

# UNOFFICIAL COPY



Doc#: 0718433164 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 07/03/2007 10:54 AM Pg: 1 of 15

This document prepared by  
and after recording return to:  
Steven J. Holler  
Chief Assistant Corporation Counsel  
Department of Law  
City of Chicago  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

## SUBORDINATION AGREEMENT

21<sup>st</sup> This Subordination Agreement ("Agreement") is made and entered into as of the day of May, 2007 between the City of Chicago by and through its Department of Planning and Development (the "City"), and U. S. Bank National Association (the "Lender"), with respect to that certain letter of credit facility to be provided by the Lender, having an aggregate facility maximum principal amount of up to \$14,870,765 (such facility, and any drawings and borrowings pursuant thereto, collectively, the "Lender Loans"). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Consent to Assignment and Assumption of 108 North State Street Redevelopment Agreement (the "Assumption Agreement") dated as of April 13, 2007 by and between the City and 108 N. State Retail LLC, an Illinois limited liability company, (the "Retail Developer"), 108 N. State Transit LLC, an Illinois limited liability company (the "Transit Developer"), and 108 N. State Residential LLC, an Illinois limited liability company (the "Residential Developer") (together with their permitted successors and permitted assigns under the Assumption Agreement and the Redevelopment Agreement, the "Developer Parties").

## RECITALS

A. Prior to the execution of this Agreement, the Developer Parties have acquired the Original Developer Parties' (i) remaining right, title and interest in, among other things, the air rights parcels legally described on Exhibit A attached hereto and made a part hereof (the "Air Rights Parcels"), and (ii) remaining right, title and interest in the Phase II Project, and (iii) the Original Developer Parties' remaining rights and obligations under the Redevelopment Agreement as to the Phase II Project (collectively, the "Assumed Phase II Project Obligations").

B. In connection with such acquisition and the Developer Parties' completion of the construction work related to, among other things, such Assumed Phase II Project Obligations, the City and the Developer Parties are entering into the Assumption Agreement.

C. In connection with such acquisition and the Developer Parties' completion of such construction work, Residential Developer and Lender are entering into, among other agreements, that certain Reimbursement Agreement dated as of May 21, 2007 (the "Loan Agreement"),

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pursuant to which the Lender has committed to issue a letter of credit, in face amount of \$14,870,765. The repayment of the obligations of the Residential Developer with respect to such letter of credit and the Reimbursement Agreement is secured by, among other things, that certain Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of May 21, 2007 executed by the Residential Developer to and for the benefit of the Lender (the "Lender Mortgage"). The Lender Mortgage encumbers certain property (the "Air Rights Parcels") which Residential Developer intends to develop for residential purposes. The Lender Mortgage has been delivered pursuant to the Loan Agreement (the Loan Agreement, Lender Mortgage, and all other documents evidencing and securing the Lender Loans, being referred to herein collectively as the "Lender Loan Documents").

D. Pursuant to the Assumption Agreement and the Redevelopment Agreement, the Developer Parties will agree to be bound by certain covenants expressly running with the Air Rights, as set forth in Sections 8.01(k), (l), (n) and (p) (i.e., as to Section 8.01(p) of the Redevelopment Agreement, the obligation to make the mandatory APC Purchase Price Payments under Section 19 of the Assumption Agreement) and Sections 8.02, 8.03, 8.19 and 8.21 of the Redevelopment Agreement (the "City Encumbrances").

E. The City has agreed to enter into the Assumption Agreement with the Developer Parties, subject to, among other things, to (a) the execution by the Developer Parties of the Assumption Agreement and the recording thereof as an encumbrance against the Property; and (b) the execution by the Lender of this Subordination Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, The Lender and the City agree as hereinafter set forth:

1. Subordination; Consent. All rights, interests and claims of the Lender in the Property pursuant to the Lender Loan Documents are and shall be subject and subordinate to the City Encumbrances on the terms set forth herein. Lender acknowledges and agrees that the City has certain rights set forth in the Redevelopment Agreement and agrees that such rights, including, without limitation, the priority of the City Encumbrances, shall survive the foreclosure of the Lender Mortgage or other enforcement of remedies with respect to the Air Rights Parcels, or transfer in lieu thereof, as provided in this Agreement. City acknowledges and agrees that, notwithstanding the time of recording of the Redevelopment Agreement and the Assumption Agreement (the "Redevelopment Documents"), and subject to the first two sentences of this Section 1, the lien of the Lender Mortgage shall not be terminated, or the priority thereof lessened, by any action taken by the City with respect to the Redevelopment Documents, including any action taken to enforce the Redevelopment Documents, to exercise any rights of possession, reentry, or reversion, or to terminate any or all of the Redevelopment Documents and the lien and priority of the Lender Mortgage (or the fee interest in the Air Rights Parcel if transferred) shall survive any such termination of or action with respect to the Redevelopment Documents. Subject to the first two sentences of this Section 1, nothing shall be deemed to limit any of the Lender's other rights or other priorities under the Lender Loan Documents, including,

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without limitation, the Lender's rights to receive, and the Residential Developer's obligation to make, payments and prepayments of principal and interest due the Lender or to exercise the Lender's rights pursuant to the Lender Loan Documents. The City hereby consents to the grant of security interests provided in the Lender Loan Documents, the foreclosure of the Lender Mortgage (subject to the continuing, prior encumbrance of the City Encumbrances), the transfer to Lender or its nominee of all or any portion of the Air Rights Parcels (whether pursuant to foreclosure or deed in lieu thereof) to an Approved Developer (as defined in the Redevelopment Documents).

2. Severance of Interests. City hereby (i) releases and agrees not to bring any action or proceeding against Residential Developer for any liability or obligation arising under the Redevelopment Documents with respect to any property other than the Air Rights Parcels, and (ii) consents to Developer Parties' (other than the Residential Developer) sale, assignment, and transfer to Residential Developer of all of their right, title and interest in and to the Air Rights Parcels, including all rights under the Redevelopment Documents and under any permits, licenses, and other interests related to the Air Rights Parcels; provided, however, that nothing in this Section 2 be construed to relieve any of the Developer Parties (including, without limitation, the Residential Developer) from the obligation to make the guaranteed payments required under Section 19 of the Assumption Agreement or other payments required under the Assumption Agreement.

3. Notice of Default. The Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to the Lender, (a) copies of any notices of default which it may give to the Developer Parties pursuant to the Lender Loan Documents or the Assumption Agreement and the Redevelopment Agreement, as applicable, and (b) copies of waivers, if any, of the Developer Parties' default in connection therewith. Neither the Developer Parties nor any other third party is an intended beneficiary of this Section 2. Failure of any party to deliver such notices or waivers shall in no instance alter the rights or remedies of such party under the Lender Loan Documents or the Assumption Agreement and the Redevelopment Agreement, as applicable.

4. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

5. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender.

6. Section Titles; Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement

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shall include the plural form.

7. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

If to the City: City of Chicago Department of Planning and Development  
121 North LaSalle Street, Room 1000  
Chicago, Illinois 60602  
Attention: Commissioner

With a copy to: City of Chicago Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic  
Development Division

If to Lender: U.S. Bank National Association  
209 S. LaSalle Street  
Suite 410  
Chicago, Illinois 60604  
Attention: Dennis Redpath  
Telephone: (312) 325-8875  
Fax: (312) 325-8852

With a copy to: GoodSmith, Gregg & Unruh LLP  
105 West Adams, 26<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attention: David D. Gregg

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail postage prepaid, registered or certified, with return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

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9. Confirmation of Undertakings by City. The City confirms and agrees that the Lender Mortgage is a "Permitted Mortgage," and that the Lender is a "Permitted Mortgagee," as those terms are used in Section 16 of the Redevelopment Agreement and Section 16 of the Assumption Agreement, with respect to the Air Rights Parcel (and all references in the Redevelopment Documents applicable to a Permitted Mortgagee shall be limited to rights and obligations related to the Air Rights Parcel). If Lender succeeds to the Residential Developer's interest in the Air Rights Parcel, the City shall attorn to and recognize Lender or any successor in interest to Lender's banking business, or any successor in title that is an Approved Developer, with respect to the Redevelopment Documents applicable to the Air Rights Parcels, provided that such successor assumes in writing the Residential Developer's obligations under the Redevelopment Documents, as related to the Air Rights Parcels. Lender shall have no liability or obligations under the Redevelopment Documents until after Lender receives title to the Air Rights Parcels following foreclosure of the lien of the Lender Mortgage (or deed in lieu thereof). In the event that the Lender succeeds to the Residential Developer's interest in the Redevelopment Agreement and the Assumption Agreement as to the Air Rights Parcels or any portion thereof pursuant to the exercise of remedies under the Lender Mortgage, whether by foreclosure or deed in lieu of foreclosure, or by other enforcement proceeding under the Lender Mortgage, or by obtaining an assignment of the Residential Developer's interest in lieu of foreclosure or through settlement of any pending or threatened foreclosure proceeding, and accepts an assignment of the Residential Developer's interest under the Redevelopment Agreement and under the Assumption Agreement in accordance with Section 18.15 of the Redevelopment Agreement and Section 18 of the Assumption Agreement, then the City hereby agrees to attorn to and recognize the Lender as the successor in interest to the Residential Developer for all purposes under the Redevelopment Agreement and the Assumption Agreement as to the Air Rights Parcels. Provided the Lender agrees to cure all defaults under the Redevelopment Agreement relating to the Air Rights Parcels that are susceptible of being cured by the Lender. The City agrees not to terminate the Redevelopment Documents as a result of a default under Sections 15.01(f), (g), (h), (i), (j) or (k) of the Redevelopment Agreement to the extent such defaults are personal to the Developer Parties and not susceptible of being cured by the Lender.

10. Consistent Construction. This Agreement shall be construed consistently with the rights and obligations of the Lender, as a Permitted Mortgagee, as set forth under the Assumption Agreement, the Redevelopment Agreement and the other Redevelopment Documents, and as modified by this Agreement, provided, however, that the notice, reasonable efforts and unaltered rights and remedies provisions of Section 7 of this Agreement shall control over the notice provision of Section 17 of the Assumption Agreement and the Redevelopment Agreement.

11. Guaranty by DDL LLC; Guaranteed APC Purchase Price Payments. The parties acknowledge that in connection with the Developer Parties' execution of the Assumption Agreement, DDL LLC, an Illinois limited liability company (the "DDL LLC"), shall be providing a guaranty to the City (the "City Guaranty"). The parties further acknowledge and agree that (a) neither party has received a pledge of collateral from DDL LLC as of the date hereof, though each may hereafter receive such a pledge, (b) the City shall have the right to



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demand and obtain the payment or performance due by the Guarantor under its guaranty without the consent of the Lender if and when such payment or performance is due even if, at the time of such demand, a default exists under the Lender Loan Documents, and (c) the City shall have the right to demand and obtain the payment by the Developer Parties of the mandatory APC Purchase Price Payments required under Section 19 of the Assumption Agreement even if, at the time such payment is due, a default exists under the Lender Loan Documents. The parties further acknowledge and agree that the Lender shall have the right to demand and obtain the payment or performance due by the Guarantor to it under its guaranty to the Lender without the consent of the City if and when such payment or performance is due even if, at the time of such demand, a default exists under the Redevelopment Documents,

12. No Lender Obligation to Make Mandatory Purchase Price Payments. If the Lender, or any financial institution that is a successor or assignee to the Lender under the Lender Loan Documents, or a nominee for the Lender or any such successor or assignee, takes title to the Air Rights Parcels, whether by foreclosure, other judicial sale or deed in lieu of foreclosure (such a lender or nominee, a "Lender In Title"), such Lender in Title shall not be required to make the mandatory APC Purchase Price Payments under Section 19 of the Assumption Agreement during such period as it holds title to the Air Rights Parcels. Upon the Lender in Title's conveyance of the Air Rights Parcels to a third party for development (other than a transfer to an affiliate of Lender), such third party shall be bound to make such mandatory payments, including any payments past due or due and payable under the Assumption Agreement that had been tolled pursuant to this Section 11 during the Lender in Title's ownership of the Air Rights Parcels.

13. Approved Developer. The City agrees that the Lender (or any successor to the Lender) may transfer the Air Rights Parcels and all rights of Residential Developer under the Redevelopment Documents (or the rights of Lender under the Lender Loan Documents) to an Approved Developer, as defined in the Redevelopment Agreement, or to an entity owned and controlled by the Lender (or such successor). Upon a transfer of the Air Rights Parcels to an Approved Developer, such Approved Developer shall succeed to the rights of Lender under this Agreement.

14. Transfer of Lender Loan Documents. The City agrees that Lender may assign all or any portion of its interest in the Lender Loan Documents and its rights under this Agreement in the ordinary course of business to any financial institution of comparable size and creditworthiness without the consent of the City (whether by assignment, participation, or otherwise) or to an Approved Developer and any such transferee shall succeed to the interests, rights and obligations of Lender hereunder.

15. Closing Letter. The City represents to Lender that the closing letter delivered at the time of the Residential Developer's acquisition of the Air Rights Parcels remains accurate, subject to the terms, conditions and limitations set forth therein.

16. Further Assurances. The parties hereto will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements

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reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

17. No Third Party Beneficiaries; No Modification. Except as provided herein, the parties hereto do not intend the benefits of this Agreement to inure to any other Person. This Agreement may be amended without the consent of Borrower or Development Parties. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the parties hereto.

18. Successors and Assigns. This Agreement shall bind all successors and assigns of the City, Lender, Borrower, and Developer Parties, and shall inure to the benefit of all successors and permitted assigns of the City, Lender, Borrower, and Developer Parties, subject to the limitations set forth herein.

19. Counterpart Originals. This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

20. Legal Construction. In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois applicable to agreements intended to be wholly performed within the State of Illinois.

21. No Waiver; Remedies. No failure on the part of a party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

22. No Joint Venture. Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

[SIGNATURES APPEAR ON NEXT PAGE]

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IN WITNESS WHEREOF, this Subordination Agreement has been signed as of the date first written above.

**LENDER:**

**U. S. BANK NATIONAL  
ASSOCIATION**

By: Dennis T. Redpath  
Its: SVP

**CITY:**

**CITY OF CHICAGO**, acting by and  
through its Department of Planning and  
Development

By: \_\_\_\_\_  
Lori T. Healey, Commissioner

[DEVELOPER PARTIES' ACKNOWLEDGMENT APPEARS ON NEXT PAGE]

Property of Cook County Clerk's Office



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IN WITNESS WHEREOF, this Subordination Agreement has been signed as of the date first written above.

**LENDER:**

**U. S. BANK NATIONAL  
ASSOCIATION**

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

**CITY:**

**CITY OF CHICAGO**, acting by and  
through its Department of Planning and  
Development

By: Lori T. Healey  
Lori T. Healey, Commissioner

[DEVELOPER PARTIES' ACKNOWLEDGMENT APPEARS ON NEXT PAGE]

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ACKNOWLEDGED AND AGREED TO THIS  
\_\_\_ DAY OF APRIL, 2007

**DEVELOPER PARTIES:**

**108 N. STATE RETAIL LLC**, an Illinois limited liability company

By: JFA MANAGEMENT, LLC, an Illinois limited liability company, its manager

By: Al O'Donnell  
Name: Al O'Donnell  
Title: Manager

**108 N. STATE TRANSIT LLC**, an Illinois limited liability company

By: JFA MANAGEMENT, LLC, an Illinois limited liability company, its manager

By: Al O'Donnell  
Name: Al O'Donnell  
Title: Manager

**108 N. STATE RESIDENTIAL LLC**, an Illinois limited liability company,

By: JFA MANAGEMENT, LLC, an Illinois limited liability company, its manager

By: Al O'Donnell  
Name: Al O'Donnell  
Title: Manager

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

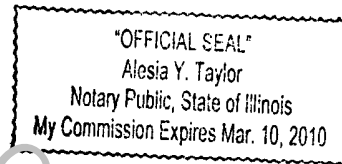
I, Alesia Y. Taylor, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT Dennis J. Redpath, personally known to me to be the SVP of U. S. Bank National Association ("Lender"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by Lender, as his/her free and voluntary act and as the free and voluntary act of Lender, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20<sup>th</sup> day of April, 2007.

Alesia Y. Taylor  
Notary Public

My Commission Expires: Mar. 10, 2010

(SEAL)



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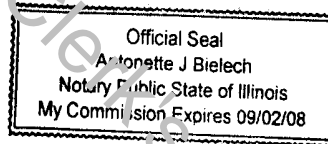
STATE OF ILLINOIS                     )  
   ) SS  
 COUNTY OF COOK                     )

I the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Lori T. Healey, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (the "City") 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 acknowledged that as such Commissioner she signed and delivered the said instrument pursuant to authority given her on behalf of the City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of April, 2007.

Antonette J. Brelech  
 Notary Public  
 My Commission Expires: 9/2/08

(SEAL)

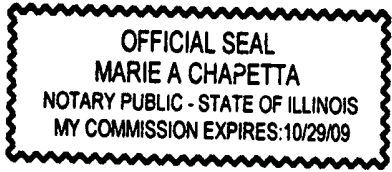


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STATE OF ILLINOIS        )  
  ) ss  
COUNTY OF COOK        )

I, **Marie A. Chapetta**, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **Al O'Donnell**, personally known to me to be the Manager of JFA Management, LLC (the "Manager"), in its own capacity and in its capacity as the manager of 108 N. State Retail LLC, 108 N. State Transit LLC, and 108 N. State Residential LLC (collectively, the "Developer Parties"), 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 acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the members of the Manager, as his free and voluntary act and as the free and voluntary act of the Manager and the Developer Parties, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 27th day of April, 2007.



*Marie A. Chapetta*  
\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires: 10/29/09

(SEAL)



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## EXHIBIT A

### DESCRIPTION OF REAL PROPERTY

#### PARCEL 1:

(PART BETWEEN +92.50 C.C.D TO +689.50 C.C.D.)

THAT PART OF VACATED WEST RANDOLPH STREET TOGETHER WITH THAT PART OF VACATED NORTH STATE STREET TOGETHER WITH THAT PART OF A TRACT OF LAND CONSISTING OF ALL LOTS, STREETS AND ALLEYS WITHIN BLOCK 37 OF ORIGINAL TOWN OF CHICAGO IN THE EAST PART OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A STRIP OF LAND LYING EAST OF AND ADJOINING SAID BLOCK 37 AND WEST OF THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, APPROVED MARCH 3, 1845, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +689.50 FEET CHICAGO CITY DATUM AND ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +92.50 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WESTERLY LINE OF THAT PART OF VACATED WEST RANDOLPH STREET, AFORESAID, 5.00 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 89°08'58" EAST, ALONG THE NORTHERLY LINE OF THAT PART OF VACATED WEST RANDOLPH STREET, AFORESAID, 329.63 FEET TO THE EASTERLY LINE OF THAT PART OF VACATED NORTH STATE STREET, AFORESAID; THENCE SOUTH 00°00'00" WEST, ALONG THE EASTERLY LINE OF THAT PART OF VACATED NORTH STATE STREET, AFORESAID, 89.12 FEET; THENCE NORTH 90°00'00" WEST, 229.85 FEET; THENCE SOUTH 12°36'25" WEST, 46.74 FEET; THENCE SOUTH 15°39'45" WEST, 41.34 FEET; THENCE NORTH 90°00'00" WEST, 78.44 FEET TO THE WEST LINE OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WEST LINE OF BLOCK 37, AFORESAID 174.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

(PART ABOVE +689.50 C.C.D.)

THAT PART OF A TRACT OF LAND CONSISTING OF ALL LOTS, STREETS AND ALLEYS WITHIN BLOCK 37 OF ORIGINAL TOWN OF CHICAGO IN THE EAST PART OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A STRIP OF LAND LYING EAST OF AND ADJOINING SAID BLOCK 37 AND WEST OF THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, APPROVED MARCH 3, 1845, ALL TAKEN AS A TRACT, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +689.50 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF BLOCK 37, AFORESAID; THENCE SOUTH 89°08'58" EAST, ALONG THE NORTH LINE OF SAID BLOCK 37 AND THE EASTERLY EXTENSION THEREOF, 324.63 FEET TO THE WEST LINE OF STATE STREET AS ESTABLISHED BY AN ACT OF THE LEGISLATURE OF THE STATE OF ILLINOIS, AFORESAID; THENCE SOUTH 00°00'00" WEST, ALONG SAID WEST LINE, 84.19 FEET; THENCE NORTH 90°00'00" WEST, 224.85 FEET; THENCE SOUTH 12°36'25" WEST, 46.74 FEET; THENCE SOUTH 15°39'45" WEST, 41.34 FEET; THENCE NORTH 90°00'00" WEST, 78.44 FEET TO THE WEST LINE OF BLOCK 37, AFORESAID; THENCE NORTH 00°01'10" EAST, ALONG THE WEST LINE OF BLOCK 37, AFORESAID 174.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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## PARCEL 3:

NON-EXCLUSIVE EASEMENT IN FAVOR OF PARCELS 1 AND 2 AS CREATED BY DECLARATION OF EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS, DATED NOVEMBER 10, 2005 AND RECORDED NOVEMBER 14, 2005 AS DOCUMENT NUMBER 0531834084, MADE BY CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, 108 NORTH STATE STREET II, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, BLOCK 37, L.L.C, A DELAWARE LIMITED LIABILITY COMPANY AND BLOCK 37 OFFICE, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY; FOR THE FOLLOWING PURPOSES:

(A) INGRESS, EGRESS AND ACCESS TO AND FROM THE BLOCK 37 PARCEL OVER, UNDER, ACROSS AND THROUGH THE PORTION OF THE DEVELOPMENT SITE FOR THE PURPOSE OF DEVELOPMENT AND CONSTRUCTION OF THE DEVELOPMENT PROJECT AND THE CTA PROJECT, INCLUDING, WITHOUT LIMITATION, CONSTRUCTION AND COMPLETION BY 108 NORTH STATE STREET II, L.L.C. OF THE MILLS PORTION OF THE CTA PROJECT PURSUANT TO THE DEVELOPMENT AGREEMENT (SUCH EASEMENT TO INCLUDE, WITHOUT LIMITATION, NECESSARY EXCAVATION, TUNNELING, CONSTRUCTION, MATERIAL STORAGE AND ALL OTHER RELATED CONSTRUCTION ACTIVITY BY CONTRACTORS, SUBCONTRACTORS, REPRESENTATIVES, SURVEYORS, CONSULTANTS, EMPLOYEES AND AGENTS FROM TIME TO TIME OF BLOCK 37, L.L.C., 108 NORTH STATE STREET II, L.L.C., BLOCK 37 OFFICE, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY AND CHICAGO TRANSIT AUTHORITY, AS THE CASE MAY BE) (DEFINED THEREIN AS THE "CONSTRUCTION ACCESS EASEMENTS"); (B) SUPPORT IN AND TO ALL STRUCTURAL MEMBERS, SLABS, CAISSONS, BEAMS, FOUNDATIONS, COLUMNS AND OTHER FACILITIES LOCATED WITHIN THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "SUPPORT EASEMENTS"); (C) INSTALLATION, USE AND MAINTENANCE OF UTILITY LINES AND FACILITIES, INCLUDING THE RIGHT TO INSTALL, LAY, MAINTAIN, REPAIR, REPLACE LINES, WIRES, CONDUITS AND EQUIPMENT FOR UTILITY SERVICE REQUIRED FOR THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "UTILITY EASEMENTS"); (D) CONSTRUCTION, USE AND MAINTENANCE OF COMMON WALLS, FLOORS, CEILINGS AND ENCLOSURES ALONG ANY COMMON PROPERTY LINES AND BOUNDARIES, INCLUDING THE RIGHT TO MAINTAIN UNINTENTIONAL ENCROACHMENTS RESULTING FROM CONSTRUCTION OF THE DEVELOPMENT PROJECT (DEFINED THEREIN AS THE "COMMON EASEMENTS"); (E) SUCH EASEMENTS AS SHALL BE REASONABLY NECESSARY FOR THE CONSTRUCTION, REPAIR, REPLACEMENT, MAINTENANCE AND OPERATION OF THE DEVELOPMENT PROJECT (DEFINED THEREIN AS "MISCELLANEOUS EASEMENT"); AND (F) INGRESS, EGRESS AND ACCESS OVER, ACROSS AND THROUGH THE CTA PARCEL AND THE EXISTING CTA FACILITIES AS SHALL BE REQUIRED TO ENABLE 108 NORTH STATE STREET II, L.L.C. TO EXERCISE THE "MILLS SELF-HELP RIGHT" AS PROVIDED IN THE DEVELOPMENT AGREEMENT (DEFINED THEREIN AS THE "MILLS SELF-HELP RIGHT EASEMENT").

Property Address: 108 N. State Street, Chicago, Illinois

PINs: 17-09-450-001-0000, 17-09-450-002-0000, 17-09-450-003-0000, 17-09-450-006-0000, 17-09-450-007-0000, 17-09-450-008-0000, 17-09-450-009-0000, 17-09-450-010-0000, 17-09-450-011-0000, 17-09-450-012-0000, 17-09-450-013-0000, 17-09-450-016-0000, 17-09-450-017-0000, 17-09-450-018-0000, 17-09-451-005-0000, 17-09-451-006-0000, 17-09-451-007-0000, 17-09-451-008-0000, 17-09-451-009-0000, 17-09-451-012-0000, 17-09-451-018-0000, and 17-09-450-019-0000

[Note: The above permanent tax numbers affect land and other property.]