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Eugene "Gene" Moore
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AGREEMENT FOR THE
SALE AND REDEVELOPMENT
OF LAND

(The Above Space For Recorder's Use Only)

This **AGREEMENT FOR THE SALE AND REDEVELOPMENT OF LAND** ("Agreement") is made on or as of the 1st day of December, 2004, by and between the **CITY OF CHICAGO**, an Illinois municipal corporation ("City"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 and **SMITHFIELD PROPERTIES XX, L.L.C.**, an Illinois limited liability company ("Developer"), whose offices are located at 400 West Huron Street, Chicago, Illinois 60610.

RECITALS

WHEREAS, the City Council of the City, by ordinance adopted May 26, 2004 (C.J.P. 24718-24770) ("Ordinance"), authorized the sale and conveyance to Developer of that certain real parcel of land located at 151 North State Street, Chicago, which parcel is legally described on Exhibit "A" attached hereto ("Property"); and

WHEREAS, the Property is located in a tax increment financing ("TIF") redevelopment area known as the Central Loop TIF Redevelopment Project Area ("Project Area"); and

WHEREAS, upon the acquisition of the Property from the City, Developer shall demolish the existing building and other improvements on the Property and thereafter shall develop and construct on the Property a thirty-two (32) story, mixed use building consisting of residential, retail and parking uses ("Project") in accordance with the terms and conditions of the Agreement, all as more fully described herein; and

WHEREAS, the development and construction of the Project and the uses of the Property are consistent with the Central Loop TIF Redevelopment Plan ("Plan") for the Project Area;

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NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them hereby covenant and agree with the other as follows:

SECTION 1. INCORPORATION OF RECITALS/COVENANTS, REPRESENTATIONS, AND WARRANTIES.

A. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

B. Covenants, Representations and Warranties of Developer. To induce the City to execute the Agreement and perform the obligations of the City hereunder, Developer hereby covenants, represents and warrants to the City as follows:

- (i) Developer is a duly organized and existing limited liability company in good standing under the laws of the State of Illinois. As of the execution date of the Agreement, the members of Developer (singularly, "Member" and collectively, "Members") are Level 5 Trust and Orchard Jerome, L.L.C. The rights and responsibilities of the Members are further described in that certain operating agreement ("LLC Agreement") dated as of January 31, 2003, a copy of which has been delivered to the Department of Planning and Development of the City ("DPD"). The Members agree that the LLC Agreement shall not be materially modified or amended without the express written consent of the DPD.
- (ii) No litigation or proceedings are pending or, to the best of Developer's knowledge, are threatened against Developer which could: (1) affect the ability of Developer to perform its obligations pursuant to and as contemplated by the terms and provisions of the Agreement; or (2) materially affect the operation or financial condition of Developer.
- (iii) The execution, delivery and performance of Developer of the Agreement have not constituted or will not, upon the giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which Developer is a party or may be bound or affected, or a violation of any law or court order which may affect the Property, any part thereof, any interest therein or use thereof.
- (iv) The parties executing the Agreement on behalf of Developer have been duly authorized by all appropriate action to enter into, execute and deliver the Agreement and perform the terms and obligations contained therein.
- (v) To the best of its knowledge and as of the date of the construction permit application for the Project, the development of the Project and the intended use of the Property by Developer does not and shall not violate: (1) any written statute, law, regulation,

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rule, ordinance or executive or judicial order of any kind as available to the general public (including, without limitation, zoning (except for the off-street loading requirements, compliance for which will be satisfied through a Business Residential Planned Development designation) and building laws, ordinances, codes or approvals and environmental protection laws or regulations); or (2) any building permit, restriction of record or any agreement affecting the Property or any part thereof.

- (vi) Except as otherwise provided in the Agreement, prior to the issuance of the Certificate, Developer shall not, without the prior written consent of the DPD (as hereafter defined) which consent shall not unreasonably be withheld: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (except as provided for in Section 12); (3) grant, suffer or permit any lien, claim, or encumbrance upon the Property or any portion thereof (unless Developer has taken such action as to cause the title company to insure over any title encumbrances caused by such liens or claims); (4) permit or suffer any levy, attachment, claim or restraint to be made affecting the Property or any part thereof; or (5) enter into any transaction not in the ordinary course of business of Developer which materially or adversely affects Developer's ability to pay its debts as such may then exist or mature.
- (vii) Developer has and shall maintain all government permits, certificates and consents necessary to conduct its business and shall obtain and thereafter maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to construct and complete the Project.
- (viii) Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument relating to the borrowing of money to which such entity is a party or by which such entity or the Property is bound.
- (ix) Developer has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with this Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into this Agreement or any City Contract with Developer in violation of Chapter 2-156-020 of the Municipal Code of Chicago.
- (x) Developer shall develop and construct the Project solely for those uses permitted by this Agreement. Developer shall also provide the leased space to the Local Tenant (as hereinafter defined) in accordance with the provisions of Section 5A of this Agreement.

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- (xi) Developer shall comply with the employment opportunity obligations described in this Agreement.
- (xii) To Developer's knowledge, neither the Developer nor any Affiliate thereof (as defined immediately below) is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List."

"Affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

C. Representations and Warranties of the City. To induce Developer to execute the Agreement and perform the obligations of Developer hereunder, the City hereby represents to Developer that, to the best of its knowledge, on the date of the Agreement:

- (i) The City has full capacity, right, power and authority to sign, deliver and perform the Agreement and all documents to be signed by the City, and all required action and approvals have been duly obtained. The individuals signing the Agreement and all other documents signed or to be signed on behalf of the City are duly authorized to sign on the City's behalf and to bind the City. The Agreement and all documents to be signed by the City are binding upon and enforceable against the City in accordance with their respective terms.
- (ii) Any survey, plans, specifications, drawings, soil reports, warranties, and all other contracts and documents delivered to Developer under the Agreement are correct and complete copies of original documents in the City's possession.
- (iii) After having made due inquiry, the City states that there are no: special assessment, condemnation, environmental, zoning, other land-use regulation proceedings; ownership, tenant, contractor, or supplier disputes; or any other litigation or proceedings which would adversely affect the use and operation of the Property for its intended purpose under the Agreement.

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- (iv) All of the documents executed by the City which are to be delivered to Developer at Closing are duly authorized, executed, and delivered by the City, are legal, valid, and binding obligations of the City, are sufficient to convey title (if they purport to do so), and do not violate any provisions of any agreement to which the City is a party or to which it is subject.
- (v) Between the date of execution of this Agreement and the Closing, the City shall not enter into any contracts, leases or other agreements affecting the Property which will survive the Closing and be binding upon Developer. Any existing leases shall be terminated prior to the Closing and the existing building shall be delivered to Developer in a broom clean condition.
- (vi) Any existing service or employment contracts shall be terminated prior to the Closing.
- (vii) The City has delivered to Developer all studies, reports, plans and other documents concerning the physical condition of the Property which are in its possession or under its control.

D. Survival of Representations and Warranties. Developer agrees that all of its representations and warranties, and the City agrees that all of its representations and warranties, set forth in this Section 1 or elsewhere in the Agreement are true as of the execution date of the Agreement and will be true in all material respects at all times hereafter during the Term of the Agreement, except with respect to matters that will be disclosed in writing and approved by the other party.

SECTION 2. SALE AND PURCHASE PRICE.

Subject to the terms, covenants and conditions of this Agreement, the City agrees to sell the Property to Developer, and Developer agrees to purchase the Property from the City for the amount of Nine Million Five Hundred Eighty Thousand and 00/100 Dollars (\$9,580,000.00) ("Purchase Price") to be paid by certified check or by such other means as shall be satisfactory to the City.

SECTION 3. CONVEYANCE OF PROPERTY.

- (A) Form of Deed. The City shall convey to Developer title to the Property by Quitclaim Deed ("Deed"). The conveyance and title shall, in addition to the provisions of this Agreement, be subject to:
 - (i) The Plan for the Project Area.
 - (ii) The standard objections in an ALTA insurance policy.

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- (iii) Taxes which are not yet due and owing.
 - (iv) Easements, encroachments, covenants and restrictions of record and not shown of record which will not affect the use or marketability of the Property.
 - (v) Such defects which cannot reasonably be cured but will not affect the use or marketability of the Property.
- (B) Title commitment and Insurance. The City has provided Developer with a title commitment issued by Chicago Title Insurance Company dated March 19, 2003 (Order # 8128030) showing the City in title to the Property. The parties acknowledge that the Closing, as defined in Section 3(D) below, shall be contingent upon the removal by City of those exceptions identified as letters A, E, G, H, I, J and K from said title commitment. Developer shall be responsible for any title insurance or endorsements it deems necessary.
- (C) Survey. Developer shall be responsible for any survey it deems necessary.
- (D) The Closing. The closing ("Closing") shall take place at the offices of Near North Title Insurance Company or such other title company mutually agreeable to the parties ("Title Company") on March 16, 2005
- (E) Real Estate Taxes, Utilities, Building Contracts. The City shall obtain the waiver of all delinquent general real estate tax liens, if any, on the Property. If the City is unable to obtain the waiver of any such tax liens to the satisfaction of Developer, either party may terminate this Agreement. Upon such termination, the City shall return the Earnest Money and Performance Deposit (as described in Section 4 below) to Developer. Developer shall be responsible for all taxes accruing after the Closing. The City shall be responsible for obtaining a full payment certificate for the Property from the Department of Water to be presented at Closing. The following shall be adjusted ratably as of the date of Closing: payments under building contracts assigned to Developer; fuels, water and utility bills; and other similar items. Any deposits made by the City with utility companies shall be returned to the City. Developer shall be responsible for making all arrangements for the continuation of all utility services.
- (F) Recordation of Deed. Developer shall promptly file the Deed for recordation with the Office of the Cook County Recorder of Deeds. Developer shall pay all costs for so recording the Deed.
- (G) Escrow. In the event Developer requires conveyance through escrow, the Developer shall pay all escrow fees.
- (H) Assignment of Lease. At Closing, the City shall assign all of its right, title and interest in the lease with Walgreen's ("Walgreen's Lease") currently affecting the

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Property. The City agrees that rent, utilities and other items related to the Walgreen's Lease shall be prorated as of the Closing Date. In addition, the City shall use its best efforts to obtain from Walgreen's an estoppel certificate confirming that the Walgreen's Lease is in full force and effect. In the event that Developer requests the termination of leases affecting the Property prior to Closing, Developer shall give the City one hundred twenty (120) days notice prior to the Closing requesting the termination of the Walgreens lease and sixty (60) days notice prior to the Closing requesting the termination of the Whiteco (billboard) lease. The City, at Closing, shall provide Developer with copies of termination letters sent to tenants as pertains to said leases and evidence that the tenants have vacated the leased space. If Developer has given the City timely notice requesting termination of a lease prior to Closing, Developer shall not be required to close on the Property until such tenants for which a termination has been requested have vacated the Property. Notwithstanding the foregoing, Developer shall be responsible for the demolition and removal, upon termination of the Whiteco lease, of the billboard located on the Property.

SECTION 4. EARNEST MONEY AND PERFORMANCE DEPOSIT.

Developer has deposited with the City a letter of credit in the principal amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00). At Closing, one half of this amount, being the sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000), shall be deemed as "Earnest Money" and "credited" against the Purchase Price by either: (i) reducing by such amount the outstanding principal of the letter of credit, which remaining sum to be deemed as a "Performance Deposit" securing the performance of Developer's obligations under the Agreement; or (ii) at the discretion of Developer, the original letter of credit received by the City from Developer may be returned to Developer upon receipt by the City of a "substitute" letter of credit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), which shall also be deemed as a Performance Deposit. Either letter of credit (i or ii) shall be retained by the City until the Certificate (as described in Section 9) has been issued by the City.

SECTION 5A. DESCRIPTION OF THE PROJECT.

Developer shall undertake to develop and construct the Project in accordance with the terms and provisions of the Agreement. For purposes of the Agreement, the Project shall be comprised of a mixed use building ("Building"), not to exceed thirty-two (32) stories, which will be developed and constructed on the Property and is presently intended to include residential, retail and parking uses. The Building will be constructed of concrete, steel, glass, and aluminum in accordance with the Drawings (as hereinafter defined). To the extent balconies or terraces are included in a residential unit, such balconies or terraces shall not extend over the public way.

The Retail Space (as hereinafter defined) within the Project along the State Street and Randolph Street right-of-way shall have signage and awnings compatible with and complimentary to the existing streetwall and substantially in accordance with Exhibit "B". An approximately [9,000] square foot green roof shall be installed on the Building as depicted in the Drawings. In

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accordance with rules and regulations established by Developer, the lower roof shall be accessible to designated occupants of the Project. The roof will have landscaping, as depicted in the Drawings.

The Plans include a roof area located above the fourth level of the Project creating an opening between floors 4 and 9 (floors 5, 6, 7 & 8 will be partial floors thereby creating an opening) (the "Opening"). From grade the location of the Opening completely conceals the public parking garage (the "Garage") located directly to the east of the Project. Developer has represented to City that the west elevation of the Garage (the "Garage Elevation") is not visible through the Opening from grade level. As a result, City has not required Developer to install any additional screening in the Opening or otherwise treat the Garage Elevation. In the event the Garage Elevation is visible from grade level, City shall notify Developer in writing within sixty (60) days following the issuance of the Certificate that such elevation is visible describing in detail the manner and location in which the Garage Elevation may be seen from grade level. Thereafter, within forty five (45) days Developer shall prepare design plans to eliminate such view or otherwise improve the Garage Elevation. Developer and City shall use good faith efforts to agree upon an appropriate solution.

Developer agrees to supplement or install, as the case may be, the existing landscaping on Benton Place, Randolph and State Street public way in accordance with the Chicago Landscape Ordinance and the Drawings. As part of the landscaping improvements, Developer agrees to repaint those light poles located along the State Street frontage of the Property and agrees to repair and/or replace any sidewalks that are affected by the construction. Vehicular ingress and egress to and from the Building and loading area shall not be permitted via North State Street.

Floors 1-2 of the Building shall consist of approximately 25,000 square feet of retail space, which may increase or decrease, given the number and type of tenants and their need for space (the "Retail Space"). Developer understands and agrees that certain retail uses may be inappropriate for inclusion in the retail area of the Project as are more fully described on Exhibit "C" attached hereto. Developer covenants and agrees that such retail uses shall not be included within the Project. Permitted retail uses in the Retail Space are set forth in Exhibit "D", attached hereto.

Developer and City have agreed to the design and location of signs identifying tenants of the Retail Space as reflected in Exhibit "B". City acknowledges that such design was agreed upon independent of any design criteria for similarly located properties and developments. Developer may revise its Sign Plans as part of the Project consistent with the signage for such other properties, which signs shall be subject to the review and approval of the City, not to be unreasonably withheld or delayed.

A portion of the Retail Space (consisting of no less than 1,500 square feet of leaseable space) shall be leased by Developer to one or more independently, locally-owned retailers ("Local Tenant"). The Local Tenant shall be: (i) a retailer based in Chicago that is 'uniquely Chicago', or unique to Chicago; (ii) either individually or family-owned (ownership in the form of a corporation, partnership or limited liability company shall be permitted) and a non-franchisor or non-franchisee; (iii) shall have operated its retail business for a period of at least five (5) years; and (iv) shall have a business net operating income of no more than Three Million Dollars (\$3,000,000) per year.

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In selecting a Local Tenant, Developer agrees to advertise in local media based on the criteria described in this Section 5A. DPD reserves the right to approve any and all such advertisements as well as the identity of the selected Local Tenant. In the event that during the ten (10) year term for the leased space described herein the selected Local Tenant defaults under its lease with Developer or the Local Tenant and Developer agree to mutually terminate said lease, Developer agrees to select a subsequent Local Tenant for the balance of the ten year term in accordance with the provisions described in this Section 5A.

Developer shall be obligated to provide the leased space to the Local Tenant for a period of not less than ten (10) years commencing with the first day of occupancy of the leased space by the Local Tenant. True and correct copies of each and every lease entered into by Developer and the Local Tenant shall be delivered to DPD, the terms and conditions of such leases to be subject to the reasonable approval of DPD. Developer understands that its obligation to provide the leased space to the Local Tenant in accordance with the terms and conditions of this Section 5A and the Agreement generally shall be provided for in a restrictive covenant contained in the Deed, which restrictive covenant shall survive the issuance of the Certificate and have a duration of ten (10) years commencing with the first day of occupancy of the leased space by the Local Tenant.

Floors 3-32 of the Building shall be utilized for residential purposes. The Building is intended to contain approximately one hundred ninety (190) residential units having a condominium form of ownership which units will occupy floors 3-32 of the Building and generally consisting of 24 one-bedroom duplex units on floors 3-4 and 83 (83) one-bedroom and 83 (83) two-bedroom units on floors 5-32. City acknowledges and understands that the unit mix set forth in the previous sentence represents only an estimate by Developer and such unit mix may be modified in whole or in part by Developer in its sole discretion provided same complies with applicable laws. In the event that Developer determines in its discretion that it is not reasonably feasible to sell some or all of the condominium units, Developer may develop that portion of the building (or a portion thereof) intended for residential condominium with any use set forth in Exhibit "E", attached hereto, subject to the limitations and restrictions set forth in Exhibit "C" and Exhibit "D".

While residential or related uses are encouraged in that area which is predominantly occupied by the core of the Building (floors 5-8), Developer agrees that if this use is not feasible, the space will be reused and the face of the building will not appear "blank" or "dark".

The basement of the Building will accommodate approximately seventy eight (78) parking spaces, provided that the vaulted area below N. State St., W. Randolph St., W. Benton Ct. and N. Holden Ct. are available for use as off-street parking and, provided, further that such parking complies with applicable laws and Developer obtains the appropriate permit for such parking, which shall be primarily utilized by the owners of the aforesaid residential units. If additional parking spaces are secured by Developer in the Garage, the parties acknowledge that Developer may seek to construct a skybridge over and above that part of Holden Court lying between the Property and the Garage; provided, however, Developer shall be solely responsible for all costs associated with obtaining a grant of privilege regarding air rights over the pertinent part of Holden Court and any and all fees (including permit fees) relating to the development and construction of the skybridge.

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DPD hereby agrees to support an application for such grant, subject to Developer obtaining all appropriate governmental approvals as may be required for the grant of such use of the public way.

SECTION 5B. PROJECT BUDGET; PROOF OF FINANCING; PROJECT SCHEDULE; BONDING REQUIREMENTS.

Not less than thirty (30) days prior to the Closing, Developer shall submit to the City for approval a project budget ("Budget") setting forth the project and anticipated construction and development costs regarding the Project. Developer shall also submit to the DPD a description of financing ("Financing"), which shall indicate the amount of Developer's equity and evidence of: (a) a commitment for adequate financing for the acquisition of the Property ("Commitment") obtained from a financial institution or lender, specifying the source and the amount of the loan and length of the term, or (b) evidence of a line of credit or other funding source necessary to fund the purchase of the Property. The Financing shall be subject and subordinate to the terms and conditions of the Agreement.

Within ten (10) days of receipt, DPD shall review and approve the Financing with regard to its adequacy in providing sufficient funds for the acquisition of the Property, and further, approve the Commitment.

If Developer fails to provide the DPD with a Budget or Financing as required herein to the DPD's reasonable satisfaction, the City may declare this Agreement null and void and return the letter of credit described in Section 4 to Developer provided, however, the City shall first notify Developer in writing of any deficiency in either the Budget or Financing and Developer shall have ten (10) days to cure same.

Developer's preliminary schedule ("Schedule") for the commencement and completion of the work constituting the Project has been approved by DPD. The Schedule shall be subsequently revised by Developer during the construction of the Project and submitted to the DPD on a quarterly basis commencing with the execution date of the Agreement.

Prior to the commencement of any portion of the Project in the public way, Developer shall require that its General Contractor or the appropriate subcontractors, as the case may be, be bonded for its performance and payment by sureties having an AA rating or better using American Institute of Architect's Form No. 311 or its equivalent. The City shall be named as an obligee or co-obligee on such bond. Prior to the commencement by the General Contractor or any subcontractor with work in the public way, the General Contractor and any such subcontractor shall comply with the licensing, letter of credit, insurance and bonding, and other requirements applicable under the Municipal Code of Chicago.

SECTION 6. SITE PLANS AND ARCHITECTURAL DRAWINGS; CONSTRUCTION DRAWINGS.

Developer agrees to construct the Project on the Property in accordance with the Site Plans and Architectural Drawings dated May 17, 2004 ("Drawings"), which have been approved by DPD

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and which are listed on Exhibit "B" attached hereto. No material deviation from the Drawings shall be made without the prior written approval of DPD.

Within twelve (12) months of Closing, Developer shall submit to the City's Department of Construction and Permits ("DCAP") for its approval its proposed construction drawings and specifications based on the Drawings. Upon the approval of DCAP, said construction drawings shall be the "Construction Drawings" for purposes of the Agreement.

The Drawings and the Construction Drawings shall conform with the terms of the Agreement, and applicable federal, state and local laws, ordinances and regulations, including, without limitation, the Zoning Ordinance of the City of Chicago, Title 17, Municipal Code of Chicago (except for the off-street loading requirements, compliance for which will be satisfied through a Business Residential Planned Development designation). In addition, the Drawings and the Construction Drawings shall comply with any and all federal, state and local laws, rules and regulations with regard to accessibility standards for the physically disabled, including, without limitation, the Fair Housing Act, 42 U.S.C. 3601 et seq. (1990), the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (1990) and 47 U.S.C. 152, 221, 225 and 611 (1990), the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq. (1992), and the Illinois Accessibility Code, 71 Ill.Admin.Code ch. 1, subch. B, sec. 400.100 et seq. (1988).

Developer shall be solely responsible for and shall pay all costs in regard to: the demolition of the Building, the relocation, installation or construction of public or private utilities; curb cuts and driveways; the repair or reconstruction of any curbs, sidewalks or parkways deteriorated or damaged as a result of the Developer's redevelopment; the removal of existing pipes, utility equipment or building foundations; and the termination of existing water or other services.

SECTION 7. LIMITED APPLICABILITY.

The approval of the Drawings by DPD are for the purposes of this Agreement only and do not constitute the approval required by DCAP or any other City department; nor does the approval by DPD pursuant to this Agreement constitute an approval of the quality, structural soundness or the safety of any Project located or to be located on the Property. The approval given by DPD shall be only for the benefit of Developer and any lienholder authorized by this Agreement.

SECTION 8. COMMENCEMENT AND COMPLETION OF PROJECT; FAILURE TO CLOSE WITHIN PRESCRIBED PERIOD; TERM OF THE AGREEMENT DEFINED.

After Closing (and in the event that Developer has not requested a lease termination per Section 3(H)), Developer, as assignee of the Walgreen's lease, may continue to lease the existing structures under said Walgreen's lease until such time as it has obtained the Demolition Permit and is prepared to undertake demolition of the structures currently located on the Property. In conjunction with the demolition work, Developer agrees to deliver to DPD the "dump ticket" obtained by the demolition contractor. Notwithstanding anything to the contrary contained in this Agreement, Developer understands and agrees that if it demolishes the Building and the Property remains vacant for more than ninety (90) days from the completion of the demolition work, then Developer shall

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erect a fence on the perimeter of the Property and landscape the Property in accordance with the City's Landscape Ordinance, unless Developer has submitted to DCAP the Construction Drawings and is in good faith is pursuing the issuance of a building permit for the Project. Except as otherwise provided in the Agreement, Developer shall complete the Project within twenty-four (24) to thirty (30) months from the date of the commencement of the Project, subject to force majeure. The Developer shall commence construction of the Project no later than twelve (12) months after Closing, provided that the appropriate building permits have been issued by the City or unless Developer is in good faith pursuing the issuance of such permits.

Developer agrees for itself, its successors and assigns, that Developer, its successors and assigns, shall promptly begin and diligently complete the Project within the time periods specified in this Section 8.

In the event that Developer fails to close within the Closing Period (as defined in Section 3(D) hereof), then Developer may elect to extend the Closing Period for a period not to exceed twelve (12) months. Developer's election to extend the Closing Period shall be in writing and shall be delivered to the City not less than ten (10) business days prior to the date of the then scheduled Closing. Such election may be made on more than one occasion, provided the extensions of the Closing does not exceed twelve (12) months in total. In consideration for the extension or extensions of the Closing, Developer shall pay to the City the sum of Twenty Five Thousand Dollars (\$25,000) for each month that the Closing is extended beyond the Closing Period, which sum shall be prorated for partial month extensions. The foregoing extension fee shall be paid at Closing and shall be reflected on the closing statement executed by the parties. Notwithstanding the foregoing, the Closing Period shall be extended without payment of an extension fee if the cause of the delay in the Closing Period is the result of acts of the City not caused by Developer or the inability of the City to close the subject transaction in accordance with the provisions of this Agreement ("City Delays"). In such event, Developer shall be permitted to extend the Closing Period for a period not to exceed twelve (12) months with payment of extension fees as noted above commencing with the date that the Closing Period is extended due to City Delays. If Developer fails to close on the Closing date as extended, the City shall have the right to declare Developer in default of its obligations under this Agreement and retain any sums collected from Developer as liquidated damages.

For purposes of the Agreement, the "Term of the Agreement" shall be defined as commencing with the execution date of the Agreement, and unless otherwise terminated in accordance with the terms and provisions of the Agreement, shall expire on the date of the expiration of the Plan, which is June 20, 2007. Failure of Developer, or its successors and assigns, to comply with the use restrictions shall give rise to the City to have the right to seek monetary damages, injunctive relief or specific performance.

SECTION 9. CERTIFICATE OF COMPLETION; APPROVALS.

Upon the completion of the Project substantially in accordance with the approved Construction Drawings, the Agreement and the Plan, and Developer is otherwise in compliance with the terms and provisions of the Agreement, the City shall furnish Developer with a Certificate of Completion ("Certificate"). The Certificate shall be a conclusive determination of satisfaction and

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termination of the covenants in the Agreement with respect to the obligations of Developer and its successors and assigns to complete the Project in accordance with the terms and conditions of the Agreement. The Certificate, however, shall not constitute evidence that Developer has complied with any applicable provisions of federal, state and local laws, ordinances and regulations with regard to the completion of the Project, nor shall it serve as any "guaranty" of the structural soundness or quality of the construction of the Project, nor shall it serve to release Developer, or its successors and assigns, from its obligations as described in Section 5A and 10 of the Agreement.

The Certificate shall be in recordable form. Upon written request by Developer for the Certificate, the City, within twenty (20) days after receipt of the same, shall undertake an inspection of the Project and the Property accompanied by a representative of Developer and thereafter provide Developer either with the Certificate or a written statement indicating in adequate detail how Developer has failed to complete the Project in conformity with the Agreement, the Plan and the Construction Drawings or is otherwise in default, and what measures or acts will be necessary, in the reasonable opinion of the City, for Developer to perform in order to obtain the Certificate. Developer shall promptly, but in all events within sixty (60) days, correct any such nonconformity or default. Upon compliance with the City's requirements, Developer shall resubmit a written request for a Certificate from the City for the benefit of Developer's lenders and tenants. In addition to the Certificate, Developer may also request an Estoppel Certificate from the City, the issuance of which shall not be unreasonably withheld. Upon issuance of the Certificate, the City shall return the letter of credit evidencing the Performance Deposit to Developer.

Notwithstanding anything to the contrary contained herein, the City understands and agrees that as condominium units are sold by Developer to unit buyers, this Agreement shall no longer be an encumbrance on title affecting title to said condominium units and the City shall have no right of reverter to such units.

Wherever the Agreement provides for the approval or consent of the City, the DPD or the Commissioner, or any matter is to be to the City's, the DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, (a) such approval, consent or satisfaction shall be made, given or determined by the City, the DPD or the Commissioner in writing and in the reasonable discretion thereof and (b) such approval, consent, or satisfaction shall be deemed conclusively given if the City, the DPD or the Commissioner fails to respond in writing within the time period specified in the Agreement for such approval, consent, or satisfaction (or if no time period is specified, then within ten (10) business days) and also fails to respond in writing within ten (10) business days of a notice from Developer of its intent to invoke the provisions of this section. The Commissioner or other person designated by the Mayor shall act for the City or the DPD in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering the Agreement for the City.

SECTION 10. RESTRICTIONS ON USE.

During the Term of the Agreement, Developer, and its successors and assigns, agrees as follows:

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- (a) Provide the leased space to the Local Tenant in accordance with the provisions of Section 5A. This restriction shall survive the Term of the Agreement.
- (b) Once the Project is completed (as evidenced by the issuance of the Certificate), Developer agrees to utilize the Building in accordance with the uses described in Section 5A and the terms and conditions of the Agreement, including, without limitation, the maintenance of the green roof.
- (c) Shall not discriminate based upon race, color, religion, sex, national origin or ancestry, military status, sexual orientation, source of income, age, handicap, in the sale, lease, rental, use or occupancy of the Property or any Project located or to be erected thereon. In addition, Developer agrees that it shall comply with any and all federal, state and local laws, rules and regulations with regard to accessibility standards for the physically disabled, including, without limitation, the Fair Housing Act, 42 U.S.C. 3601 *et seq.* (1990), the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* (1990) and 47 U.S.C. 152, 221, 225 and 611 (1990), the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.* (1992), and the Illinois Accessibility Code, 71 Ill.Admin.Code ch. 1, subch. B, sec. 400.100 *et seq.* (1988). This restriction shall survive the Term of the Agreement.

SECTION 11. INSURANCE.

Developer shall provide and maintain at Developer's own expense, or cause its General Contractor and Subcontractors to provide and maintain, until the City issues its Certificate the insurance coverages and requirements specified below insuring all operations related to the construction of the Project and the terms and provisions of the Agreement.

(a) Prior to Execution and Delivery of the Agreement and During the Term of the Agreement:

(i) Workers Compensation and Employers Liability Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Agreement and employers Liability Coverage with limited of not less than \$100,000 each accident or illness.

(ii) Commercial Liability Insurance (Primary and Umbrella). Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(b) During the Construction of the Project:

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(i) Workers Compensation and Employers Liability Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Agreement and employers Liability Coverage with limited of not less than \$500,000 each accident or illness.

(ii) Commercial Liability Insurance (Primary and Umbrella). Commercial General Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following the completion of the Project), explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability Insurance (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with the work to be performed, the General Contractor shall provide above-said insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

(iv) Railroad Protective Liability Insurance. When any work is to be done adjacent to or on railroad or transit property, the General Contractor shall provide, or cause to be provided with respect to the operations that the General Contractor performs, the above-stated insurance in the name of the railroad or transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence 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 the property, including the loss of use thereof.

(v) Builders Risk Insurance. When the General Contractor undertakes any construction, including improvements, betterments, and /or repairs, the General Contractor shall provide, or cause to be provided, All Risk Builders Risk Insurance at replacement costs for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverages shall include but are not limited to the following: collapse, boiler and machinery if applicable.

(vi) Professional Liability. When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors or omissions shall be maintained with limits of not less than \$1,000,000. Coverage shall include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the execution date of the Agreement and the commencement of the Project.

(vii) Contractors Pollution Liability. When any remediation work is performed which may cause a pollution exposure, contractor's pollution liability insurance shall be provided with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. When policies are renewed, the policy retroactive date must coincide with , or precede, the execution date of the Agreement and the commencement of the Project. A

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claims-made policy which is not renewed or replaced must have an extended reporting period of one (1) year. The City is to be named as an additional insured on a primary, non-contributory basis.

Developer will furnish the DPD original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement (including, without limitation, Workers Compensation and Employers Liability Insurance, Commercial General Liability Insurance (Primary and Umbrella), Automobile Liability Insurance (Primary and Umbrella), Railroad Protective Liability Insurance, Builders Risk Insurance, Contractors Pollution Liability Insurance, and All Risk Property Insurance), and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of the Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer shall not be deemed to be a waiver by the City. Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work or suspend the Agreement until proper evidence of insurance is provided.

The insurance shall provide for thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by Developer.

Developer agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

Developer expressly understands and agrees that any coverages and limits furnished by Developer shall in no way limit the Developer's liabilities and responsibilities specified within the Agreement documents or by law.

Developer expressly understands and agrees that Developer's insurance is primary and that any insurance or self insurance programs maintained by the City of Chicago shall apply in excess of and not contribute with insurance provided by the Developer under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

Developer shall require the General Contractor and all Subcontractors to provide the insurance required herein or Developer may provide the coverages for the General Contractor and the Subcontractors. The General Contractor, other contractors, and Subcontractors shall be subject to the same insurance requirements of Developer unless otherwise specified herein.

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If Developer, the General Contractor, other contractors or Subcontractors desires additional coverages, Developer, the General Contractor, other such contractors and each Subcontractor shall be responsible for the acquisition and cost of such additional protection.

The City of Chicago Risk Management Department, at its discretion reasonably exercised, maintains the right to modify, delete, alter or change these requirements; provided, however, the parties agree that the City cannot change the insurance requirements as described in this Section 3.13 by requiring additional evidence of insurance from Developer or by specifying the type of insurance other than that described herein.

SECTION 12. PROHIBITION AGAINST TRANSFER/LIMITATION ON ENCUMBRANCE.

Prior to the issuance of the Certificate by the City with regard to completion of the Project, Developer shall not, without the prior written consent of the City: (a) sell or convey the Property or any part thereof; or (b) create any assignment with respect to this Agreement or the Property that would take effect prior to the issuance of the Certificate by the City; or (c) contract or agree to: (1) sell or convey the Property, or (2) create any assignment with respect to this Agreement or the Property that would take effect prior to the issuance of the Certificate by the City. Nothing in this Section 12, however, shall prohibit Developer from (i) entering into real estate sales contract(s) with (a) one or more purchasers of condominium units, (b) a purchaser for a portion of the Building for use as apartment rentals, or (c) a purchaser for a portion of the Building for a use permitted under this Agreement; (ii) selling and conveying completed (a) condominium units, (b) apartment units to one or more purchasers thereof, or (c) portions of the Building for a use permitted under this Agreement; (iii) entering into leases with retail tenants; or (iv) executing a mortgage in favor of a construction, acquisition or mezzanine lender. If the Property is acquired by a corporation, partnership or other legal entity, there shall be no transfer of ten percent (10%) or more interest in the entity nor any similar significant change in the constitution of the entity until the Certificate is issued or the City consents in writing to the transfer or change.

Prior to the completion of the Project as certified by the City, neither Developer nor any successor in interest to the Property shall engage in any financing or other transaction the effect of which creates an encumbrance or lien upon the Property except for the purposes of obtaining: (a) funds necessary to acquire the Property; (b) funds necessary to construct the Project; or (c) funds necessary for architects, surveyors, appraisers, environmental consultants, attorneys or other professionals or consultants in connection with the acquisition, financing or construction of the Project; provided, however, that Developer shall be permitted to obtain a permanent loan to replace the construction loan for the Project, tenants shall be permitted to obtain leasehold financing for construction of leasehold improvements and inventory, and residential units may be financed by unit purchasers, Developer, with notice to the City, may sell, lease or otherwise transfer to an entity, any portion of the Project provided that such portion is used as permitted by Exhibits D or E, as applicable.

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SECTION 13. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.

Notwithstanding any other provision of this Agreement or of the Deed, the holder of any mortgage on the Property authorized by Section 12 of this Agreement or any purchaser permitted thereby shall not be obligated to construct or complete the Project; provided, however, that the foregoing provision shall not apply to any purchaser, other than the holder of the mortgage, of the Property at a foreclosure sale. Nothing in this Section nor in any other section of this Agreement shall be deemed or construed to permit or authorize any such holder of a mortgage to devote the Property to any use, or to construct any Project thereon, other than those uses or Project permitted in the Plan.

SECTION 14. COVENANTS RUNNING WITH THE LAND.

The parties agree, and the Deed shall so expressly provide, that the covenants provided in Sections 5A, as related to the Local Tenant only, 8, 10, 12 and 13 shall be covenants running with the land, binding Developer and its successors and assigns to the fullest extent permitted by law and equity for the benefit and in favor of the City, and shall be enforceable by the City. The covenants provided in Sections 8, 12 and 13 shall be terminated upon issuance of the Certificate described in Section 9.

SECTION 15. PERFORMANCE AND BREACH.

- A. Time of the Essence. Time is of the essence in the parties' performance of their obligations under this Agreement.
- B. Permitted Delays. Developer shall not be considered in breach of its obligations with respect to the commencement or completion of construction of the Project in the event of a delay in the performance of such obligations due to unforeseeable causes beyond Developer's control and without the Developer's fault or negligence, including but not limited to, delays or halts in construction of the Project which are compelled by court order, acts of God, acts of the public enemy, acts of the United States government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of subcontractors due to such cause. The time for the performance of the obligations shall be extended only for the period of the delay if Developer requests it in writing of the City within twenty (20) days after the beginning of any such delay.
- C. Breach.
 1. Generally. Except as otherwise provided in this Agreement, in the event of a default by either party in the performance of its obligations under this Agreement, the defaulting party, upon written notice from the other, shall cure or remedy the default not later than sixty (60) days after receipt of such notice. If the default is not capable of being cured within the sixty (60) day period but the defaulting party has commenced action to cure the default and is diligently proceeding to cure the default

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within the sixty (60) day period, then the sixty (60) day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the aggrieved party may institute such proceedings at law or in equity as may be necessary or desirable in its sole discretion to cure and remedy the default, including but not limited to, proceedings to compel specific performance. In the event that the default occurs prior to the Closing, the aggrieved party may also terminate this Agreement.

2. **Event of Default.** For purposes of this Agreement, the occurrence of any one or more of the following shall constitute an "event of default":

- a. Developer fails to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations required under this Agreement, including, without limitation, the Restrictions on Use Covenants described in Section 10 of the Agreement; or
- b. Developer makes or furnishes a warranty, representation, statement or certification to the City which is not true and correct in any material respect (where Developer has not in timely manner disclosed to the City for approval a change in such warranty, representation statement or certification); or
- c. A petition is filed by or against Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereinafter existing, which is not vacated, stayed or set aside within sixty (60) days after filing; or
- d. Developer abandons or substantially suspends the construction of the Project, and such abandonment or suspension is not cured, ended, or remedied within sixty (60) days of the date Developer receives written demand by the City to cure such default; or
- e. Developer fails to timely pay real estate taxes or assessments affecting the Property or suffers or permits any levy or attachment, material suppliers' or mechanics' lien, or any other lien or encumbrance unauthorized by this Agreement to attach to the Property and such taxes or assessments shall not have been paid, contested, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal or discharge within sixty (60) days after written demand by the City to remove such lien or encumbrance, or security is posted with the City or the Title Company sufficient to satisfy such liens and costs. Notwithstanding anything to the contrary herein contained, Developer shall be permitted an opportunity to contest any lien claim which may be asserted against the project by a subcontractor or material supplier. During the contest, Developer shall not be required to post any bond or security. Upon determination of the lien claim, the Developer may elect to satisfy any adverse finding or post security for payment and pursue further relief or appeal; or

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- f. Developer makes an assignment, pledge, encumbrance, transfer or other disposition in violation of this Agreement; or
 - g. Developer's financial condition or operations adversely changes causing the cessation of work on the Project; or
 - h. Developer fails to comply with the terms of any other written agreement entered into with the City or any loan issued by the City.
3. Prior to Conveyance. If prior to the conveyance of the Property, Developer defaults in any specific manner described in this Section 15(C), the City may terminate this Agreement, institute any action or proceeding at law or in equity against Developer, and return the Earnest Money and Performance Deposit.
 4. After Conveyance Until Sale of First Condominium Unit. If subsequent to the conveyance of the Property but prior to the sale and conveyance of the first condominium unit in the Building by Developer, Developer defaults in any specific manner described in this Section 15(C), the City, by written notice to Developer, may utilize any and all remedies available to the City at law or in equity, including but not limited to, the right to re-enter and take possession of the Property, terminate the estate conveyed to Developer, and revert title to such Property (or part thereof, as provided for herein) in the City; provided, however, that the reversion of title in the City shall be limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement.
 5. Resale of the Property. Upon the reversion of title to the Property or part thereof as provided in Section 15(C)(4), the City shall employ its best efforts to convey the Property or any part thereof (subject to any mortgage liens permitted in this Agreement) to a qualified and financially responsible party (as solely determined by the City) who shall assume the obligation of completing the Project or such other improvements as shall be satisfactory to the City. The proceeds from the sale of the Property by the City to a subsequent developer shall be utilized and distributed to the holder of any mortgage authorized by this Agreement as is necessary to satisfy the same, and thereafter in accordance with the provisions described in subsection 15.(C)(6) below. The sale and conveyance of the Property to a subsequent developer shall be undertaken in a reasonably timely manner in accordance with all applicable federal, state and local laws, ordinances and regulations and consistent with the objectives of this Agreement and the Plan.
 6. Disposition of Resale Proceeds. If the City sells the Property or part thereof as provided for in this Section, the proceeds from the sale shall be utilized to reimburse the City for:

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- (a) costs and expenses incurred by the City, including but not limited to, salaries of personnel in connection with the recapture, management and resale of the Property or such part thereof (less any income derived by the City from the Property or such part thereof in connection with such management); and
- (b) all taxes, assessments, and water and sewer charges assessed against the Property or part thereof; and
- (c) any payments made (including attorneys' fees) to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer; and
- (d) any expenditures made or obligations incurred with respect to construction or maintenance of the Property; and
- (e) any other amounts owed to the City by Developer.

Developer shall be entitled to receive any proceeds up to the amount of Developer's investment in the Property not utilized in meeting the expenses of the City described herein.

7. After Conveyance Until Issuance of Certificate. If subsequent to the conveyance of the Property to Developer but prior to the issuance of the Certificate, Developer defaults in any specific manner described in this Section 15(C), the City, by written notice to Developer, may utilize any and all remedies available to the City at law or in equity, including but not limited to, the right to damages, specific performance and injunctive relief. In addition to, and without in any way limiting the City's rights under this Section 15, the City shall have the right to retain the Performance Deposit in the event of a default by Developer.
8. After Issuance of Certificate. If subsequent to the issuance of the Certificate until the expiration of the Term of the Agreement, Developer defaults in any specific manner described in this Section 15(C), including, without limitation, the failure to develop and make available the leased space to the Local Tenant, the City, by written notice to Developer, may utilize any and all remedies available to the City at law or in equity, including but not limited to, the right to damages, specific performance and injunctive relief.
9. Waiver and Estoppel. Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City of or limit such rights in any way. No waiver made by the City with respect to any specific default by Developer shall be construed, considered or treated as a waiver of the rights of the City with respect to any other defaults of Developer.

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- D. Access to the Property. After the Closing until the expiration of the Term of the Agreement, any duly authorized representative of the City shall have access to the Property at all reasonable times for the purpose of confirming Developer's compliance with this Agreement. The City understands that with regard to any site visits to the Property as anticipated by this paragraph, that any City representative shall be accompanied by a representative of Developer.
- E. City's Right to Inspect Records. Developer agrees that the City shall have the right and authority to review, from time to time, Developer's books and records relating to the Project, including, without limitation, Developer's loan statements, general contractor's sworn statements, the contract with the General Contractor and subcontracts, purchase orders, waivers of lien, paid receipts and invoices. All such books, records and other documents shall be available at the offices of Developer for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the DPD upon prior reasonable notice to Developer and at DPD's sole cost and expense.
- F. Estoppel Certificates. During the Term of the Agreement, each party shall provide the other, in reasonable form upon request, an estoppel certificate relating to the Agreement.

SECTION 16. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

Developer warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No agent, official, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

SECTION 17. INDEMNIFICATION.

Developer agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' fees and court costs) suffered or incurred by the City (excepting that caused by the negligence of the City) arising from or in connection with: (i) the failure of Developer to perform its obligations under this Agreement; (ii) the failure of Developer or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Project; (iii) a material misrepresentation or omission in the Plan which is the result of information supplied or omitted by Developer or by any agents, employees, contractors or persons acting under the control or at the request of Developer; (iv) the failure of Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto; and (v) any actions resulting from any activity undertaken by Developer on the Property prior to or after the conveyance of said

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Property to Developer by the City. This indemnification shall survive any termination of this Agreement.

Notwithstanding the above, the City agrees to: (a) give prompt written notice to Developer of any such matter for which Developer shall be obligated to provide indemnification to the City; (b) the City shall cooperate with Developer and Developer's insurer(s), if any, in the defense thereof; (c) the City shall not settle or otherwise compromise or prejudice Developer's defense thereof (unless Developer approves of such action, which approval shall not be unreasonably withheld, conditioned or delayed); and (d) the City shall provide Developer and Developer's insurer(s), if any, the opportunity to defend against any such matter.

SECTION 18. ENVIRONMENTAL MATTERS.

The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and the Developer agrees to accept the Property "as is".

Within ninety (90) days of the execution date of the Agreement, Developer shall provide the DPD with copies of any Phase I environmental and accessibility audits with respect to the Property.

Developer hereby represents and warrants to the City that Developer has conducted environmental studies sufficient to conclude (and Developer has concluded) that the Project shall be constructed, developed, completed and operated in accordance with all Environmental Laws. Developer also represents and warrants to the City that the Project shall be constructed, developed, completed and operated in accordance with this Agreement and all Exhibits attached hereto, the construction documents described in Section 6 and the Plan. For purposes of the Agreement, "Environmental Laws" shall mean the following: any and all federal, state and local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago.

Without limiting any other provisions hereof, Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of Developer: (1) the presence of any Hazardous Material from a portion of the Property or any real property in which Developer, or any

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person directly or indirectly controlling, controlled by or under common control with Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by Developer, or (2) any liens against the Property permitted or imposed by an Environmental Laws, or any actual or asserted liability or obligation of the City or Developer or any of its affiliates under any Environmental Laws relating to the Property.

Prior to the Closing, Developer shall have the right to request a right of entry for the purpose of conducting environmental tests on the Property. If such a request is made, the City shall grant Developer a right of entry for such purpose. The granting of the right of entry, however, shall be contingent upon Developer obtaining all necessary permits and the following types and amounts of insurance: a) commercial general liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage liability with the City named as an additional insured; b) automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury and property damage; and c) worker's compensation and occupational disease insurance in statutory amounts covering all employees and agents who are to provide any work on the Property. All insurance policies shall be from insurance companies authorized to do business in the State of Illinois, and shall remain in effect until completion of all activity on the Property. Developer shall deliver duplicate policies or certificates of insurance to the City prior to commencing any activity on the Property. Developer expressly understands and agrees that any coverage and limits furnished by Developer shall in no way limit Developer's liabilities and responsibilities set forth in this Agreement.

Developer agrees to carefully inspect the Property prior to the commencement of any activity on the Property to make sure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. Developer shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect any work being done on the Property. Developer's activities on the Property shall be limited to those reasonably necessary to perform the environmental testing. Upon completion of the work, Developer agrees to restore the Property to its original condition. Developer shall keep the Property free from any and all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Developer, and agrees to indemnify and hold the City harmless against any such liens.

Developer agrees to deliver to the City a copy of each report prepared by or for the Developer regarding the environmental condition of the Property. If prior to the Closing, Developer's environmental consultant determines that contamination exists on the Property to such an extent that the parties agree that the estimated cost of remediation (as determined by the consultant and approved by the City) is too excessive for Developer, Developer may declare this Agreement null and void. In such event, the City shall return the Earnest Money and Performance Deposit to Developer. Developer agrees that a request to terminate this Agreement shall not be made until all reports concerning the condition of the Property have been reviewed by the City.

If after the Closing, the environmental condition of the Property is not in all respects entirely suitable for the use to which the Property is to be utilized pursuant to the terms of this Agreement, it shall be the sole responsibility and obligation of Developer to take such action as may be necessary

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to put the Property in a condition entirely suitable for the intended use of the Property. Developer agrees to release and indemnify the City from any claims and liabilities relating to or arising from the environmental condition of the Property and to undertake and discharge all liabilities of the City arising from any environmental condition which existed on the Property prior to the Closing.

SECTION 19. DEVELOPER'S EMPLOYMENT OBLIGATIONS.

A. Employment Opportunity. Developer agrees, and shall contractually obligate its various contractors, subcontractors or any affiliate of Developer operating on the Property (collectively, the "Employers" and individually, an "Employer") to agree that with respect to the provision of services in connection with the construction of the Project or occupation of the Property:

1. Neither Developer nor any Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Section 2-160-010 et seq. of the Municipal Code of Chicago, as amended from time to time (the "Human Rights Ordinance"). Developer and each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer and each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, Developer and each Employer, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.
2. To the greatest extent feasible, Developer and each Employer is required to present opportunities for training and employment of low and moderate income residents of the City; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the City.
3. Developer and each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including, but not limited to, the Human Rights Ordinance, and the Illinois Human Rights Act, 775

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ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

4. Developer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.
5. Developer and each Employer shall include the foregoing provisions of subparagraphs 1 through 4 in every contract entered into in connection with the construction of the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or affiliate, as the case may be.
6. Failure to comply with the employment obligations described in this Section 19(A), shall be a basis for the City to pursue remedies under the provisions of Section 15, above.

B. City Resident Employment Requirement. Developer agrees, and shall contractually obligate the Employers to agree that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 3-92-330 of the Municipal Code of Chicago (at least fifty percent of the total worker hours worked by persons on the construction of the Project shall be performed by actual residents of the City of Chicago); provided, however, that in addition to complying with this percentage, Developer and the Employers shall be required to make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

Developer and the Employers may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City of Chicago.

"Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

Developer and the Employers shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the construction of the Project. Developer and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the DPD in triplicate, which shall identify clearly the actual residence of every

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employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

Developer and the Employers shall provide full access to their employment records to the Chief Procurement Officer, the DPD, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. Developer and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years from and after the issuance of the Certificate.

At the direction of the Department, Developer and the Employers shall provide affidavits and other supporting documentation to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of Developer and the Employers to provide work for actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

In the event that the City has determined that Developer or an Employer failed to ensure the fulfillment of the requirements of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance it is agreed that 1/20 of 1 percent (.05%) of the aggregate hard construction costs set forth in Developer's budget shall be surrendered by Developer and for the Employers to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Developer and/or the other Employers or employee to prosecution.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement.

Developer shall cause or require the provisions of this Section 19(B) to be included in all construction contracts and subcontracts related to the construction of the Project.

C. The Developer's MBE/WBE Commitment. The Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the General Contractor to agree that during the Project:

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1. Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 19.C, during the course of the Project, at least the following percentages of the MBE/WBE Budget shall be expended for contract participation by minority-owned businesses ("MBEs") and by women-owned businesses ("WBEs"):
 - (a) At least 24 percent by MBEs.
 - (b) At least four percent by WBEs.

2. For purposes of this Section 19.C only:
 - (a) The Developer (and any party to whom a contract is let by the Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by the Developer in connection with the Project) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

 - (b) The term "minority-owned business" or "MBE" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

 - (c) The term "women-owned business" or "WBE" shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

3. Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials

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or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Section 19.C. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of DPD.

The Developer shall deliver quarterly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by the Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on five Business Days' notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

4. Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer shall be obligated to discharge or cause to be discharged the disqualified General Contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.
5. Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Section 19.C shall be undertaken in accordance with Sections 2-92-430 and 2-92-730, Municipal Code of Chicago, as applicable.
6. Prior to the commencement of the Project, the Developer shall be required to meet with the City's monitoring staff with regard to the Developer's compliance with its obligations under this Section 19.C. The General Contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this Section 19.C, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, the Developer shall submit the documentation required by this Section 19.C to the City's monitoring staff, including the following: (a) subcontractor's activity report; (b) contractor's

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certification concerning labor standards and prevailing wage requirements; (c) contractor letter of understanding; (d) monthly utilization report; (e) authorization for payroll agent; (f) certified payroll; (g) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (h) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that the Developer is not complying with its obligations under this Section 19.C, shall, upon the delivery of written notice to the Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to the Developer to halt the Project, (2) withhold any further payment of any City Funds to the Developer or the General Contractor, or (3) seek any other remedies against the Developer available at law or in equity.

SECTION 20. BARRICADES, SIGNS AND PUBLIC RELATIONS.

Prior to the commencement of any demolition or construction activity requiring barricades, Developer shall install a barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The City shall retain the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

Developer shall erect a sign of size and style approved by the DPD in a conspicuous location at the Building during the construction of the Project, indicating that the undertaking of the Project is in accordance with the Plan. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding Developer and the Project in the City's promotional literature and communications. After the issuance of the Certificate until the expiration of the Term of the Agreement, the DPD shall have the right to approve any changes in signage that are inconsistent with the original signage approved for the Project.

SECTION 21. PROVISIONS NOT MERGED WITH DEED.

The provisions of this Agreement shall not be merged with the Deed, and the delivery of the Deed shall not be deemed to affect or impair the provisions of this Agreement.

SECTION 22. HEADINGS.

The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions thereof.

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SECTION 23. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

SECTION 24. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

SECTION 25. SEVERABILITY.

If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

SECTION 26. NOTICES.

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:

City of Chicago
 Department of Planning and Development
 121 North LaSalle Street
 Room 1000 - City Hall
 Chicago, Illinois 60602
 Attn: Terri Texley, Deputy Commissioner,
 Central District

With a copy to:

City of Chicago
 Department of Law
 121 North LaSalle Street
 Room 600 - City Hall
 Chicago, Illinois 60602
 Attn: Real Estate Division

If to Developer:

Smithfield Properties XX, LLC
 400 West Huron Street
 Chicago, Illinois 60610
 Attn: W. Harris Smith and Robert Buono

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With a copy to:

Smithfield Properties, L.L.C.
400 West Huron Street
Chicago, Illinois 60610
Attn: General Counsel

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

SECTION 27. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute an original instrument.

SECTION 28. SUCCESSORS AND ASSIGNS.

Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties.

SECTION 29. AMENDMENT.

This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City may amend, modify or supplement the Plan without the consent of any party hereto, provided that such amendment, modification, or supplement shall not have a material adverse effect on Developer, the Property or the Project.

SECTION 30. ENTIRE AGREEMENT.

This Agreement (including Exhibits A-D attached hereto, which are hereby incorporated herein by reference) constitutes the entire agreement of the parties hereto and supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

SECTION 31. ASSIGNABILITY AND TRANSFER.

Unless permitted by the terms of this Agreement, Developer, until the City issues the Certificate with regard to the completion of the Project, shall not assign, transfer or convey any right, title or interest in the Project, the Property, or both, or any of its duties or obligations under the Agreement as they relate to the Project, the Property, or both.

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SECTION 32. CONFLICT OF INTEREST.

Pursuant to Section 5/11-74.4-4(n) of the TIF Act, Developer represents, covenants and warrants that, to the best of its knowledge, no member, official or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Plan, or any consultant hired by the City or Developer owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in any such entity's business, the Property or any other property in the Redevelopment Area. No member, official or employee of the City shall be personally liable to Developer, or any successor in interest, to perform any commitment or obligation of the City under the Agreement nor shall any such person be personally liable in the event of any default or breach by the City.

SECTION 33. FURTHER ASSURANCES.

Developer and the City agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of the Agreement.

SECTION 34. SURVIVAL.

All representations and warranties contained in the Agreement are made as of the execution date of the Agreement and the execution, delivery and acceptance hereof by the parties shall not constitute a waiver of rights arising by reasons of any misrepresentation.

SECTION 35. MUTUAL ASSISTANCE.

The parties agree to perform their respective obligations, including the execution and delivery of any documents, instruments, petitions and certifications, as may be necessary or appropriate, consistent with the terms and provisions of the Agreement.

SECTION 36. WAIVER.

Waiver by the City or Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or Developer in writing.

SECTION 37. CUMULATIVE REMEDIES.

The remedies of any party hereunder are cumulative and the exercise of any one or more of the remedies provided by the Agreement shall not be construed as a waiver of any of the other remedies of such party unless specifically so provided herein.

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SECTION 38. COSTS AND EXPENSE.

Costs and expenses associated with the enforcement of the terms of this Agreement shall be borne by the party determined to be at fault by a court of law or arbiter, as applicable.

SECTION 39. DISCLAIMER.

No provision of the Agreement, nor any act of the City, shall be deemed or construed by any of the parties, or by third persons, to create or imply to create the relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City.

SECTION 40. RELEASE.

Upon the expiration of the Term of the Agreement, within thirty (30) days of receipt of written request, the City shall execute and deliver to Developer a release of the Agreement in recordable form.

SECTION 41. NO THIRD PARTY BENEFICIARY.

The approvals given by the City pursuant to the Agreement and the Partial Certificates and Certificate when issued by the City shall be only for the benefit of Developer, the mortgagee or other lien holder, and their successors in interest in the Property and no other person or party may assert against the City or claim the benefit of such approval or certificate.

SECTION 42. APPROVAL.

Wherever the Agreement provides for the approval or consent of the City, the DPD or the Commissioner, or any matter is to be to the City's, the DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, the DPD or the Commissioner in writing and in the reasonable discretion thereof and not unreasonably delayed. The Commissioner or other person designated by the Mayor shall act for the City or the DPD in making all approvals, consents and determinations of satisfaction, issuing the Certificate or otherwise administering the Agreement for the City.

SECTION 43. BUSINESS ECONOMIC SUPPORT ACT.

Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if Developer is required to provide notice under the WARN Act, Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State of Illinois, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of the State, and the Mayor of each municipality where Developer has locations in the State of Illinois. Failure by Developer to provide such notice as described above may result in the termination of all or a part of the reimbursement obligations of the City to Developer as set forth herein.

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SECTION 44. VENUE AND JURISDICTION.

If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois, or the United States District Court for the Northern District of Illinois.

SECTION 45. CONFLICT.

In the event of a conflict between any provisions of this Agreement and the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., this Agreement shall prevail and control.

SECTION 46. RECORDATION OF AGREEMENT.

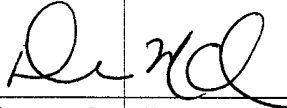
One original of this Agreement shall be recorded at the Office of the Recorder of Deeds of Cook County, Illinois. Developer shall pay the recording fees.

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IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Commissioner of Planning and Development, and Developer has signed the same on or as of the day and year first above written.

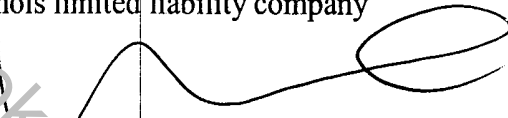
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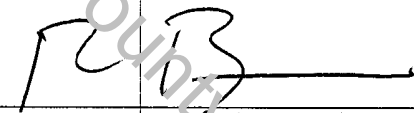
CITY OF CHICAGO,
an Illinois municipal corporation

By: 
Denise M. Casalino, P.E.
Commissioner of Planning and Development

DEVELOPER:

SMITHFIELD PROPERTIES XX, L.L.C.,
an Illinois limited liability company

By: 
W. Harris Smith, Manager

By: 
Robert Buono, Manager

This instrument was prepared by, and after recording,
please return to:

Maria E. Hoffman
Assistant Corporation Counsel
Room 1610 - 30 North LaSalle Street
Chicago, Illinois 60602
(312) 744-6927
H:\DOCS\State-Randolph\RDA.12.wpd

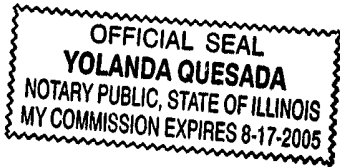
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Yolanda Quesada, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Denise M. Casalino, P.E., personally known to me to be the Commissioner of Planning and Development of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as the Commissioner, she signed and delivered the instrument pursuant to authority given by the City of Chicago, as her free and voluntary act and as the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 9th day of Dec., 2004.

Yolanda Quesada
NOTARY PUBLIC

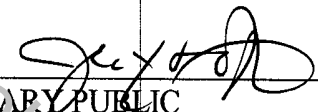


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STATE OF ILLINOIS)
) SS.
 COUNTY OF C O O K)

I, J. Eftimoff, a Notary Public in and for said County, in the State aforesaid, do hereby certify that W. Harris Smith, personally known to me to be a Manager of Smithfield Properties XX, L.L.C., an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me severally acknowledged that as such manger, he signed and delivered the instrument as his free and voluntary act as authorized by the operating agreement for said limited liability company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this 2ND day of Dec, 2004.



 NOTARY PUBLIC



Clerk's Office of Cook County

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOTS 25 TO 31 IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO
IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP
39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN
COOK COUNTY, ILLINOIS.

Legal Description of Vaulted Areas

Commonly known as: 151 North State Street,
Chicago, Illinois 60601

PIN: 17-10-305-004-0000

Property of Cook County Clerk's Office

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EXHIBIT B

DRAWINGS

Landscape Site Plan dated July 9, 2004

Landscape Terrace Plan dated July 9, 2004

Exterior Elevations Drawing A200 dated November 11, 2004

Site Context Elevation dated July 9, 2004

Signage Plan dated July 9, 2004

Color Landscape Site Plan - November 11, 2004

Color View from State Street - June 4, 2004

Color Detail Perspective - June 4, 2004

Property of Cook County Clerk's Office

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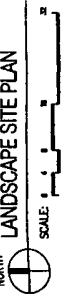
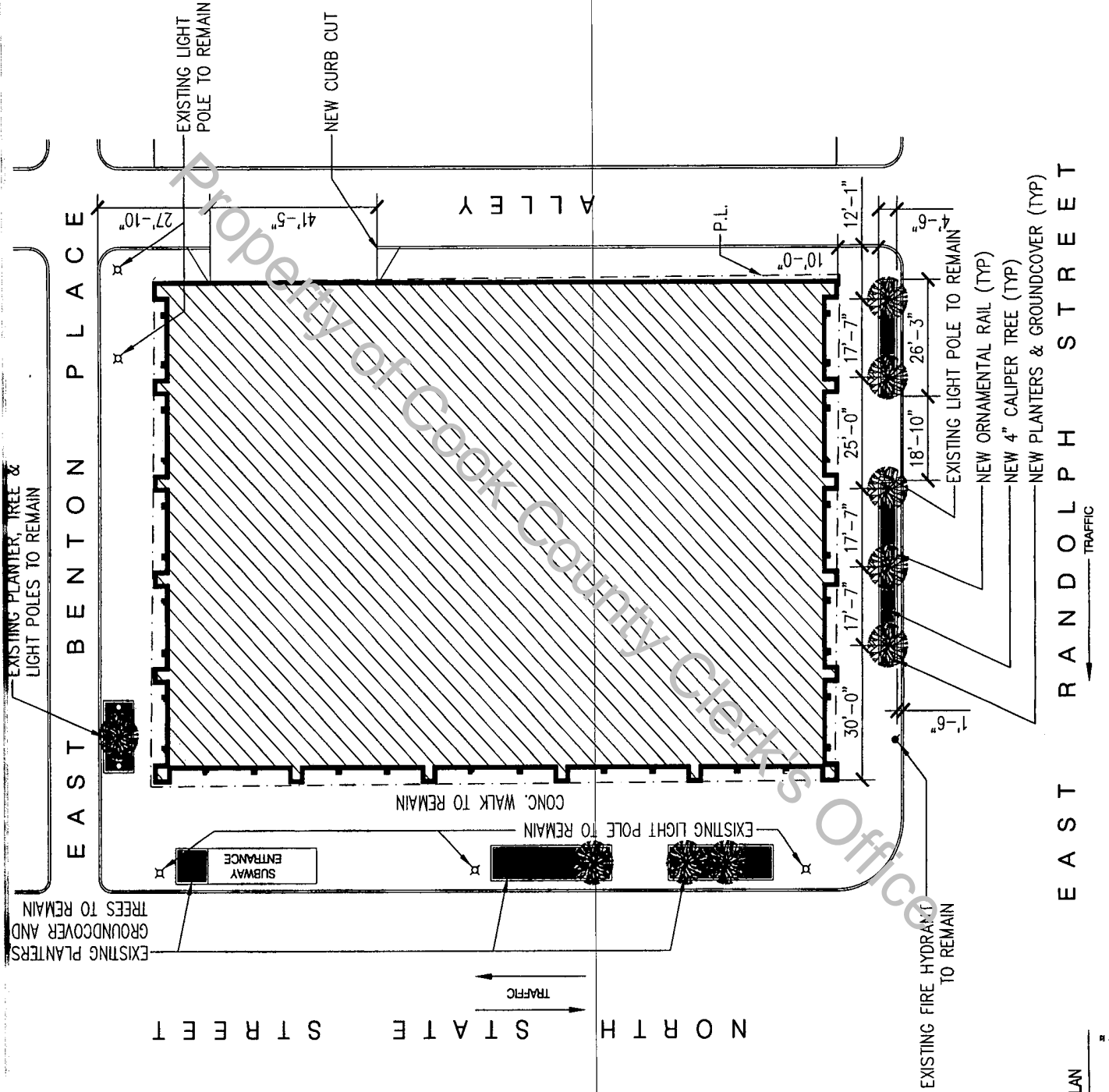
BOOTH HANSEN

Architecture, Interiors, Planning
333 North Dearborn Street
Chicago, Illinois 60610

09 JULY 2004

STATE &
RANDOLPH
Chicago, IL

LANDSCAPE
SITE PLAN



NORTH
LANDSCAPE SITE PLAN
SCALE: 1" = 1'

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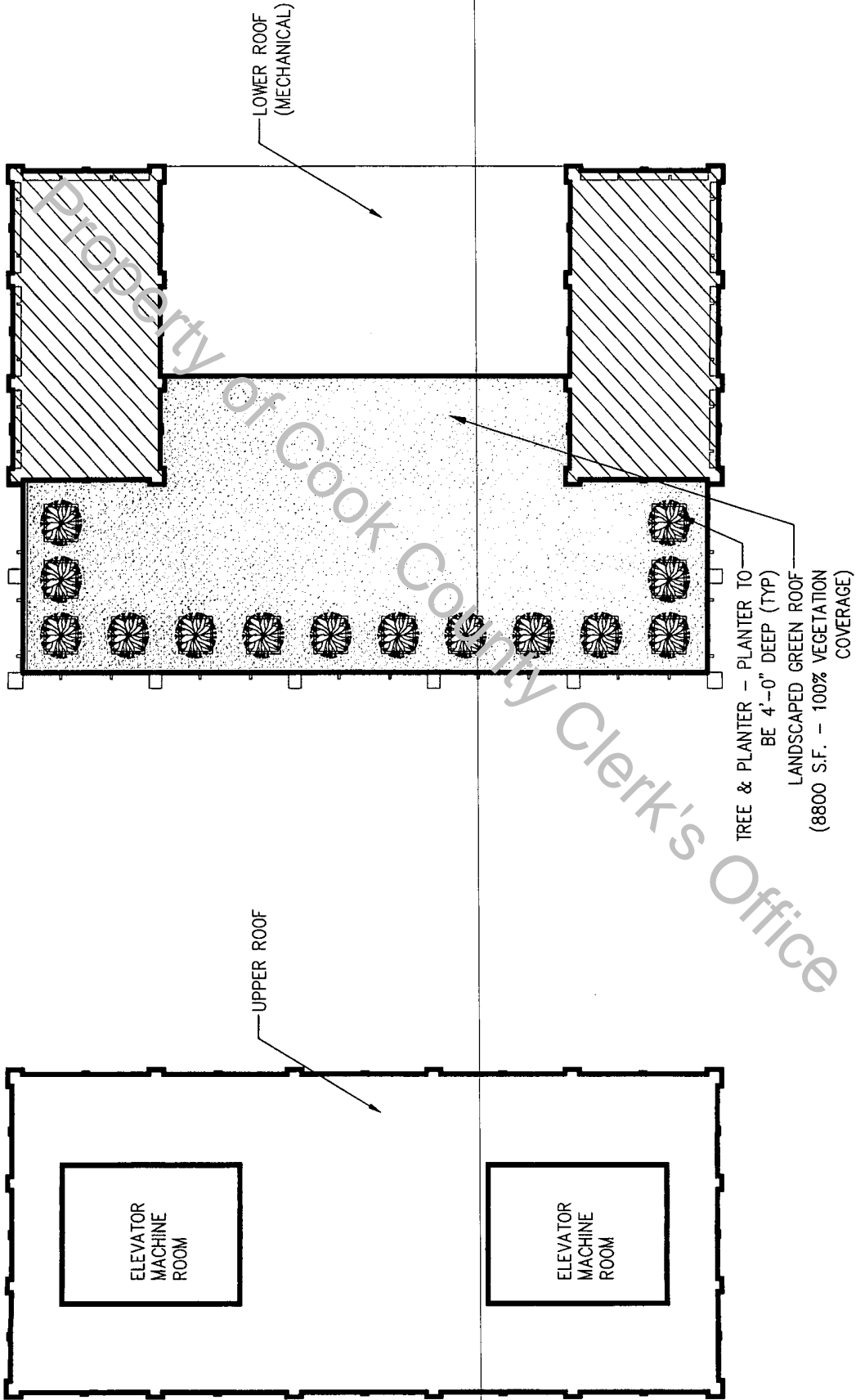
BOOTH HANSEN

Architect & Interior Design
Chicago, Illinois 60601

09 JULY 2004

STATE &
RANDOLPH
Chicago, IL

LANDSCAPE
TERRACE PLAN



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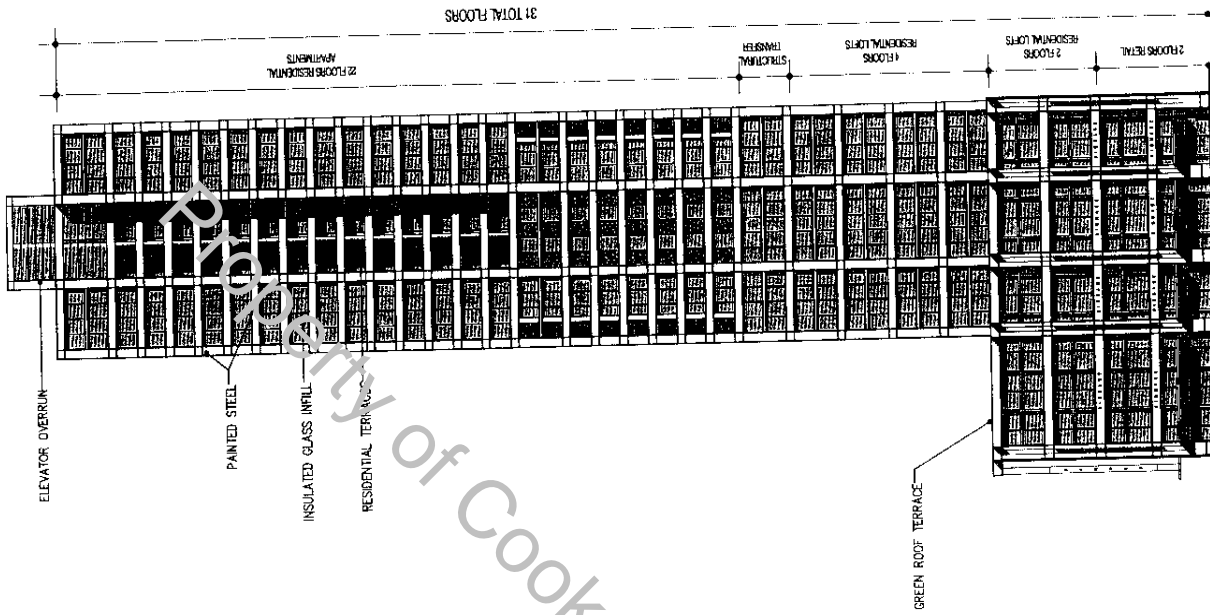
BOOTH HANSEN

Architectural Services - Rendering
333 South Dear Parkway Street
Chicago, Illinois 60601

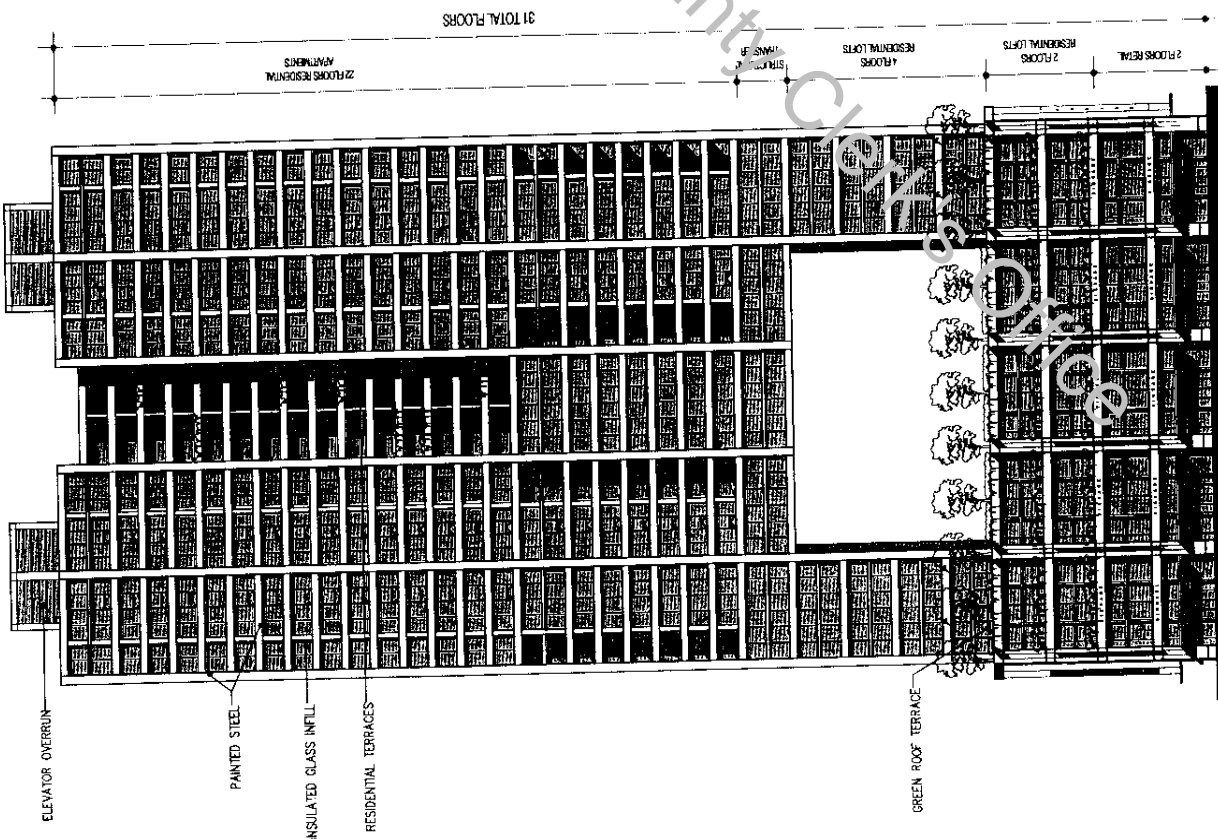
11 NOVEMBER 2004

STATE &
RANDOLPH
Chicago, IL

EXTERIOR
ELEVATIONS
A200



RANDOLPH STREET ELEVATION



STATE STREET ELEVATION

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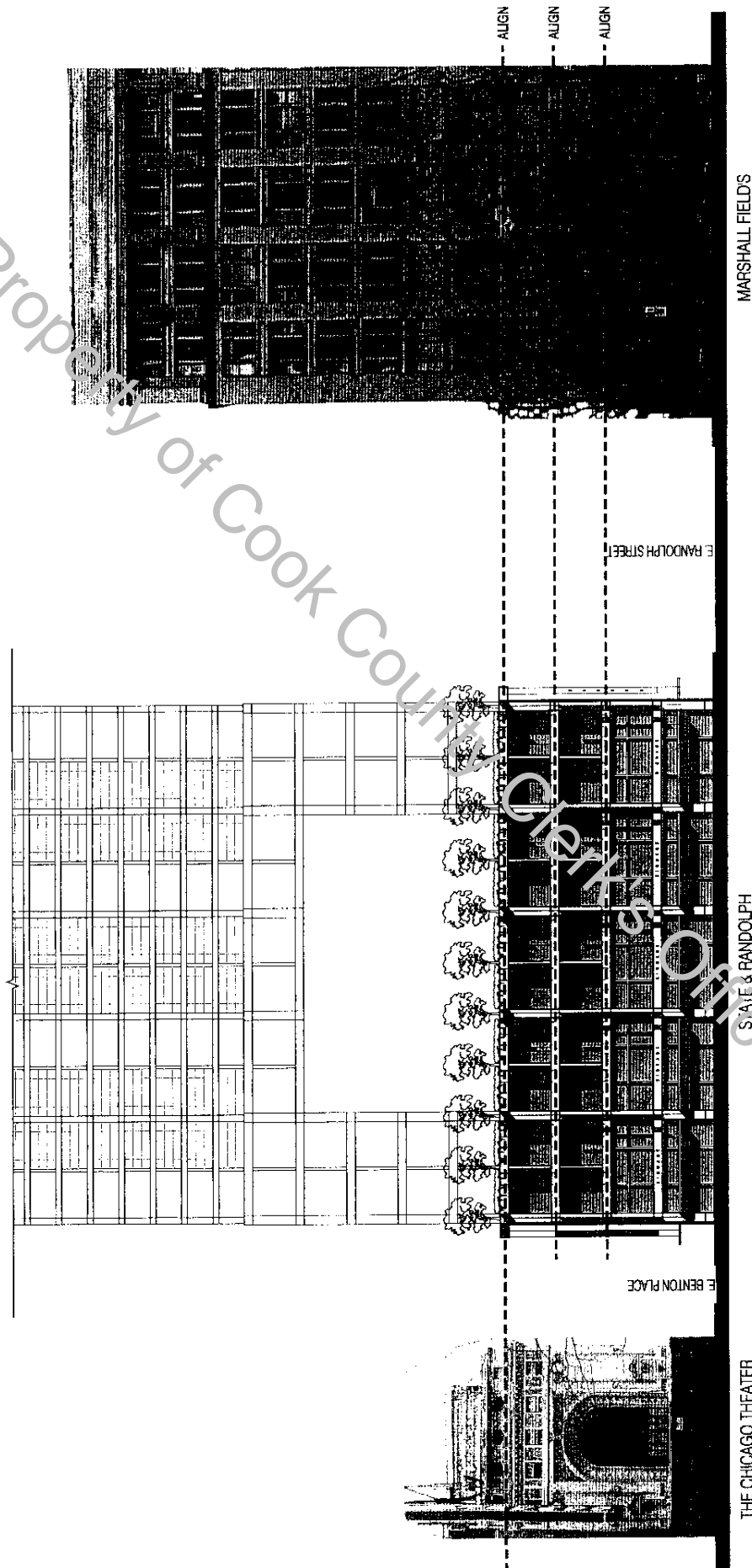
BOOTH HANSEN

ARCHITECTS + INTERIORS + PLANNING
CHICAGO, ILLINOIS 60601

09 JULY 2004

STATE &
RANDOLPH
Chicago, IL

SITE CONTEXT
ELEVATION



MARSHALL FIELDS

E RANDOLPH STREET

STATE & RANDOLPH

E BENTON PLACE

THE CHICAGO THEATER

ALIGN

ALIGN

ALIGN

UNOFFICIAL COPY

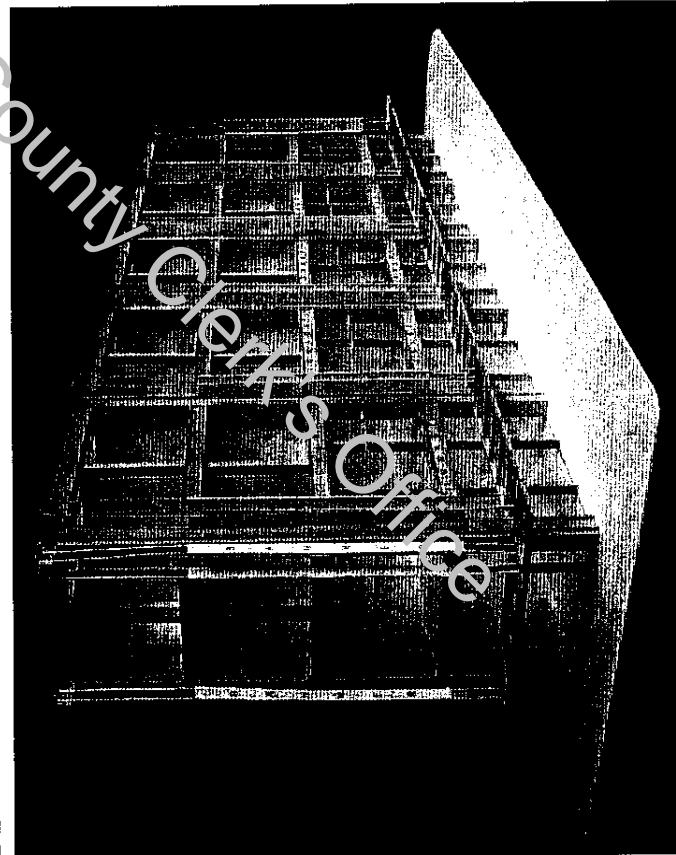
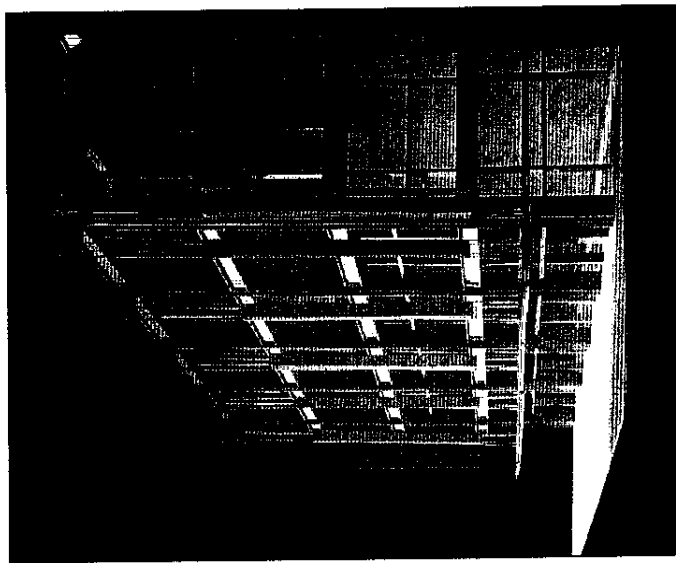
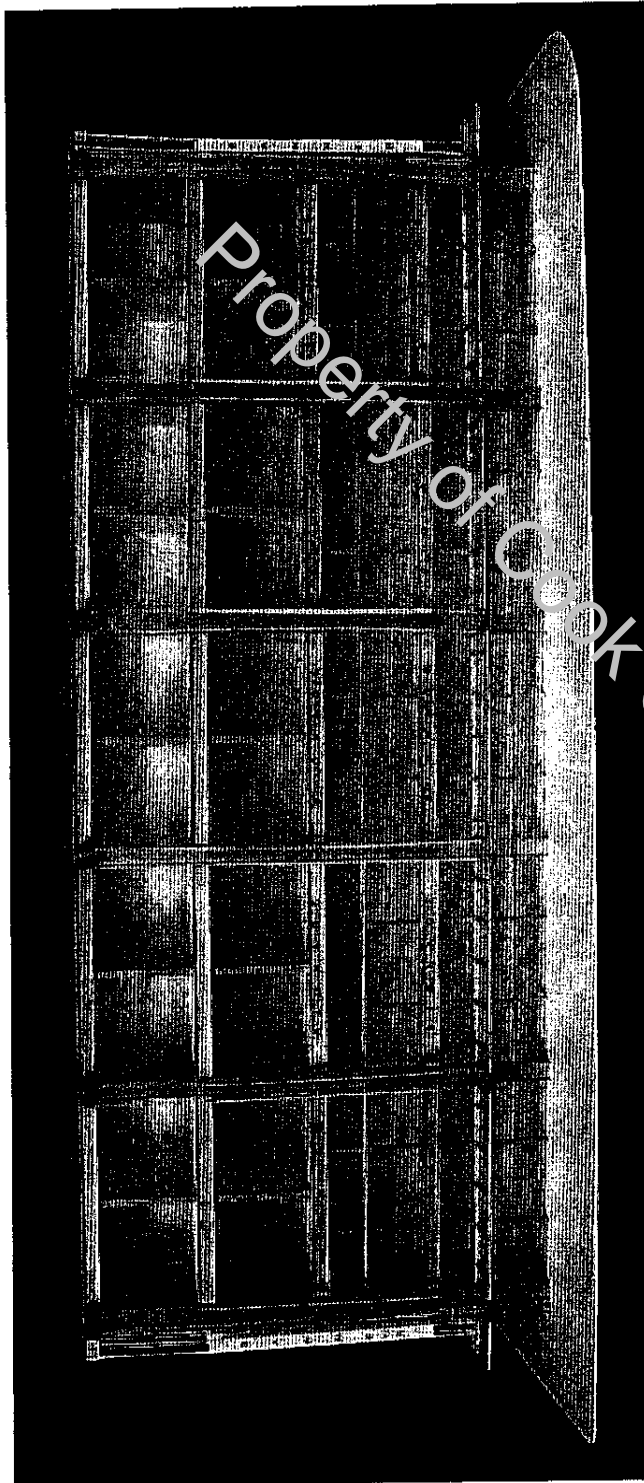
BOOTH HANSEN

Architect: Booth Hansen Chicago
333 North Dearborn Street
Chicago, Illinois 60610

09 JULY 2004

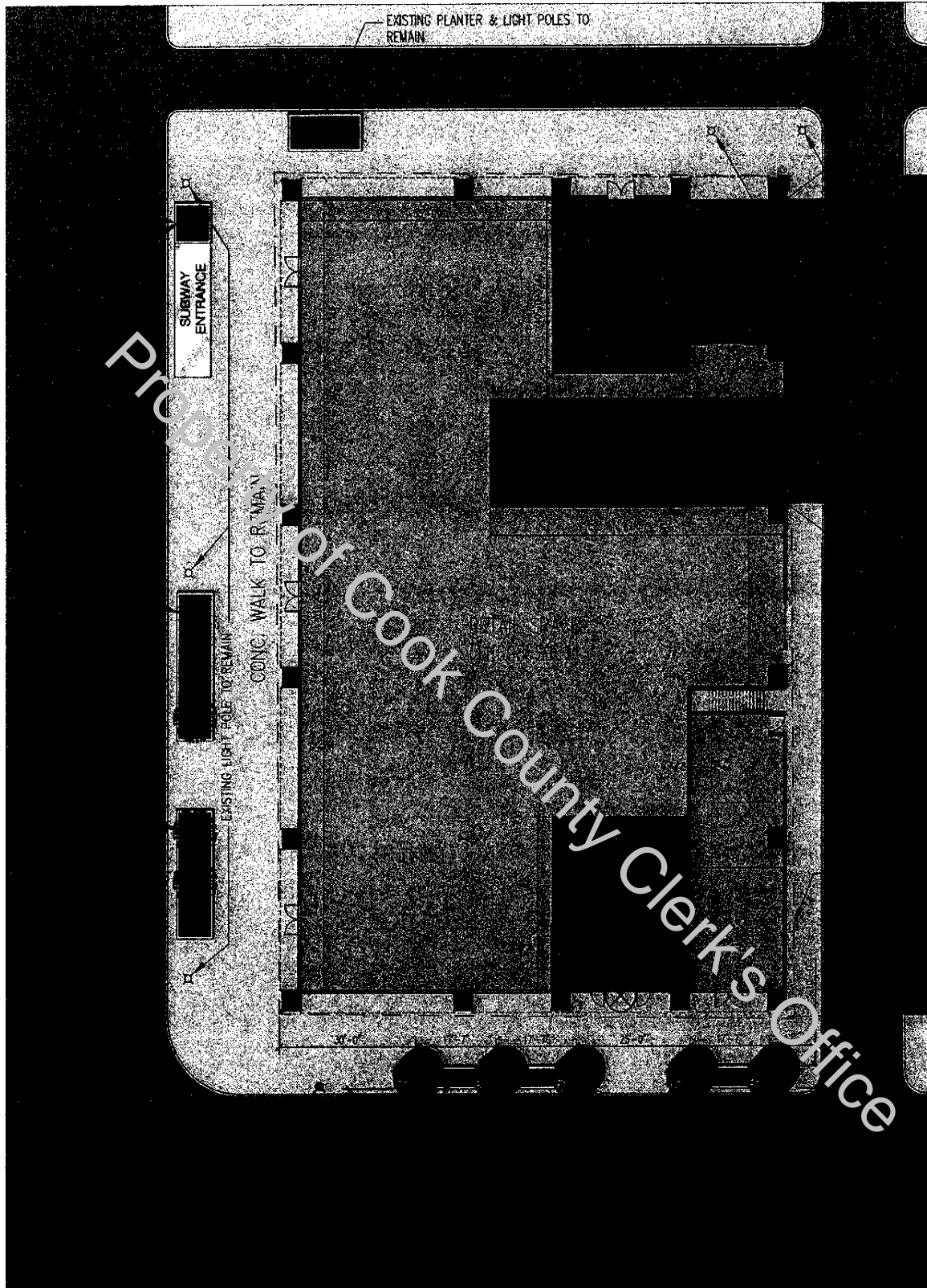
STATE &
RANDOLPH
Chicago, IL

SEWAGE
PLAN



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11 NOVEMBER, 2004



LANDSCAPE SITE PLAN

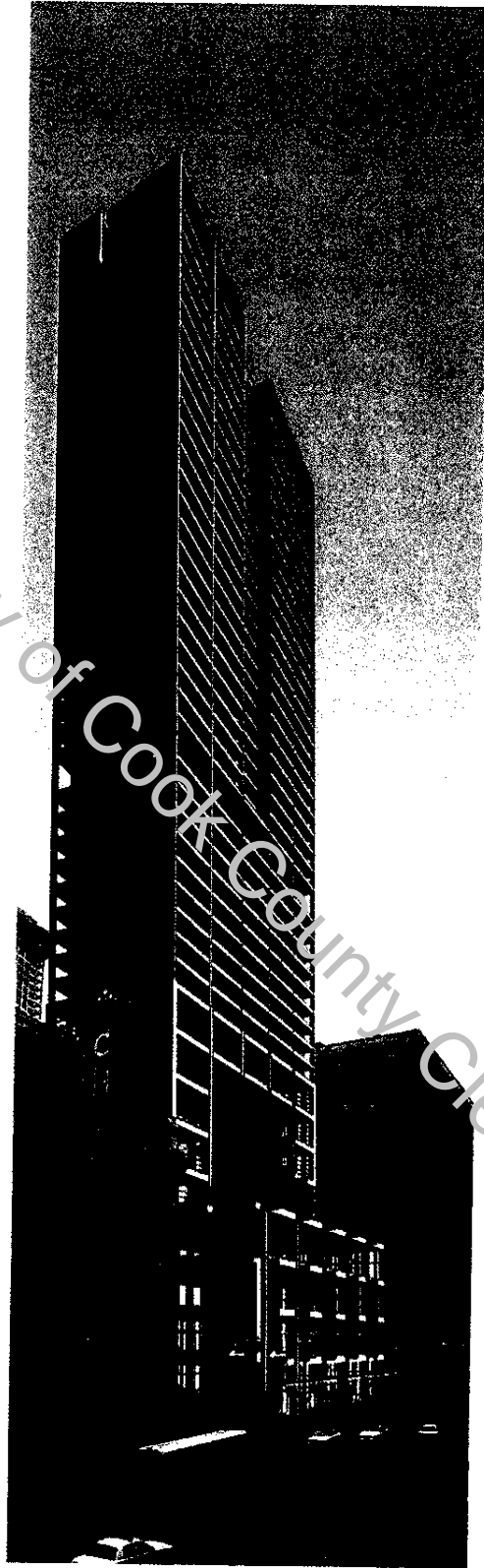
SMITHFIELD PROPERTIES

400 WEST HURON
CHICAGO, ILLINOIS 60610

BOOTH HANSEN

Architecture Interiors Planning
333 South Des Plaines Street
Chicago, Illinois 60661

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04 JUNE, 2004

VIEW FROM STATE STREET

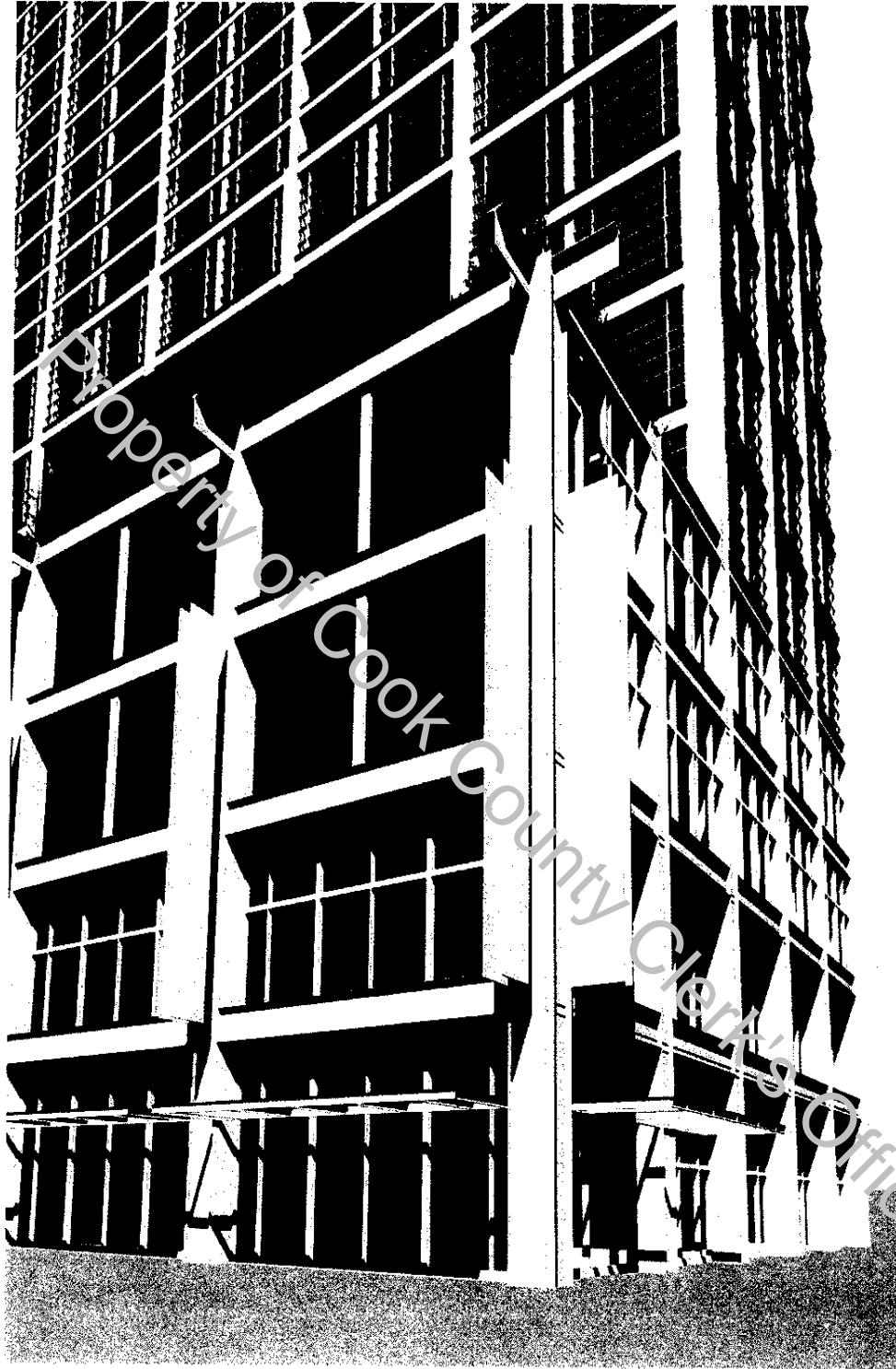
SMITHFIELD PROPERTIES

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DETAIL PERSPECTIVE

SMITHFIELD PROPERTIES

400 West Huron
Chicago, Illinois 60610

BOOTH HANSEN

Architecture Interiors Planning
333 South Des Plaines Street
Chicago, Illinois 60661

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EXHIBIT C

PROHIBITED RETAIL USES FOR THE PROJECT

1. Astrology, card-reading, palm-reading or fortune telling in any form
2. Auto Accessory Stores
3. Fast food restaurants as defined below; provided, however, this paragraph 3 shall not prohibit the uses permitted by Exhibit D (Permitted Uses) to this Agreement:

National restaurants where most customers order and are served food at a counter in packages prepared to leave the premises, or able to be taken to a counter to be consumed at such restaurants and restaurants that: (a) are part of a chain or franchised restaurant where standardized floor plates are used at several locations; and (b) furnishing plan for such restaurant indicates hard-finished, stationary seating arrangements.

4. Currency Exchanges
5. Employment Agencies
6. Inter-track waging facility
7. Laundries/Laundrettes
8. Offices (first floor only, except as may be accessory to a permitted use)
9. Pawn Shops
10. Pay day loan store
11. Plumbing showroom and shops
12. Second hand stores and rummage shops
13. Tattoo Parlors
14. A retailer generally engaged in the sale of soft goods and/or clothing at a discount where the labels for such soft goods or clothing are primarily from manufacturers other than such discount retailer.

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EXHIBIT D

PERMITTED RETAIL USES

City and Developer acknowledge and agree that Retail Space represents an important addition to the Central Business District, generally, and the State Street Corridor, specifically. Developer shall use commercially reasonable efforts to lease the Retail Space to tenants described in this Exhibit. For purposes of identifying permitted uses, the Retail Space shall be divided into the "Corner Space", "First Floor Space" and "Second Floor Space" (collectively, the "Retail Space Plan") as set forth in Exhibit B, attached hereto and made a part hereof. The City acknowledges and understands that the Retail Space Plan is approximate and may be modified by Developer to accommodate tenant requirements.

The following uses shall be specifically permitted in the Retail Space:

Corner Space

Retail tenants located (1) in superior regional shopping malls in the greater Chicago metropolitan area and Midwest Region, including, but limited to, Oakbrook, Old Orchard, Woodfield, Sommerset Collection (Troy, MI) and St. Louis Galleria; (2) on N. Michigan Avenue in Chicago, IL and 5th Avenue in New York, NY. By way of example, but not limitation, the following tenants shall be permitted in the Corner Space: Banana Republic, The Gap, Zara, Talbot's, The Limited, Crate and Barrel, Barnes & Noble, Victoria's Secret, Adits, Barnes & Noble, Mexx, REI, William-Sonoma, Disney, Apple Computer and Urban Outfitters.

First Floor Space

Retail tenants permitted in the Corner Space, a Local Tenant (as such term is defined in Section 5A of the Agreement) and uses generally categorized as "dominant merchants", including, but not limited to: (1) retail clothing and soft goods stores such as H&M, Casual Corner, and Daffy's; (2) restaurants or other establishments engaged in the service of food, (excluding any Prohibited Use), including, but not limited to, Potbelly's, Chipolte, Panera, Delmonico's Lalo's Noodles & Co., Baci; (3) hard goods and home furnishings, including, but not limited to, Sportmart, Dick's Sporting Goods, CompUSA, Linens & Things, Rooms to Go and Ethan Allen.

A drug store or pharmacy, including specifically Walgreens or any other nationally recognized drug store chain shall be a permitted use subject to the City's approval, which shall not be unreasonably withheld or delayed, provided the Developer present the City with written documentation demonstrating its good faith efforts to lease the First Floor Space to a tenant described above.

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Second Floor Space

Operation of retail tenants permitted in the Corner Space, First Floor Space and such other retail users that are operating stores in regional malls and shopping centers in the Chicago metropolitan area.

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EXHIBIT E

PERMITTED USES FOR PORTION OF PROJECT INTENDED FOR RESIDENTIAL USE

Banks
Barber Shops
Beauty Parlors
Book Stores
Camera Stores
Catering Establishments
Clinics, Medical and Dental
Clubs, Private
Community Centers
Consulates
Eleemosynary Uses or Institutions
Galleries
Financial Institutions
Gift Shops
Grocery Stores
Health Centers
Hotels
Libraries
Micro Wave Relay Towers
Nursing Homes
Offices
Personal Service Shops
Pet Shops
Picture Framing
Post Offices
Radio Broadcasting Stations
Recording Studios
Religious Institutions
Residential
Restaurants
Schools, Business
Schools
Shoe Repair Stores
Sporting Goods Stores
Storage
Swimming Pools
Tailor Shops
Television Broadcasting Stations
Universities