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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/15/2006 02:13 PM Pg: 1 of 15

Prepared by and after recording return to:  
Ira J. Swidler  
Katten Muchin Rosenman, LLP  
525 W. Monroe Street  
Chicago, Illinois 60661

8352439 D2 MS

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, made as of the 13<sup>th</sup> day of September, 2006, by and among MONY LIFE INSURANCE COMPANY, a New York corporation, with an address of 1290 Avenue of the Americas, New York, NY 10104 (hereinafter called "Lender"), MDA CITY APARTMENTS, LLC, an Illinois limited liability company, with an address of 30833 Northwestern Highway, Farmington Hills, MI 48334 (hereinafter called "Landlord"), MDA MASTER TENANT, LLC, an Illinois limited liability company, with an address of 30833 Northwestern Highway, Farmington Hills, MI 48334 (hereinafter called "Tenant") and BANC OF AMERICA HISTORIC CAPITAL ASSETS LLC, a Delaware limited liability company, with an address of 101 South Tryon Street, Charlotte, NC 28255-0001 (hereinafter called "Investor").

WITNESSETH:

WHEREAS, Lender is the lender in connection with a \$33,000,000 loan (the "Mortgage Loan") being made to Landlord, which Mortgage Loan is secured by means of a first lien mortgage (the "Mortgage") and other related security documents and financing statements given by Landlord in favor of Lender, as amended (with the Mortgage, hereinafter collectively referred to as the "Loan Documents").

WHEREAS, the Mortgage will be recorded in the Public Records of the County of Cook, Illinois and will encumber the property described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Premises"); and

WHEREAS, Tenant is the holder of a leasehold estate under and pursuant to a certain Master Lease Agreement dated December 1, 2003, as amended by First Amendment to Master Lease Agreement dated as of August 30, 2006 (the "Lease"), with Landlord for the Premises; and

WHEREAS, Landlord has rehabilitated the historic building located on the Premises in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Historic Tax Credit") pursuant to Section 47 of the Internal Revenue Code of

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**Box 400-CTCC**

SNDA for Equity Investments

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1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code"); and

WHEREAS, pursuant to that certain Operating Agreement of Tenant dated as of December 1, 2003 (the "Operating Agreement"), the Investor has acquired an interest in Tenant and has made an investment therein; and

WHEREAS, Landlord and Tenant have executed that certain credit pass-through election form (the "Pass-Through Election") dated pursuant to which Landlord has elected under Section 50 of the Code to pass-through to Tenant the Historic Tax Credit to which Landlord is otherwise entitled as a result of the rehabilitation of the Building; and

WHEREAS, the Mortgage Loan requires that Lender consent to any lease of the Premises; and

WHEREAS, the parties hereto desire to set forth their rights in connection with said Lease and the Loan Documents.

NOW, THEREFORE, in consideration of the covenants hereinafter contained and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

1. Consents. Lender hereby consents to the Lease, and Lender agrees that the execution and delivery thereof by Landlord and/or Tenant, as the case may be, shall not constitute a default under the Loan Documents. Tenant and Investor hereby (a) consent to the Mortgage Loan and (b) agree that the execution and delivery of the Loan Documents by Landlord, and the pledge by the managing member of its interest in Tenant, shall not constitute a default under the Master Lease or Operating Agreement.

2. Initial Lease Subordination; Rescission. The Lease and all of the terms, covenants and provisions thereof and the entire right, title and interest of Tenant thereunder shall be and hereby are made subject and subordinate in all respects to the Mortgage and to the lien thereof and to all the terms, conditions and provisions thereof, and to any renewals, extensions, modifications, consolidations or replacements thereof; provided, however, that any holder of the Mortgage may at any time rescind such subordination of the Lease, by notice given to Tenant in recordable form, whereupon the Lease shall be deemed prior to the Mortgage, without regard to the terms of this Agreement.

3. Non-Disturbance Assurances. Prior to May 29, 2012, Lender shall not name Tenant as a party defendant to any action for foreclosure or other enforcement of the Mortgage (unless required by law), nor shall the Lease be terminated by Lender in connection with, or by reason of, foreclosure or other proceedings for the enforcement of the Mortgage, or by reason of a transfer of Landlord's interest under the Lease pursuant to the taking of a deed or assignment in lieu of foreclosure (or similar device), provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights: (i) the Lease shall be in full force and effect, with no default or event of default on the part of Tenant currently occurring, and (ii) Tenant shall not be in breach of any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

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## 4. Attornment.

(a) In the event that the Lease is not terminated by Lender in accordance with the provisions of paragraph 3 and Lender or any other person or entity shall succeed to the rights of Landlord under the Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights (hereinafter sometimes called a "successor landlord"), Tenant shall attorn to and recognize such successor landlord as its new landlord under the Lease, and Tenant shall promptly execute and deliver any instrument that such successor landlord may reasonably request to evidence such attornment. Tenant hereby irrevocably appoints Lender the attorney-in-fact of Tenant to execute and deliver such instrument on behalf of Tenant, should Tenant refuse or fail to do so promptly after request. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give it any right or election to terminate or otherwise adversely affect the Lease or the obligations of Tenant thereunder by reason of any foreclosure or other action whatsoever in enforcement of the Mortgage.

(b) Upon such attornment as provided in subparagraph (a) above, provided no default has occurred by Tenant that has not been cured within any applicable notice and cure period, the Lease shall continue in full force and effect as, and as if it were, a direct lease between Tenant and such successor landlord upon all of the terms, covenants, conditions and agreements as set forth in the Lease, and Tenant shall, from and after the successor landlord's succession to the interest of Landlord under the Lease, have the same remedies against such successor landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord if the successor landlord had not succeeded to the interest of Landlord; provided, however, that the successor landlord shall not be: (i) liable for any accrued obligation or previous act or omission of any prior landlord under the Lease (including Landlord); (ii) subject to any credits, claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord) or to the payment of rent or other performance under the Lease; (iii) required to account for any security deposit other than any security deposit actually delivered to the successor landlord; (iv) bound by any previous modification of the Lease or by any previous prepayment of more than one month's rent, unless such modification or prepayment shall have been expressly approved in writing by Lender; (v) obligated to commence or complete any construction or to make any contribution toward construction or installation of any improvements upon the Premises required under the Lease or any expansion or rehabilitation of existing improvements thereon; or (vi) responsible for repairing or restoring the Property in the case of damage by fire or other casualty or taking by condemnation to the extent the costs thereof exceed the insurance or condemnation proceeds.

## 5. Intentionally Omitted.

## 6. Notice and Cure Rights.

(a) Lender and Landlord each agree, simultaneously with the giving of any notice of the occurrence of an event of default with respect to the Mortgage Loan, to give a duplicate copy thereof to the Investor and Tenant. Should Landlord default in respect of any of the provisions of the Mortgage Loan, the Investor and/or Tenant shall have the right, but not the obligation, to cure such default, and Lender thereof shall accept performance by or on behalf of

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the Investor and/or Tenant as though, and with the same effect as if, it had been done or performed by Landlord. The Investor will have a period of time after the service of such notice upon it within which to cure the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given under the Loan Documents in respect of the specified default after the giving of any required notice thereunder.

(b) Lender agrees that the removal of the managing member of Tenant by the Investor pursuant to the Operating Agreement (and the corresponding removal of the manager of MDA Mezzanine Borrower, LLC) shall not in and of itself accelerate the Mortgage Loan or constitute a default under the Loan Documents, provided that (i) any substitute managing member and manager is an affiliate of the Investor, and (ii) Lender receives notice of such substitution no less than ten (10) days prior to such substitution.

(c) Lender agrees that any transfer of the Investor's interest pursuant to the Option Agreement dated as of December 1, 2003, between the Investor and the managing member of Tenant (the "Option Agreement") shall not in and of itself accelerate the Mortgage Loan or constitute a default under the Loan Documents.

7. Lender's Remedial Rights. Tenant shall provide Lender with prompt notice of any asserted default against Landlord under the Lease. In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of time, to cancel or terminate the Lease, or to claim a partial or total eviction or to exercise any other remedy, Tenant shall not exercise such right or remedy (a) until it has given written notice of such act or omission to Lender; and (b) until a reasonable period for Lender's obtaining possession of the Premises and remedying such act or omission shall have elapsed following the later of (i) the giving of such notice or (ii) the time when Lender shall have become entitled under the Loan Documents to remedy the same; provided that Lender shall give Tenant written notice of its intention to, and shall commence and continue with due diligence to, remedy such act or omission. Notwithstanding the foregoing, Lender shall have no obligation to remedy or to continue to remedy any such act or omission.

8. Tenant's Assurances. Tenant shall not, without obtaining the prior written consent of Lender, (i) enter into any agreement amending, modifying or terminating the Lease, (ii) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, (iii) voluntarily surrender the premises demised under the Lease or terminate the Lease without cause or shorten the term thereof, (iv) assign the Lease or sublet the premises demised under the Lease or any part thereof other than pursuant to the provisions of the Lease and in accordance with the terms of the Loan Documents, or (v) pledge, mortgage, grant a lien, assign or transfer or otherwise encumber Tenant's right, title or interest in or to the Lease or any sublease, license, contract or other agreement for use and/or occupancy of the Premises or any part thereof, or in any rents, proceeds, payments, or other consideration or amounts arising from the Premises on any proceeds of any of the foregoing; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, pledge, mortgage, grant, transfer or encumbrance without Lender's prior consent, shall not be binding upon Lender. Tenant shall comply with the requirements of Section 2.11 of the Mortgage. Notwithstanding anything to the contrary contained in the Lease, Tenant consents to an assignment of the Lease by Landlord to Lender or to a purchaser at a foreclosure sale or



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any assignee of a "Lender" (as defined in the Lease). Tenant agrees that amounts payable to its members or their affiliates under the Operating Agreement shall be made only from cash flow from the Premises after payment of debt service on the Mortgage Loan and any permitted mezzanine loan, payment of any required reserves and payment of actual operating expenses of the Premises.

9. Tenant's Representations. Tenant hereby represents and warrants to Lender that as of the date hereof (i) Tenant is the owner and holder of the tenant's interest under the Lease, (ii) the Lease has not been further modified or amended, (iii) the Lease is in full force and effect, (iv) neither Tenant nor Landlord is in default under any of the terms, covenants or provisions of the Lease and Tenant knows of no event which but for the passage of time or the giving of notice or both would constitute an event of default by Tenant or Landlord under the Lease, (v) neither Tenant nor Landlord has commenced any action or given or received any notice for the purpose of terminating the Lease, (vi) all rents, additional rents and other sums due and payable under the Lease have been paid in full and no rents, additional rents or other sums payable under the Lease have been paid for more than one (1) month in advance of the due dates thereof, (vii) there are no offsets or defenses to the payment of the rents, additional rents, or other sums payable under the Lease, (viii) the Commencement Date of the Lease is September 6, 2005 and the term of the Lease expires on December 31, 2010, (ix) the Compliance Period expires on May 29, 2011 and (x) the aggregate amount of Investor's Capital Contribution Obligation (as defined in the Operating Agreement) is \$8,990,003, of which \$7,303,241 has been paid as of the date hereof.

10. Payments to Lender. Tenant acknowledges that it has notice that Landlord's interest under the Lease and the rent and all other sums due thereunder have been assigned to Lender as part of the security for the indebtedness secured by the Mortgage. In the event that Lender notifies Tenant of any event of default under the Loan Documents and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant agrees that it shall pay rent and all other sums due under the Lease directly to Lender without notice to or the consent of Landlord and without any obligation on the part of Tenant to determine whether or not the Mortgage Loan is in fact in default. The non-disturbance covenants of Lender provided in Paragraph 3 are subject to the undertaking by Tenant to pay rent and all other such sums directly to Lender after Tenant's receipt of the notice described above.

11. Estoppel Certificates. Whenever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to Lender, and without charge to Lender, an estoppel certificate setting forth whatever information Lender may reasonably require to confirm the current status of the Lease including, without limitation, a confirmation that the Lease is and remains in full force and effect.

12. Miscellaneous.

(a) This Agreement may not be modified except by an agreement in writing signed by the parties or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

(b) Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage except as specifically set forth herein.

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(c) Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement with respect to the Mortgage. Tenant further agrees that in the event there is any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease dealing with nondisturbance, the terms and provisions hereof shall be controlling.

(d) All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing sent by either hand delivery service providing dated evidence of delivery, overnight courier service providing dated evidence of delivery, or mailed by certified or registered mail, return receipt requested, to the party to whom the notice, demand or request is being made at its address set forth herein. Any party may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement.

(e) If any of the terms of this Agreement or the application thereof to any person or entity or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or entity or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) This Agreement shall be governed by and construed in accordance with the laws of Illinois, exclusive of choice of law principles.

(g) To the fullest extent permitted by law, the parties hereto each hereby irrevocably and unconditionally:

(i) agree that any action, suit or proceeding by any person or entity arising from or relating to this Agreement or any statement, course of conduct, act, omission or event in connection therewith (collectively, "Related Litigation") shall be brought in any state or federal court of competent jurisdiction sitting in Illinois, submit to the jurisdiction of such courts, and agree not to bring any Related Litigation in any other forum;

(ii) acknowledge that such courts will be the most convenient forum for any Related Litigation, waive any objection to the laying of venue of any Related Litigation brought in any such court, waive any claim that any Related Litigation brought in any such court has been brought in an inconvenient forum, and waive any right to object, with respect to any Related Litigation, that such court does not have jurisdiction over it;

(iii) consent and agree to service of any summons, complaint or other legal process in any Related Litigation by registered or certified U.S. mail, postage prepaid, to it at the address for notices described in this Agreement, and consent and agree that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law); and

(iv) to the extent permissible under applicable law, waive the right to trial by jury in any Related Litigation.

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(h) This Agreement may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement.

(i) Whenever the context may require, any provisions used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

*[Signatures appear on the following page]*

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WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

**LENDER:**

MONY LIFE INSURANCE COMPANY, a New York corporation

By: [Signature]  
Name: ROBERT A LYNN  
Title: Investment Officer

**LANDLORD:**

MDA CITY APARTMENTS, LLC, a Delaware limited liability company

By: MDA Mezzanine Borrower, LLC, a Delaware limited liability company, its sole member

By: Holtzman Interests No. 17, LLC, a Michigan limited liability company, its manager

By: \_\_\_\_\_  
Name: Jonathan Holtzman  
Title: Manager

**TENANT:**

MDA MASTER TENANT, LLC, an Illinois limited liability company

By: Holtzman Interests No. 17, LLC, a Michigan limited liability company, its managing member

By: \_\_\_\_\_  
Name: Jonathan Holtzman  
Title: Manager

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WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

**LENDER:**

MONY LIFE INSURANCE COMPANY, a New York corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

MDA CITY APARTMENTS, LLC, a Delaware limited liability company

By: MDA Mezzanine Borrower, LLC, a Delaware limited liability company, its sole member

By: Holtzman Interests No. 17, LLC, a Michigan limited liability company, its manager

By: \_\_\_\_\_  
Name: Jonathan Holtzman  
Title: Manager

**TENANT:**

MDA MASTER TENANT, LLC, an Illinois limited liability company

By: Holtzman Interests No. 17, LLC, a Michigan limited liability company, its managing member

By: \_\_\_\_\_  
Name: Jonathan Holtzman  
Title: Manager

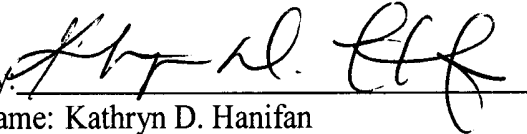
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**INVESTOR:**

BANC OF AMERICA HISTORIC CAPITAL ASSETS LLC, a Delaware limited liability company

By: Banc of America Community Development Corporation, its sole member

By: 

Name: Kathryn D. Hanifan

Title: Vice President

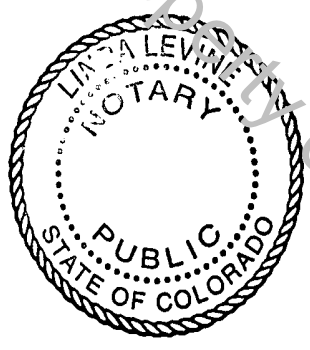
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STATE OF COLORADO :  
: ss  
County of Douglas :

On this, the 31 day of AUGUST, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Robert A. Lynn who acknowledged himself herself to be the Investment Off. of MONY Life Insurance Company, who I am satisfied is the person who signed the within Subordination, Non-Disturbance and Attornment Agreement and who acknowledged that being validly authorized to do so, he/she executed same as such officer for the purposes therein contained.

WITNESS my hand and seal the day and year aforesaid.



Linda Levin  
Notary Public

My Commission Expires: 3-17-2007

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State OF Michigan :  
County of Oakland : SS

On this, the 31<sup>st</sup> day of August, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Jonathan Holtzman, who acknowledged himself/herself to be the Manager of Holtzman Interests No. 17, LLC, a Michigan limited liability company, the managing member of MDA Mezzanine Borrower, LLC, a Delaware limited liability company, the manager of MDA City Apartments, LLC, a Delaware limited liability company, who I am satisfied is the person who signed the within Subordination, Non-Disturbance and Attornment Agreement and who acknowledged that being validly authorized to do so, he/she executed same as such officer for the purposes therein contained.

WITNESS my hand and seal the day and year aforesaid.

*Cheryl L. Imrick*  
Notary Public

My Commission Expires: 11/21/06

**CHERYL L. IMRICK**  
**NOTARY PUBLIC MACOMB CO., MI**  
**MY COMMISSION EXPIRES Nov 21, 2006**  
**ACTING IN OAKLAND COUNTY**

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# UNOFFICIAL COPY

State OF Michigan :  
County of Oakland : SS

On this, the 31st day of August, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Jonathan Holtzman, who acknowledged himself/herself to be the Manager of Holtzman Interests No. 17, LLC, a Michigan limited liability company, the managing member of MDA Master Tenant, LLC, an Illinois limited liability company, who I am satisfied is the person who signed the within Subordination, Non-Disturbance and Attornment Agreement and who acknowledged that being validly authorized to do so, he/she executed same as such officer for the purposes therein contained.

WITNESS my hand and seal the day and year aforesaid.

Joseph D. Smick  
Notary Public

My Commission Expires: 11/21/06

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STATE OF Mass :  
COUNTY OF Suffolk : SS  
:

On this, the 6<sup>th</sup> day of September, 2006, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Kathryn D. Hanifan, who acknowledged herself to be the Vice President of Banc of America Community Development Corporation, the sole member of Banc of America Historic Capital Assets LLC, a Delaware limited liability company, who I am satisfied is the person who signed the within Subordination, Non-Disturbance and Attornment Agreement and who acknowledged that being validly authorized to do so, she executed same as such officer for the purposes therein contained.

WITNESS my hand and seal the day and year aforesaid.

Karen Lee Maw  
Notary Public Karen Lee Maw

My Commission Expires: 9-14-12

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## EXHIBIT "A"

### Legal Description of Premises

#### PARCEL 1:

LOTS 3 TO 6, BOTH INCLUSIVE, IN RICHARD T. HAINES' SUBDIVISION OF LOTS 1 TO 5 IN BLOCK 10 OF FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOTS 1 AND 2 IN RICHARD T. HAINES' SUBDIVISION OF LOTS 1 TO 5 IN BLOCK 10 OF FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THE NORTH 1/2 OF A STRIP OF LAND 9.5 FEET IN WIDTH: (I) LYING SOUTH OF AND ADJOINING LOTS 1 THROUGH 6, BOTH INCLUSIVE, IN RICHARD T. HAINES' SUBDIVISION OF LOTS 1 TO 5 IN BLOCK 10 OF FORT DEARBORN ADDITION TO CHICAGO; (II) LYING NORTH OF AND ADJOINING LOT 7 IN RICHARD T. HAINES' SUBDIVISION AFORESAID AND (III) LYING NORTH OF THE NORTH LINE EXTENDED EAST, OF LOT 7 IN RICHARD T. HAINES' SUBDIVISION; ALL IN BLOCK 10 OF FORT DEARBORN ADDITION TO CHICAGO AFORESAID, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4

NON-EXCLUSIVE EASEMENT IN FAVOR OF PARCELS 1, 2 & 3 AS CREATED BY GRANT OF EASEMENT MADE BY AND BETWEEN CONSOLIDATED EQUITY III, LLC AND MDA CITY APARTMENTS, LLC RECORDED MARCH 16, 2006 AS DOCUMENT NUMBER 0607544098, FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS OVER, UPON, ON OR THROUGH THE SOUTH 1/2 OF THE VACATED ALLEY LYING NORTH OF AND ADJOINING LOT 7 IN RICHARD T. HAINES' SUBDIVISION OF LOTS 1 TO 5 IN BLOCK 10 OF FORT DEARBORN ADDITION TO CHICAGO AFORESAID, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THEREFROM ANY PORTION SITUATED MORE THAN THIRTY (30) FEET ABOVE CURRENT GRADE.

Address: 185 North Wabash, Chicago, IL 60601

PIN: 17-10-306-001-0000; 17-10-306-002-0000