



Doc#: 0700233215 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/02/2007 11:19 AM Pg: 1 of 17

After Recording Return To:

J. Thomas Trent, Jr., Esq.
Boult, Cummings, Conners & Berry, PLC
1600 Division Street, Suite 700
Nashville, Tennessee 37203

Property of Cook County Clerk's Office

(Space Above This Line for Recording Data)

THIS TERMINATION OF SALE AGREEMENT, MEMORANDUM OF SALE AGREEMENT

THIS TERMINATION OF SALE AGREEMENT, MEMORANDUM OF SALE AGREEMENT AND MULTI-PARTY AGREEMENT ("Agreement") is made and delivered as of the *20th* day of *December*, 2006, by and among , by and among SHERMAN PLAZA PARTNERS, LLC ("Seller"), a Delaware limited liability company having an address of c/o Focus Management, LLC 211 Waukegan Road, Northfield, Illinois 60093, Attn: Tim Anderson, THE LINCOLN NATIONAL LIFE INSURANCE COMPANY ("Purchaser"), an Indiana corporation having an address of c/o Delaware Investment Advisers, 1300 S. Clinton Street, Suite 3C-05, Fort Wayne, Indiana 46802, Attn: John Gerber, COLE TAYLOR BANK ("Construction Lender"), an Illinois banking corporation having an address of 5501 West 79th Street, Burbank, Illinois 60459, Attn: William E. Krinsky, LEHMAN BROTHERS HOLDINGS INC. ("Secondary Lender"), a Delaware corporation having an address of 399 Park Avenue, 8th Floor, New York, New York 10022, Attn: Scott Weiner, and TIMOTHY ANDERSON, JAMES B. KLUTZNICK AND MAURICE FISHER (collectively, "Guarantor"), individuals residing in the State of Illinois.

WHEREAS, Seller, Purchaser and Guarantor have entered into a Sale Agreement (the "Sale Agreement"), dated November 30, 2004, pursuant to which Seller has agreed to construct a mixed use project on the land described on Exhibit A (the "Land") that includes residential condominiums and retail space (collectively the "Project"); and

WHEREAS, Seller has agreed to sell the retail portion of the Project to Purchaser located on the land described on Exhibit B and Seller has agreed to assign to Purchaser all of Seller's rights under the Garage Retail Lease between Seller and the City of Evanston, Illinois, dated October 28, 2002, and the Retail Parking Lease between Seller and The City of Evanston, Illinois, dated November 30, 2004 (collectively, the "Subject Property"), upon the terms and conditions set forth in the Sale Agreement; and

WHEREAS, Construction Lender and Seller have entered into that certain Acquisition and Loan Agreement, dated November 30, 2004, pursuant to which Construction Lender has agreed to loan to

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Seller an amount not to exceed the principal sum of Ninety-Nine Million and No/100 Dollars (\$99,000,000.00) (the "Construction Loan") to fund a portion of the development costs of the Project; and

WHEREAS, the members of Seller have obtained a mezzanine loan from Secondary Lender in the principal sum of Eleven Million and No/100 Dollars (\$11,000,000.00) (the "Secondary Loan") to fund a portion of the development costs of the Project; and

WHEREAS, Seller, Purchaser, Construction Lender, Secondary Lender, and Guarantor entered into that certain Multi-Party Agreement, dated November 30, 2004, related to the Project (the "Multi-Party Agreement"); and

WHEREAS, the parties hereto desire to give all persons notice of the terms of the Sale Agreement and the Multi-Party Agreement.

WHEREAS, in order to place third parties on notice of the terms of the Sale Agreement and the Multi-Party Agreement, Seller, Purchaser, Construction Lender, Secondary Lender, and Guarantor entered into that certain Memorandum of Sale Agreement and Multi-Party Agreement (the "Memorandum"), dated November 30, 2004 and filed for record in the ___ Office as Instrument No. _____; and

WHEREAS, the parties desire to terminate the Sale Agreement and Memorandum.

NOW THEREFORE, Ten Dollars (\$10.00) paid Purchaser by Seller and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Defined Terms. All terms not defined herein but defined in the Sale Agreement shall have the meaning ascribed to them in the Sale Agreement.

2. Termination. The Sale Agreement is hereby terminated, except to the extent that the provisions thereof expressly survive termination. The Memorandum is hereby terminated.

3. Joint & Several Liability. If any party to this Agreement is made up of more than one person, (i) the defined term (e.g. Guarantors) for such party shall mean and refer to each person comprising the party, individually, and to all persons comprising the party, collectively, and (ii) all persons comprising the party shall be jointly and severally liable hereunder.

4. Miscellaneous. The captions and headings of the paragraphs contained in this Agreement are for convenience only and shall in no way define, limit, construe, or describe the scope or intent of this Agreement. Each of the parties has agreed to the particular language of this Agreement, and any question regarding the meaning of any provision of this Agreement shall not be resolved by any rule providing for construction against the party who caused the uncertainty to exist or against the draftsman. This Agreement (i) constitutes the entire agreement and understanding of Seller, Purchaser, Construction Lender, Secondary Lender, and Guarantor with respect to the subject matter hereof, and (ii) may be amended only by a written instrument executed by Seller, Purchaser, Construction Lender, Secondary Lender, and Guarantor. In the event any provision of this Agreement shall be prohibited by or invalidated under applicable law, the remaining provisions of this Agreement shall remain fully effective. No waiver of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party charged therewith. No delay or omission in the exercise of any remedy accruing upon the breach of this Agreement shall impair such remedy or be construed as a waiver of such breach. This Agreement shall be governed by and construed under the laws of the State of Illinois. If any legal proceeding is commenced related to this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable attorneys' fees, court costs and litigation expenses from the non-prevailing party therein. This Agreement shall be binding upon and shall inure to the benefit of the

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parties hereto and their respective successors and assigns. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[Signatures Appear on Next Page]

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

PURCHASER:

The Lincoln National Life Insurance Company

By: Delaware Investment Advisers, a series of
Delaware Management Business Trust,
Attorney-In-Fact

By: 
John J. Gerber,
Vice President

SELLER:

Sherman Plaza Partners, LLC

By: _____
Timothy Anderson,
Its Authorized Signatory

GUARANTOR:

Timothy Anderson

James B. Klutznick

Maurice Fisher

LENDER:

Cole Taylor Bank, an Illinois banking corporation

By: _____
Name: _____
Title: _____

SECONDARY LENDER:

Lehman Brothers Holdings Inc., a Delaware
corporation

By: _____
Name: _____
Title: _____

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STATE OF ILLINOIS

COUNTY OF _____

I, _____, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Timothy Anderson personally appeared before me this day and acknowledged that he is the Authorized Representative of Sherman Plaza Partners, LLC, and acknowledged that by authority duly given and as the act of the company, the foregoing instrument was signed in its name as its free act and deed.

WITNESS my hand and official seal this _____ day of _____, 2006.

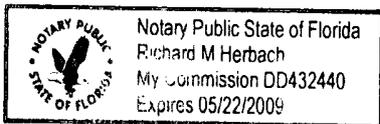
Notary Public
My Commission Expires: _____

STATE OF FLORIDA

COUNTY OF SEMINOLE

Personally appeared before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, John J. Gerber, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Vice President of Delaware Lincoln Investment Advisers, a series of Delaware Management Business Trusts, acting its capacity as attorney-in-fact for The Lincoln National Life Insurance Company, the within named bargainer, on behalf of said trusts, and that he as such Vice President, being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of said trust by himself as such officer.

Witness my hand and official seal this 19 day of December, 2006.



Richard M. Herbach

Notary Public
My Commission Expires: 5/22/09

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

PURCHASER:

The Lincoln National Life Insurance Company

By: Delaware Investment Advisers, a series of
Delaware Management Business Trust, Attorney-
In-Fact

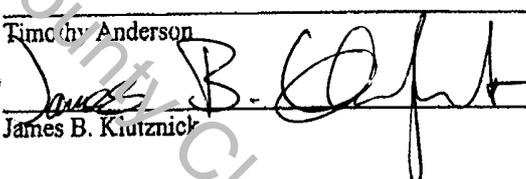
By: 
John J. Gerber
Vice President

SELLER:

Sherman Plaza Partners, LLC

By: _____
Timothy Anderson,
Its Authorized Signatory

GUARANTOR:

Timothy Anderson

James B. Klutznick

Maurice Fisher

LENDER:

Cole Taylor Bank, an Illinois banking corporation

By: _____
Name: _____
Title: _____

SECONDARY LENDER:

Sherman Plaza Mezz Holdings LLC., a Delaware limited liability company

By: _____
Name: _____

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

PURCHASER:

The Lincoln National Life Insurance Company

By: Delaware Investment Advisers, a series of Delaware Management Business Trust, Attorney-In-Fact

By: 
John J. Gerber
Vice President

SELLER:

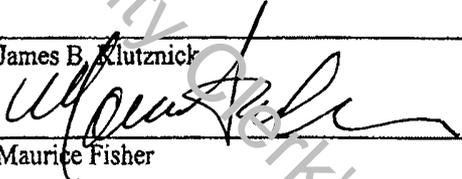
Sherman Plaza Partners, LLC

By: _____
Timothy Anderson,
Its Authorized Signatory

GUARANTOR:

Timothy Anderson

James B. Klutznick


Maurice Fisher

LENDER:

Cole Taylor Bank, an Illinois banking corporation

By: _____
Name: _____
Title: _____

SECONDARY LENDER:

Sherman Plaza Mezz Holdings LLC., a Delaware limited liability company

By: _____
Name: _____

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

PURCHASER:

The Lincoln National Life Insurance Company

By: Delaware Investment Advisers, a series of Delaware Management Business Trust, Attorney-In-Fact

By: 
John J. Gerber
Vice President

SELLER:

Sherman Plaza Partners, LLC

By: 
Timothy Anderson
Its Authorized Signatory

GUARANTOR:


Timothy Anderson

James B. Klutznick

Maurice Fisher

LENDER:

Cole Taylor Bank, an Illinois banking corporation

By: _____
Name: _____
Title: _____

SECONDARY LENDER:

Sherman Plaza Mezz Holdings LLC., a Delaware limited liability company

By: _____
Name: _____

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

PURCHASER:

The Lincoln National Life Insurance Company

By: Delaware Investment Advisers, a series of
Delaware Management Business Trust, Attorney-
In-Fact

By: _____
Leif D. Jensen,
Vice President

SELLER:

Sherman Plaza Partners, LLC

By: _____
Timothy Anderson,
Its Authorized Signatory

GUARANTOR:

Timothy Anderson

James B. Klutznick

Maurice Fisher

LENDER:

Cole Taylor Bank, an Illinois banking corporation

By: _____
Name: _____
Title: _____

SECONDARY LENDER:

Lehman Brothers Holdings Inc., a Delaware corporation

By: _____
Name: _____
Title: _____

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

PURCHASER:

The Lincoln National Life Insurance Company

By: Delaware Investment Advisers, a series of
Delaware Management Business Trust, Attorney-
In-Fact

By: _____
Leif D. Jensen,
Vice President

SELLER:

Sherman Plaza Partners, LLC

By: _____
Timothy Anderson,
Its Authorized Signatory

GUARANTOR:

Timothy Anderson

James B. Klutznick

Maurice Fisher

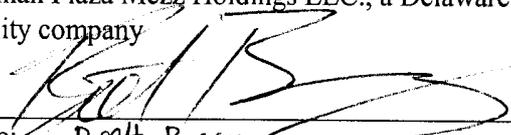
LENDER:

Cole Taylor Bank, an Illinois banking corporation

By: _____
Name: _____
Title: _____

SECONDARY LENDER:

Sherman Plaza Mezz Holdings LLC., a Delaware limited liability company

By: 
Name: Brett Bossum

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Title: Authorized signatory

Property of Cook County Clerk's Office



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STATE OF ILLINOIS

COUNTY OF Cook

I, Barbara Weglarz, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Timothy Anderson personally appeared before me this day and acknowledged that he is the Authorized Representative of Sherman Plaza Partners, LLC, and acknowledged that by authority duly given and as the act of the company, the foregoing instrument was signed in its name as its free act and deed.

WITNESS my hand and official seal this 19th day of December 2006.



Barbara Weglarz
Notary Public
My Commission Expires: 4/26/08

STATE OF INDIANA

COUNTY OF ALLEN

Personally appeared before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, John J. Gerber, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Vice President of Delaware Lincoln Investment Advisers, a series of Delaware Management Business Trust, acting in its capacity as attorney-in-fact for The Lincoln National Life Insurance Company, the within named bargainer, on behalf of said trusts, and that he as such Vice President, being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of said trust by himself as such officer.

Witness my hand and official seal this 5th day of December, 2006.

Kay L. Biddle
Notary Public
My Commission Expires: KAY L. BIDDLE, Notary Public
Resident of Allen County, Indiana
My Commission Expires February 3, 2007

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STATE OF ILLINOIS

COUNTY OF _____

I, _____, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Timothy Anderson personally appeared before me this day and acknowledged that he is the Authorized Representative of Sherman Plaza Partners, LLC, and acknowledged that by authority duly given and as the act of the company, the foregoing instrument was signed in its name as its free act and deed.

WITNESS my hand and official seal this _____ day of _____, 2006.

Notary Public
My Commission Expires: _____

STATE OF INDIANA

COUNTY OF ALLEN

Personally appeared before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, John J. Gerber, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Vice President of Delaware Lincoln Investment Advisers, a series of Delaware Management Business Trust, acting in its capacity as attorney-in-fact for The Lincoln National Life Insurance Company, the within named bargainer, on behalf of said trusts, and that he as such Vice President, being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of said trust by himself as such officer.

Witness my hand and official seal this 5th day of December, 2006.

Kay L. Riddle
Notary Public
My Commission Expires: _____
KAY L. RIDDLE, Notary Public
Reside in Allen County, Indiana
My Commission Expires February 3, 2007

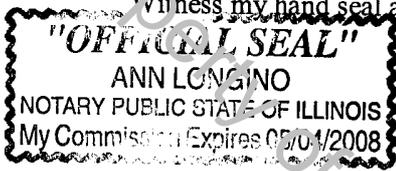
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STATE OF ILLINOIS

COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William E. Krinsky, personally known to me to be the Senior Vice President of Cole Taylor Bank, an Illinois banking corporation, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Senior Vice President he signed and delivered the said instruments as Senior Vice President of Cole Taylor Bank and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority as such Senior Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of Cole Taylor Bank by himself as such Senior Vice President.

Witness my hand seal at office this 21st day of December, 2006.



[Handwritten Signature]

Notary Public
My Commission Expires: 5-4-08

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____ personally known to me to be the _____ of Lehman Brothers Holding Inc., a Delaware corporation, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, he signed and delivered the said instruments as _____ of Lehman Brothers Holding Inc. and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority _____, being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of Lehman Brothers Holding Inc. by himself as such _____.

Witness my hand seal at office this _____ day of _____, 2006.

Notary Public
My Commission Expires: _____

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STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the _____ of Cole Taylor Bank, an Illinois banking corporation, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, he signed and delivered the said instruments as _____ of Cole Taylor Bank and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority _____, being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of Cole Taylor Bank by himself as such _____.

Witness my hand seal at office this ____ day of _____, 2006.

Notary Public
My Commission Expires: _____

STATE OF New York

COUNTY OF New York

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Brett Bossung, personally known to me to be the Authorized Signatory of Sherman Plaza Mezz Holdings LLC, a Delaware limited liability company, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Authorized Signatory, he signed and delivered the said instruments as Authorized Signatory of Sherman Plaza Mezz Holdings LLC. and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority _____, being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of Sherman Plaza Mezz Holdings LLC. by himself as such Authorized Signatory.

Witness my hand seal at office this 20th day of December, 2006

Eileen J. Gould

Notary Public
My Commission Expires: _____

EILEEN J. GOULD
Notary Public, State of New York
No 01GO4931775
Qualified in New York County
Commission Expires 6-31-2012

CHI\4768012.2

FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 16.92 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 1.3 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 0.17 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 7.15 FEET; THENCE SOUTH 35 DEGREES 11 MINUTES 42 SECONDS EAST, 15.26 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 52 SECONDS EAST, 48.28 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 16.42 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 52 SECONDS EAST, 13.17 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 38.03 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 52 SECONDS EAST, 0.75 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 5.64 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 52 SECONDS EAST, 26.04 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 0.28 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 52 SECONDS EAST, 80.87 FEET; THENCE SOUTH 26 DEGREES 43 MINUTES 33 SECONDS WEST, 19.87 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 10.06 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 4.75 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 52 SECONDS EAST, 0.67 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 14.75 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 3.50 FEET; THENCE SOUTH 00 DEGREES 17 MINUTES 52 SECONDS EAST, 0.67 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 13.17 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 0.67 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 2.69 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 6.58 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 1.17 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 2.50 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 1.17 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 26.92 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 08 SECONDS EAST, 3.15 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 2.67 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 3.15 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 52 SECONDS WEST, 2.30 FEET; THENCE SOUTH 89 DEGREES 42 MINUTES 08 SECONDS WEST, 19.06 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 3 FOR SUPPORT, INGRESS AND EGRESS, AND OTHER PURPOSES AS DESCRIBED AND DEFINED IN SECTION 3 OF THE RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404085.

PARCEL 5:

LEASEHOLD ESTATE AS CREATED BY THE RETAIL PARKING LEASE BETWEEN CITY OF EVANSTON AND SHERMAN PLAZA PARTNERS, LLC, RECORDED DECEMBER 9, 2004 AS DOCUMENT NO. 0434404092 WHICH DEMISES AND LEASES THE FOLLOWING FOR A TERM COMMENCING ON THE COMMENCEMENT DATE AS DEFINED THEREIN AND TERMINATING UPON THE 40TH ANNIVERSARY THEREOF:

SUFFICIENT UNASSIGNED AND UNRESERVED AUTOMOBILE PARKING SPACES TO COMPLY WITH THE CITY OF EVANSTON'S ZONING ORDINANCE, AS THAT ORDINANCE MAY BE MODIFIED FROM TIME TO TIME, LOCATED AT THE PLANNED NEW PUBLIC PARKING GARAGE LOCATED ON LOT 1 IN SHERMAN PLAZA SUBDIVISION, AFORESAID.

PARCEL 6:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS PROVIDED IN THE CAISSON BELL AND ABOVE-GRADE ENCROACHMENT EASEMENT BETWEEN THE CITY OF EVANSTON AND SHERMAN PLAZA PARTNERS, LLC, RECORDED FEBRUARY 22, 2006 AS DOCUMENT NO. 0605334078 IN REFERENCE TO ENCROACHMENT OF (I) CAISSONS AND CAISSON BELLS 1.5 FEET ALONG THE NORTH LINE ALONG CHURCH STREET, 4 FEET ALONG THE SOUTH LINE ALONG DAVIS STREET AND 3 FEET AND 1.5 FEET ALONG THE EAST LINE ALONG SHERMAN STREET; AND (II) ABOVE-GRADE IMPROVEMENTS OF THE PROPOSED BUILDING OVER THE PUBLIC RIGHT OF WAY BY A MAXIMUM OF 6 FEET ALONG THE NORTH, SOUTH AND EAST LINES.