

# UNOFFICIAL COPY



**PREPARED BY AND RETURN TO:**

Barack Ferrazzano Kirschbaum & Nagelberg  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606  
Attention: David H. Nadoff

Doc#: 1134104055 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/07/2011 10:37 AM Pg: 1 of 9

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## CROSS ACCESS EASEMENT AGREEMENT

THIS CROSS ACCESS EASEMENT AGREEMENT (the "Agreement") is made this 17<sup>th</sup> day of November, 2011, between WESTERN SLOPE PARTNERSHIP, L.P., an Illinois limited partnership, whose address is 401 North Armour Street, Chicago, Illinois (hereinafter referred to as "Party-A"), and PB-SW KINZIE NOBLE, LLC, an Illinois limited liability company, whose address is 70 West Madison Street, Suite 200, Chicago, Illinois 60602 (hereinafter referred to as "Party-B").

### RECITALS

A. Party-A is the owner of a tract of land located in Chicago, Illinois, and more particularly described in Exhibit "A," attached hereto and hereinafter referred to as the "Party-A Parcel".

B. Party-B is the owner of a tract of land located in Chicago, Illinois, and more particularly described in Exhibit "B," attached hereto and hereinafter referred to as the "Party-B Parcel".

C. The roofs and related structural elements (collectively, the "Dependant Elements") of the improvements currently located on Party-A Parcel and the Party B parcel (the "Party-A Improvements" and the "Party-B Improvements", respectively) are connected and interdependent in certain respects (the "Structural Interdependency").

D. Party-B and Party-A desire to grant certain easements to one another across those portions of the Dependant Elements of the Party-B Improvements and the Party-A Improvements (as applicable) described as follows (the "Easement Area"): A portion of the surface of the roof consisting of an area of eight (8) feet on either side of a line immediately above and corresponding to the center line of the Party Wall of the Party A Parcel and the Party B Parcel (as such Party Wall is identified and described in that certain Party Wall Agreement dated April 29, 1994 and recorded with the Cook County Recorder on May 3, 1994 as Document No. 94-406052). Notwithstanding the foregoing, in the event that Party-A and Party-B determine that the center line of the Party Wall does not accurately reflect the demarcation line between the Party-A Parcel and the Party-B Parcel, the parties agree that the Easement Area will be deemed

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to be that portion of the surface of the roof consisting of an area of eight (8) feet on either side of a line immediately above and corresponding to the actual demarcation line between the Party-A Parcel and the Party-B Parcel.

E. The owners of the Party-A Parcel and Party-B Parcel, and their respective successors and assigns, shall hereinafter be collectively referred to as the "Owners," and individually as an "Owner."

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the following grants, agreements, and covenants and restrictions are made:

1. **RECITALS**. The foregoing Recitals are true and correct and are incorporated herein by reference.

2. **GRANT OF ACCESS, INGRESS AND EGRESS EASEMENT**. Subject to the terms and conditions hereinafter provided, for so long as and to the extent that the Structural Interdependency continues to exist:

(a) Party-B hereby grants to Party-A, its successors and assigns, as an easement appurtenant to the Party-A Parcel, a perpetual, non-exclusive easement and right-of-way on, over and across the portion of the Easement Area located on the Party-B Improvements (as they may exist from time to time) for access, ingress and egress of persons, equipment and materials as reasonably necessary or advisable for the purpose of conducting maintenance, repair, renovation and replacement of the Party-A Improvements or any part thereof (including, without limitation, the Dependant Elements of the Party-A Improvements or any part thereof), for the benefit of the Party-A Parcel, the Improvements or any other improvements constructed or to be constructed on the Party-A Parcel, the Owner of the Party-A Parcel and its invitees, licensees, agents, employees and contractors (the "Party-A Beneficiaries"), for use in common with the Owner and tenants of the Party-B Parcel and its tenants, invitees, licensees, agents, employees and contractors (the "Party-B Beneficiaries").

(b) Party-A hereby grants to Party-B, its successors and assigns, as an easement appurtenant to the Party-B Parcel, a perpetual, non-exclusive easement and right-of-way on, over and across the portion of the Easement Area located on the Party-A Improvements (as they may exist from time to time) for access, ingress and egress of persons, equipment and materials as reasonably necessary or advisable for the purpose of conducting maintenance, repair, renovation and replacement of the Party-B Improvements or any part thereof (including, without limitation the Dependant Elements of the Party-B Improvements or any part thereof), for the benefit of the Party-B Parcel, the Improvements or any other improvements constructed or to be constructed on the Party-B Parcel, and the Party-B Beneficiaries, for use in common with the Party-A Beneficiaries.

3. **RESERVATION OF RIGHTS**. The Owners of the Party-A Parcel and Party-B Parcel may use their respective parcels for any purpose not incompatible with the easements granted hereby including, without limitation, the right to construct and install drainage and utility improvements, subject to all applicable regulations of the applicable governmental authorities,

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provided that such reserved rights do not obstruct or interfere with the easement and rights herein granted. Notwithstanding the foregoing, (a) each of the Owners may modify or replace the improvements on their respective parcels to reduce or eliminate the Structural Interdependency or otherwise and limit or eliminate the easements granted herein to the extent of such reduction or elimination, and (b) neither of the Owners may take any action that increases the Structural Interdependency in any material respect without the prior written consent of the other, not to be unreasonably withheld.

#### **4. MAINTENANCE AND REPAIRS OF EASEMENT AREA; INDEMNIFICATION.**

(a) Each Owner, at its own expense, shall maintain, or cause to be maintained in good and safe order and condition, the Easement Area located on its respective parcel. Except as otherwise expressly provided in this Agreement, in the event of any damage to or destruction of all or a portion of the Easement Area on an Owner's respective parcel, such Owner shall, at its sole cost and expense and with due diligence, either (i) repair, restore and rebuild such portion of the Easement Area to its condition prior to such damage or destruction or (ii) exercise its right under Section 3 hereof to modify the improvements on its respective parcels to reduce or eliminate the Structural Interdependency. Nothing in this Agreement is intended to override the provisions of common law.

(b) Each Owner (an "Indemnifying Owner") agrees to and hereby does defend, indemnify and hold harmless the other Owner, its respective members, partners, shareholders, officers and directors, and their respective and all of their successors and assigns (collectively, the "Indemnified Parties") from and against any and all claims, costs, expenses (including reasonable attorneys' fees), damages, losses and liabilities that any and all of the Indemnified Parties suffer and incur on account of or in connection with (i) any exercise of the Indemnifying Owner's easement or other rights under this Agreement, or (ii) any violation by Party-B or the any of the other Party-B Beneficiaries or Party-A or any of the other Party-A Beneficiaries, as the case may be, of any or all of the obligations, requirements or restrictions imposed under this Agreement.

The easements and related rights granted herein shall automatically terminate at such time as there is no longer any Structural Interdependency and shall automatically be limited as appropriate to the extent of any reduction in the Structural Interdependency; provided, that each Owner shall within ten (10) days after receipt of written notice from the other Owner execute and deliver a recordable termination or amendment of this Agreement to memorialize such termination or reduction of record, prepared by the requesting Owner and reasonably acceptable to the other Owner.

5. **RUNNING OF BENEFITS AND BURDENS.** All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, successors and assigns of the parties hereto.

6. **TERMINATION OF COVENANT LIABILITY.** Whenever a transfer of ownership of the Party-A Parcel or the Party-B Parcel takes place, liability of the transferor for any breach of any covenant hereunder occurring thereafter automatically terminates.

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7. **CONDEMNATION.** No grantee or beneficiary of any easements hereunder shall be entitled to any portion of any award or proceeds resulting from a taking or condemnation, or a conveyance in lieu of such taking or condemnation, of any portion of the Party-B Parcel and/or Party-A Parcel, except to the extent that such grantee or beneficiary (i) shall own in fee such portion of the Party-B Parcel and/or Party-A Parcel so taken, condemned or conveyed, or (ii) shall have been otherwise granted rights thereto by such fee owner (such as the holder of a first mortgage or lessee).

8. **NO JOINT VENTURE.** Nothing contained in this Agreement shall be construed to make any Owner subject hereto partners or joint venturers or to render any of said Owners liable for the debts or obligations of the others, except as expressly provided herein.

9. **ESTOPPEL CERTIFICATES.** Each Owner agrees from time to time within twenty (20) days following receipt of notice from any other Owner, to execute and deliver to such other Owner a certificate for the use of the addressee, whether such addressee is a perspective buyer, lessee or mortgagee of such Owner, stating (i) that this Agreement is unmodified and in full force and effect or if modified, that this Agreement is in full force and effect as modified and stating the modification; (ii) whether or not to the best of its knowledge, any party is in default in any respect under this Agreement, and if in default, specifying such default; (iii) whether such party has given or received any notice of an uncured default given in accordance with this Agreement and if so, attaching a true, correct and complete copy of each such notice given and received; and (iv) such other matters as are typically included in such an "estoppel certificate" or as the notifying party may reasonably request.

10. **ENFORCEMENT; ATTORNEY'S FEES.** In the event of any default under this instrument, the party not in default shall be entitled to any and all remedies available at law or in equity, including but not limited to an injunction or specific performance, but such remedies shall exclude any punitive or consequential damages. Any party which prevails in any such litigation to enforce the provisions hereof shall recover as part of his costs a reasonable attorney's fee, together with such other costs and expenses as the court deems appropriate.

11. **CONSTRUCTION.** The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to confer a commercially usable right of enjoyment on each party is carried out.

12. **NOTICE.** The addresses of Party-A and Party-B are as set forth in the initial paragraph. Either party may give written notice of change of address to the other party. All notices shall be sent by U.S. mail to the addresses provided for in this paragraph or to the last known address and shall be deemed given when received or refused.

13. **NO THIRD PARTY BENEFICIARIES; RELEASE OF EASEMENT.** This easement is granted only for the benefit of the Party-A Parcel and Party-B Parcel, and is not intended for the use or benefit of any other real property, nor is it for the use or benefit of any person or entity other than those set forth above.

14. **ENTIRE AGREEMENT; AMENDMENT.** The parties hereto agree that the entire agreement between the parties with respect to the easements is set forth in this instrument.

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This Agreement may be amended only by an instrument in writing and signed by the then Owners of the Party-A Parcel and the Party-B Parcel. Each Owner shall enter into any amendment of this Agreement reasonably required by any lender of the Owner, provided that such amendment shall not materially increase the liabilities or obligations or decrease the rights and benefits of such Owner.

15. **WAIVER.** No waiver of any of the provisions hereof shall be effective unless it is in writing and signed by the party against whom the waiver is asserted. Any such written waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or waiver of any future matter.

*[The remainder of this page is intentionally left blank.]*

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IN WITNESS WHEREOF, Party-A and Party-B have hereunto set their hands and seals the day and year first above written.

**Party-A**

WESTERN SLOPE PARTNERSHIP, L.P., an Illinois limited partnership,

By: Terry F. Goodrich  
Name: TERRY GOODRICH  
Title: Gen. Partner

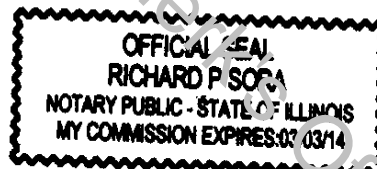
Date: November 22, 2011

STATE OF ILLINOIS  
COUNTY OF COOK

The foregoing instrument was acknowledged before me, a notary public of the State of Illinois, on this 22nd day of November, 2011, by Terry Goodrich, personally known to me or identified to my satisfaction, as the general partner of WESTERN SLOPE PARTNERSHIP, L.P., an Illinois limited partnership, on behalf of the said partnership.

Richard P. Sosa  
Name: Richard P. Sosa

Notarial Stamp:



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**Party-B**

PB-SW KINZIE NOBLE, LLC, an Illinois limited liability company

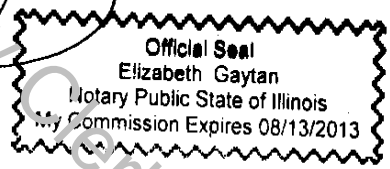
By: *James Thompson*  
Name: James Thompson  
Title: Managing Director

Date: November 17, 2011

STATE OF ILLINOIS  
COUNTY OF COOK

The foregoing instrument was acknowledged before me, a notary public of the State of Illinois, on this 17<sup>th</sup> day of November, 2011, by JAMES THOMPSON, personally known to me or identified to my satisfaction, as the MANAGING DIRECTOR of PB-SW KINZIE NOBLE, LLC, an Illinois limited liability company, on behalf of the said company.

*Elizabeth Gaytan*  
Name: ELIZABETH GAYTAN  
Notarial Stamp:





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## Exhibit "A"

Legal Description of the Party-A Parcel

## PARCEL 1:

LOTS 6, 7 AND 8 IN BLOCK 19 IN BICKERDIKE'S ADDITION TO CHICAGO IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH PART OF THE EAST/WEST 16.00 FEET VACATED ALLEY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6 IN BLOCK 19 IN GEORGE BICKERDIKE'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE NORTHWEST 1/4 AFORESAID; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE THEREOF 125.86 FEET TO THE NORTHWEST CORNER OF SAID LOT 6 AND THE POINT OF BEGINNING; THENCE CONTINUE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE NORTHERLY EXTENSION WITH SAID WEST LINE 12.00 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 32 SECONDS EAST 131.90 FEET TO THE NORTHERLY EXTENSION OF THE EAST LINE OF LOT 8 IN SAID SUBDIVISION; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 52.98 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 26 SECONDS EAST 55.70 FEET; THENCE NORTH 88 DEGREES 44 MINUTES 47 SECONDS WEST 5.30 FEET; THENCE SOUTH 01 DEGREES 13 MINUTES 27 SECONDS WEST 5.05 FEET; THENCE NORTH 88 DEGREES 46 MINUTES 33 SECONDS WEST 9.44 FEET; THENCE SOUTH 00 DEGREES 08 MINUTES 33 SECONDS EAST 78.50 FEET TO THE NORTH LINE OF WEST KINZIE STREET; THENCE NORTH 89 DEGREES 32 MINUTES 20 SECONDS WEST ALONG SAID NORTH LINE 38.34 FEET TO THE SOUTHEAST CORNER OF LOT 8 AFORESAID; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF LOT 8 126.31 FEET TO THE NORTHEAST CORNER OF LOT 8; THENCE NORTH 89 DEGREES 44 MINUTES 28 SECONDS WEST ALONG THE NORTH LINE OF LOTS 6, 7 AND 8 IN SAID SUBDIVISION 131.90 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PINS 17-08-136-026-0000  
 17-08-136-027-0000  
 17-08-136-034-0000

1470 W. Kinzie Street Chicago, IL



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## Exhibit "B"

### Legal Description of the Party-B Parcel

PARCEL 7: THAT PART OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF LOT 8 IN BLOCK 19 IN BICKERDIKE'S ADDITION TO CHICAGO; THENCE SOUTH 89 DEGREES 32 MINUTES 40 SECONDS EAST ALONG THE NORTH LINE OF KINZIE STREET TO A POINT WHICH IS 170.27 FEET EAST OF THE SOUTHWEST CORNER OF LOT 6 IN SAID BLOCK 19 FOR THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 08 MINUTES 33 SECONDS WEST ALONG THE SOUTHERLY EXTENSION OF AND THE EAST FACE OF A BRICK BUILDING AND ITS NORTHERLY EXTENSION FOR A DISTANCE OF 78.50 FEET TO THE NORTH FACE OF A BRICK BUILDING; THENCE SOUTH 88 DEGREES 46 MINUTES 33 SECONDS EAST ALONG SAID NORTH FACE 9.44 FEET TO THE WEST FACE OF A BRICK BUILDING; THENCE NORTH 01 DEGREES 13 MINUTES 27 SECONDS EAST ALONG SAID WEST FACE 5.05 FEET TO THE NORTH FACE OF A BRICK BUILDING; THENCE SOUTH 88 DEGREES 44 MINUTES 57 SECONDS EAST ALONG SAID NORTH FACE 5.30 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 26 SECONDS EAST 240.39 FEET TO A POINT IN THE SOUTH LINE OF HUBBARD STREET, WHICH POINT IS SOUTH 89 DEGREES 44 MINUTES 28 SECONDS EAST 184.86 FEET FROM THE NORTHWEST CORNER OF LOT 5 IN GEORGE BICKERDIKE'S SUBDIVISION OF LOTS 1 TO 5, INCLUSIVE, OF BLOCK 19 AFORESAID; THENCE SOUTH 89 DEGREES 44 MINUTES 28 SECONDS EAST ALONG THE SOUTH LINE OF HUBBARD STREET TO THE WEST LINE OF LOT 5 IN THE SUBDIVISION OF THE EAST 1 ACRE OF 2 ACRES EAST OF AND ADJOINING BLOCK 19 AFORESAID; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LAST DESCRIBED SUBDIVISION TO THE SOUTHWEST CORNER OF LOT 6 THEREIN (BEING ALSO THE NORTH LINE OF KINZIE STREET); THENCE WESTERLY ALONG SAID NORTH LINE OF KINZIE STREET TO THE POINT OF BEGINNING (EXCEPT THAT PART LYING NORTH OF THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 6 AFORESAID) IN COOK COUNTY, ILLINOIS.

17-08-136-038-0000

1454 W. Kinzie Street  
Chicago, IL