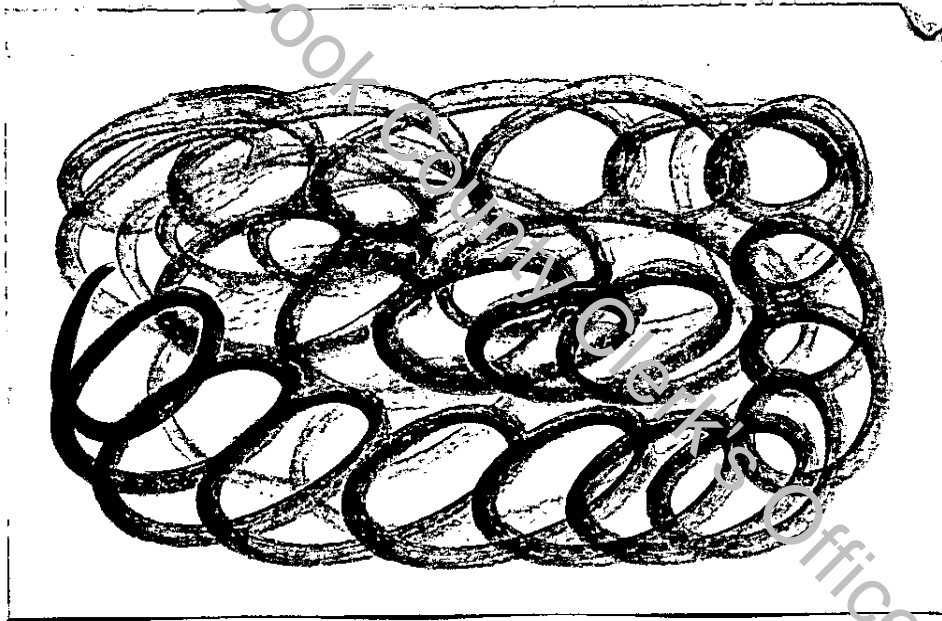


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## EXHIBIT C

### INITIAL LEASEHOLD MORTGAGEES

1. Bank of America, N.A.  
Mail Code M01-076-03-06  
7800 Forsyth, Suite 350  
Clayton, Missouri 63105



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## EXHIBIT D

### ENCUMBRANCES

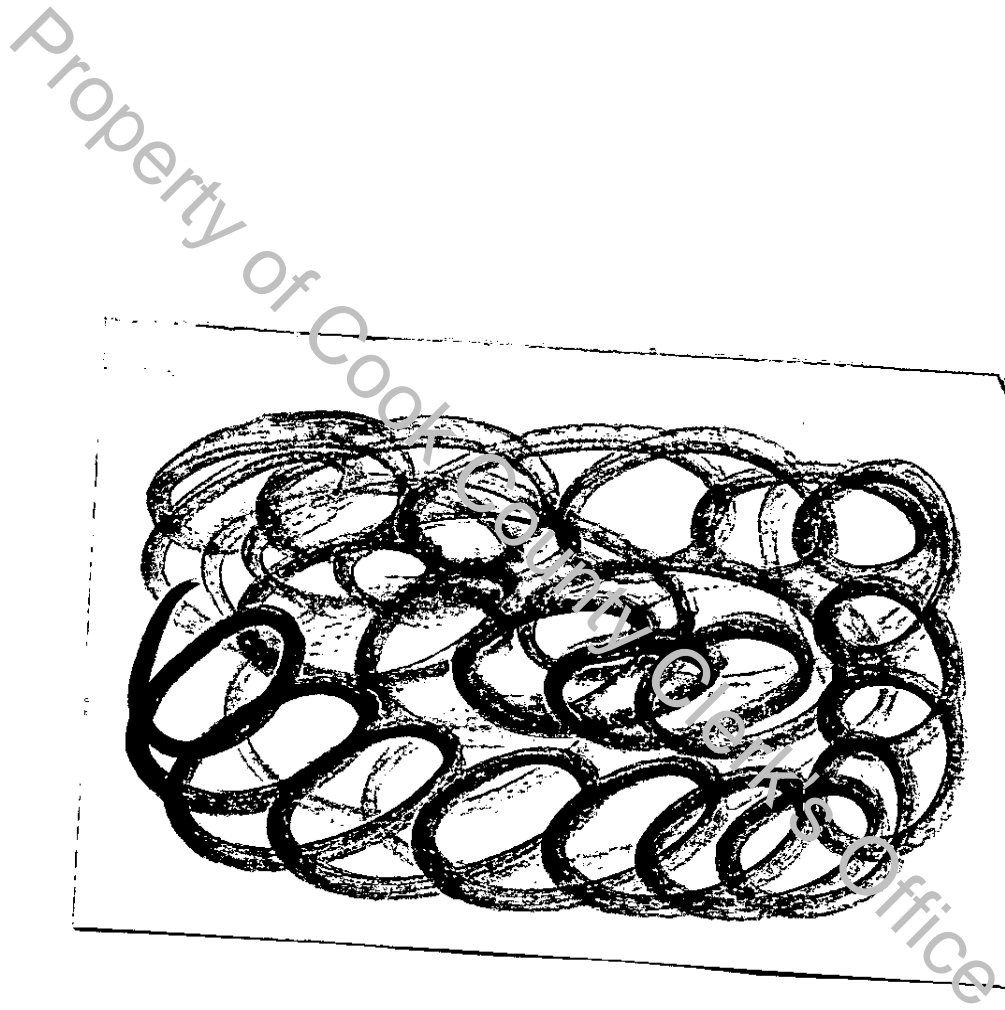
1. Mortgages, Assignments of Leases, Assignments of Rent and UCC Financing Statements securing the Initial Leasehold Mortgages described on Exhibit C.
2. The REA.
3. The Declaration of Restrictive Covenants.

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## EXHIBIT E

[INTENTIONALLY OMITTED.]



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## EXHIBIT F

### INSURANCE REQUIREMENTS

Subject to the provisions of Section 7.06, Tenant shall procure and maintain, or cause to be procured and maintained, at all times during the term of this Lease, the types of insurance specified below:

#### I. CONSTRUCTION INSURANCE REQUIREMENTS

Except as may be otherwise specifically provided herein and/or in any document evidencing or securing a CHA Mortgage Loan (a "CHA Loan Document"), Tenant shall, prior to the date of this Lease, procure and maintain, directly or through Tenant's general contractor for the construction of the Project (the "General Contractor"), at all times the types of insurance specified below in order to protect Landlord, its Commissioners, Board, officers, agents and employees, and the Receiver from the acts, omissions and negligence of Tenant, any general contractor (including without limitation the General Contractor), any subcontractor, and their respective officers, officials, subcontractors, shareholders, partners, joint venturers, members, agents or employees. The insurance carriers used must be authorized to conduct business in the State of Illinois and, except where specially provided otherwise, shall have a BEST Rating of not less than an "A-XII". The insurance provided shall cover all operations under this Lease, whether performed by Tenant, any general contractor (including without limitation the General Contractor) or by any subcontractor.

##### A. Required Insurance Coverages for Subcontractors:

1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
2. Commercial Liability Insurance Commercial Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Tenant's and the General Contractor's respective officers, employees, agents, subcontractors, invitees and guests and their personal property. Products/Completed Operations to be maintained in full force and effect for a period of two (2) years following final completion of the Project. Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.



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3. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for the Project, Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.
  4. Professional Liability (Errors & Omissions). When any architects of record and/or lead architectural firm for the Project, engineers of record, construction managers, property managers, security companies or other professional consultants perform work in connection with the Project, Professional Liability insurance covering acts, errors or omissions shall be maintained with limits of not less than Five Million (\$5,000,000) per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of Services under this Lease. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.
  5. Lead/Asbestos Abatement Liability. When any lead and/or asbestos abatement liability work is performed in connection with the contract, Lead/Asbestos Abatement Liability Insurance shall be provided with limits of not less than \$5,000,000 per occurrence insuring bodily injury, property damage and environmental clean-up. Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.
- B. Required Insurance Coverages for the General Contractor:
1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
  2. Commercial Liability Insurance. Commercial Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Per Project aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Tenant's and the General Contractor's respective officers, employees, agents, subcontractors, invitees and guests and their personal property.

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Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.

3. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for the Project, Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.

4. Excess Liability. The General Contractor shall secure Excess Liability insurance in the amount of not less than Ten Million Dollars (\$10,000,000) on a per development basis with an endorsement specifically dedicating the not less than Ten Million Dollars (\$10,000,000) to the Project. This coverage will be excess of the General Liability, Auto Liability and Employers Liability coverages. The General Contractor's insurance coverage will be excess of the insurance provided by any subcontractor with which it contracts to provide services for the Project. Landlord, the Receiver, and Tenant shall be endorsed as additional insureds on the General Contractor's Excess Liability policy.

C. Required Insurance Coverages for Tenant:

1. Excess Liability. Tenant shall secure Excess Liability insurance in the amount of not less than Ten Million Dollars (\$10,000,000) on a per development basis with an endorsement specifically dedicating the not less than Ten Million Dollars (\$10,000,000) to the Project. This coverage shall be excess of the General Liability, Auto Liability and Employers Liability coverages. Tenant's excess coverage shall be excess over the General Contractor's policy and include the General Contractor's stipulation of being excess of the insurance provided by any subcontractor providing services for the Project. Landlord and the Receiver shall be endorsed as additional insureds on this insurance. Tenant shall provide proof of this insurance to Authority.
2. Contractors Pollution Liability. If the scope of work covers working with or around hazardous materials or pollutants, Tenant shall purchase, directly or through the General Contractor, a separate Contractor's Pollution Liability insurance policy, on an occurrence basis (claims made is not acceptable), covering any bodily injury, liability, and property damage liability, arising out of pollutants including hazardous materials such as asbestos, lead, etc. or contaminated soil, including while in transit to a permanent disposal facility which may arise from activities under or

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incidental to the contract, whether such activities be by Tenant or by the General Contractor or any of its subcontractors or by anyone directly or indirectly employed or otherwise contracted by any of them. This policy shall be maintained with limits of not less than Five Million Dollars (\$5,000,000) per occurrence. Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.

3. Workers Compensation and Employer's Liability. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
  4. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for the Project, Tenant shall provide, directly or through the General Contractor, Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.
  5. Builders Risk. Tenant shall provide, directly or through the General Contractor, an All Risk Builders Risk Insurance in accordance with HUD's 5370 form (paragraph 36b), covering improvements, betterments, and/or repairs, at replacement cost, for all materials, supplies, equipment, machinery and fixtures that are or will be part of the Project.
  6. Railroad Protective Liability Insurance. When, in connection with the Project, any work is to be done adjacent to or on property owned by a railroad or public transit entity, Tenant shall procure and maintain, or cause to be procured and maintained, with respect to the operations that Tenant, a general contractor or any subcontractor shall perform, railroad protective liability insurance in the name of such railroad or public transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence, combined single limit, and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.
- D. Evidence of Insurance. Prior to the date of this Lease, and prior to the commencement of construction activities, Tenant directly or through the General Contractor shall furnish Landlord, for record keeping purposes only, with satisfactory evidence that Tenant, the General Contractor and all subcontractors have the insurance coverages set forth above. Tenant shall ensure, or shall cause the General Contractor to ensure, that all subcontractors comply with Landlord's

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minimum coverage requirements. It is the responsibility of Tenant to secure and maintain, or to cause the General Contractor to secure and maintain, proof of coverage for all entities that it contracts with that provide services to the Project. Proof of insurance records must be available for review by Landlord within twenty-four (24) hours of being requested. Said policies shall not be modified, canceled, non-renewed, or permitted to lapse until final completion and approval of the performance of the General Contractor's contract and shall contain a provision that the policy will not be modified, canceled non-renewed or permitted to lapse until not less than 30 days after Landlord has received written notice, by certified or registered mail, that the modification, cancellation, non-renewal or lapse of such policy is contemplated.

**THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO TENANTS COMMENCING WORK UNDER THIS LEASE AND RECEIVING NOTIFICATION FROM LANDLORD TO PROCEED.**

- E. Tenant shall advise, and cause each general contractor for the Project to advise, all insurers of the provisions of this Lease regarding insurance. The failure of Tenant or any general contractor to notify insurers of such provisions shall not relieve Tenant from its insurance obligations under this Lease. Nonfulfillment of the insurance provisions of this Lease shall constitute a breach of the General Contractor's contract and of this Lease and Landlord retains the right to stop work until proper evidence of insurance is provided.
- F. Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by Landlord's Risk Management Department, with a copy to Landlord's designated representative under Section 1.7 of the Development Agreement, prior to expiration of insurance coverage. At Landlord's option, non-compliance may result in one or more of the following actions: (1) the Receiver or Landlord may purchase insurance on behalf of Tenant and charge back all costs to Tenant; (2) the General Contractor may be immediately removed from the property and its contract revoked; or (3) all payments due Tenant and the General Contractor may be held until Tenant has complied with the contract. The receipt of any certificate by Landlord or the Receiver does not constitute agreement by Landlord or the Receiver that the insurance requirements in this Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of this Lease. Tenant shall ensure, or cause the General Contractor to ensure, that all subcontractors comply with Landlord's minimum coverage requirements. It is the responsibility of Tenant to secure and maintain, or cause the General Contractor to ensure or maintain, proof of coverage for all entities that it contracts with that provide services to the Project. Proof of insurance records must be available for review by Landlord within twenty-four (24) hours of being requested.
- G. If any of the required insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the General



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Contractor's contract, and the Certificate of Insurance shall state the coverage is "claims-made" and also the retroactive date. Any extended reporting period premium (tail coverage) shall be paid by Tenant, directly or through the General Contractor. It is further agreed that all insurance policies required hereunder shall provide Landlord with not less than a thirty (30) days notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the retroactive date, cancellation and/or non-renewal.

- H. Tenant shall provide to Landlord, prior to the date of this Lease and upon each renewal or replacement of a policy required hereunder, and in any event not less than annually, a certified copy of the insurance policies required hereunder and all endorsements.
- I. Tenant shall require, directly or through the General Contractor, that all subcontractors performing work for the Project carry the insurance required herein. Tenant or the General Contractor may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section "A" above. Evidence of such coverage shall be submitted to Landlord for record keeping purposes only.

## II. TENANT'S INSURANCE REQUIREMENTS

Tenant agrees to procure and maintain, or cause to be procured and maintained, at all times during the term of this Lease the types of insurance specified below in order to protect Landlord, its Commissioners, Board, officers, agents and employees, and the Receiver from the acts, omissions and negligence of Tenant, any general contractor (including without limitation the General Contractor), any subcontractor, and their respective officers, officials, subcontractors, shareholders, partners, joint venturers, members, agents or employees. The insurance carriers used by Tenant must be authorized to conduct business in the State of Illinois and shall have a BEST Rating of not less than an "A-XII". The insurance provided shall cover all operations under this Lease, whether performed by Tenant, by any general contractor (including without limitation the General Contractor) or by any subcontractor.

- A. Required Insurance Coverages:
1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
  2. All-Risk Property Damage: Tenant shall obtain an all-risk property policy in the amount of the full replacement value, including improvements and betterments, covering damage to or loss of the Property. The insurance shall include the following extensions: business interruption/loss of rents,

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and boiler and machinery, if applicable. The policy shall list the Landlord as loss payee.

3. Commercial Liability Insurance. Commercial Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Per Project aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Tenant's officers, employees, agents, subcontractors, invitees and guests and their personal property. Landlord and the Receiver shall be endorsed as additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.
4. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and hired) are used in connection with the services to be performed, Tenant shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL for bodily injury and property damage. Landlord and the Receiver shall be endorsed as additional insureds on Tenant's policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to Landlord.
5. Professional Liability. When any architects of record and/or lead architectural firm for the Development, engineers of record, construction managers, property managers or other professional consultants perform work in connection with this Lease, Professional Liability insurance covering acts, errors or omissions shall be maintained with limits of not less than Five Million Dollars (\$5,000,000) per occurrence. Coverage extensions shall include Blanket Contractual Liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of services under this Lease. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.
6. Blanket Crime. When any service agreement requires the handling of funds or valuable papers, Tenant shall provide Blanket Crime coverage covering all persons liable under this Lease, against loss by dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery and other related crime risks. The policy limit shall be written to cover losses in the amount of the maximum monies collected, received and/or in Tenant's care at any given time.

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7. Excess Liability coverage. If applicable, is to follow form of the Primary Insurance requirements outlined above.

B. Related Requirements

1. Tenant shall advise all insurers of the provisions of this Lease regarding insurance. The failure of Tenant to notify insurers of the such provisions shall not relieve Tenant from its insurance obligations under this Lease. Nonfulfillment of the insurance provisions shall constitute a breach of this Lease and Landlord retains the right to stop work until proper evidence of insurance is provided.
2. Tenant shall furnish the Chicago Housing Authority, Risk Management Department, 626 West Jackson Blvd., Fifth Floor, Chicago, Illinois 60661, original Certificates of Insurance evidencing the required coverages to be in force on the date of this Lease. In addition, copies of the endorsement(s) adding Landlord and the Receiver to the policy as an additional insureds is required.
3. Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Risk Management Department prior to expiration of insurance coverage. At Landlord's option, non-compliance may result in one or more of the following actions: (1) Landlord may purchase insurance on behalf of Tenant and charge back all costs to Tenant; (2) all payments due Tenant may be held until Tenant has complied with this Lease; or (3) Tenant may be assessed Five Hundred Dollars (\$500) for every day of non-compliance. The receipt of any certificate does not constitute agreement by Landlord that the insurance requirements in this Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of this Lease. The insurance policies shall provide for thirty (30) days written notice to be given to Landlord in the event coverage is substantially changed, canceled or non-renewed.
4. If any of the required insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of this Lease and the Certificate of Insurance shall state the coverage is "claims-made" and also the retroactive date. Tenant shall maintain coverage for the duration of this Lease. Any extended reporting period premium (tail coverage) shall be paid by Tenant. Tenant shall provide to Landlord, annually, a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that Tenant shall provide Landlord a thirty (30) days notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the retroactive date, cancellation and/or non renewal.

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5. Tenant shall require any general contractor to require all subcontractors to carry the insurance required herein or Tenant may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section "A" above.

Property of Cook County Clerk's Office



**UNOFFICIAL COPY****EXHIBIT G****Legal Description for ABLA Phase 1 Rental (inclusive of retail space)**

North of Parcel

Lots 1, 3, 5, 7, 10, 12, 13, 14, 15, 19, 23, 28, 29, and 31 in Plat 1 Roosevelt Square Subdivision, a Resubdivision of Buckley's Subdivision, part of Macalister's Subdivision, and Subdivision of Block 14 of Vernon Park Addition to Chicago, Part of the East Half of the Southwest Quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, City of Chicago, County of Cook, State of Illinois, according to the Plat thereof recorded May 27, 2004 as Document No. 0414831142.

PINS: 17-17-323-001 and 17-17-334-001

COMMON ADDRESSES:

LOT 1	904 S. RACINE AVE.
LOT 1	906 S. RACINE AVE.
LOT 1	910 S. RACINE AVE.
LOT 3	1217 ARTHINGTON STREET
LOT 5	905 S. LYTTLE ST.
LOT 7	909 S. LYTTLE ST.
LOT 10	1224 AND 1226 W. TAYLOR STREET
LOT 12	1218-1220 W. TAYLOR STREET
LOT 13	1214-1216 W. TAYLOR STREET
LOT 14	1210-1212 W. TAYLOR STREET
LOT 15	924 S. RACINE AVE.
LOT 15	1200 - 1208 W. TAYLOR STREET
LOT 19	1026 S. RACINE AVE.
LOT 19	1030 S. RACINE AVE.
LOT 23	1023 S. LYTTLE STREET
LOT 23	1027 S. LYTTLE STREET
LOT 28	1202 - 1208 W. GRENSHAW AVE.
LOT 29	1201 - 1207 W. GRENSHAW AVE.
LOT 31	1214 AND 1222 W. ROOSEVELT ROAD

AND

South of Parcel (CONTINUED ON NEXT PAGE)

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## South of Parcel

Lots 34, 35, 37, 43, 45, 46, 49, 53, 55, 58, and 62 in Plat 2 Roosevelt Square Subdivision, a Resubdivision of Blocks 6, 7, and Part of 8 of Henry Waller's subdivision, Part of the West Half of the Northeast Quarter of Section 20, Township 39 North, Range 14 East of the Third Principal Meridian, City of Chicago, County of Cook, State of Illinois, according to the Plat thereof recorded May 27, 2004 as Document No. 0414831143.

PINS: 17-20-200-062, 17-20-200-063 and 17-20-207-045

## COMMON ADDRESSES:

LOT 34	1133 W. ROOSEVELT ROAD
LOT 35	1105 W. ROOSEVELT ROAD
LOT 35	1111 AND 1119 W. ROOSEVELT ROAD
LOT 37	1220 BLUE ISLAND AVE.
LOT 43	1120 W. WASHBURNE AVE.
LOT 43	1124 W. WASHBURNE AVE.
LOT 45	1146 W. WASHBURNE AVE.
LOT 45	1148 W. WASHBURNE AVE.
LOT 45	1152 W. WASHBURNE AVE.
LOT 45	1156 W. WASHBURNE AVE.
LOT 46	1157 W. WASHBURNE AVE.
LOT 49	1133 W. WASHBURNE AVE.
LOT 49	1135 - 1141 W. WASHBURNE AVE.
LOT 49	1145 W. WASHBURNE AVE.
LOT 53	1115 W. WASHBURNE AVE. (PLAYGROUND)
LOT 55	1248 BLUE ISLAND AVE.
LOT 55	1250 BLUE ISLAND AVE.
LOT 58	1264 BLUE ISLAND AVE.
LOT 58	1266 BLUE ISLAND AVE.
LOT 62	1140 W. 13 <sup>TH</sup> STREET
LOT 62	1142 W. 13 <sup>TH</sup> STREET