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## DECLARATION OF COVENANTS, CONDITIONS,

## RESTRICTIONS AND EASEMENTS

FOR

29-39 SOUTH LASALLE ST.

CHICAGO, ILLINOIS

8935754 AY 2 OF 6

This Document prepared by  
and Mail to:

Jeffrey Jahns  
Seyfarth Shaw LLP  
131 South Dearborn Street  
Suite 2400  
Chicago, IL 60603  
(312) 460-5819

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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR 29-39 SOUTH LASALLE STREET, CHICAGO, ILLINOIS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR 29-39 SOUTH LASALLE STREET, CHICAGO, ILLINOIS (this "Declaration") is made this 9<sup>th</sup> day of January, 2014 by THE UNIVERSITY OF CHICAGO, an Illinois not-for-profit corporation (hereinafter referred to as the "University").

### WITNESSETH:

WHEREAS, the University is the legal title holder to those certain parcels of land located in Chicago, Illinois, known as 29-39 South LaSalle Street (hereinafter referred to as the "Property"), and more particularly described on Exhibit A attached hereto; and,

WHEREAS, the Property includes two (2) parcels, namely 29 South LaSalle Street, which is described on Exhibit A hereto as the 29 Land (the "29 Land"), and 39 South LaSalle Street, which is described on Exhibit A hereto as the 39 Land (the "39 Land"); and,

WHEREAS, the 39 Land contains an alley (the "Alley"), which is described on Exhibit A hereto as the "Alley", and which is depicted on Exhibit B attached hereto; and,

WHEREAS, the University desires to provide for the use and maintenance of the Alley; and,

WHEREAS, the improvements on or used solely in connection with the 29 Land (the "29 Improvements"), together with the improvements on or used solely in connection with the 39 Land (the "39 Improvements"), are currently owned by ROC II IL LaSalle, LLC, a Delaware limited liability company ("Ground Lessee"), subject to a reversionary interest in favor of the University pursuant to the terms of the Ground Lease (as hereinafter defined); and,

WHEREAS, the University desires to provide for, among other things, the 29 Land Owner having the right to elect to connect the 29 Improvements with the Unicom Thermal Technologies, Inc.'s facilities, and those of its successors and assigns, as established in the 39 Improvements pursuant to that certain Grant of Easement dated May 31, 1997, and recorded September 2, 1997 as document no. 97641685 (the "Unicom Facilities"); and,

WHEREAS, the University is desirous of submitting the Property to the provisions of this Declaration.

NOW THEREFORE, the University hereby declares that the Property is, and that the Property and its component parts shall be held, transferred, sold, conveyed, leased, improved and occupied, subject to the covenants, conditions, restrictions and easements hereinafter set forth.

## ARTICLE I

### DEFINITIONS

When used in this Declaration, the following words and terms shall have the following meanings:

1.1 "Ground Lease" shall mean and refer to that certain Amended and Restated Ground Lease dated as of July 8, 2004 by and between the University, as the ground lessor thereunder, and

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Ground Lessee, as successor-in-interest to 29/39 South LaSalle Holdings, LLC, as the ground lessee thereunder, as the same may be hereafter modified, amended, bifurcated, or otherwise supplemented in writing.

1.2 “**Owner**” shall mean and refer to the record owner, whether one or more persons, of fee simple title to any Parcel.

1.3 “**Parcel**” shall mean either the 29 Land or the 39 Land.

1.4 “**Person**” or “**Persons**” shall mean all natural individuals, corporations, limited liability companies, partnerships, trustees or other legal entities capable of holding title to real property.

1.5 “**Tenant**” shall mean a Person that is the ground lessee of a Parcel pursuant to the Ground Lease, including specifically, and without limitation, Ground Lessee.

1.6 “**Users**” shall mean with respect to a Parcel, the representatives, agents, Tenant, contractors, customers, and invitees of the Owner of such Parcel and/or the owner of the improvements thereon, and their respective, contractors, subcontractors, lessees, agents, customers, invitees and representatives of any tier, and “**29 Users**” shall mean the Users of the 29 Land and/or the 29 Improvements, and “**39 Users**” shall mean the Users of the 39 Land and/or the 39 Improvements.

## ARTICLE II

### **DECLARATION PURPOSES AND PROPERTY SUBJECTED TO DECLARATION**

2.1 Purposes. The main purposes of this Declaration are to provide for the shared use and maintenance of the Alley as more particularly hereinafter set forth, and to grant certain easements, benefiting the 29 Land and burdening the 39 Land, allowing for connecting the 29 Land and/or 29 Improvements with the Unicom Facilities located in the 39 Improvements, and such other easements as are specifically set forth below.

2.2 Parcels Subjected to Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in a Parcel, and their respective heirs, successors, personal representatives and assigns. Each grantee of a real property interest in a Parcel and its successors and/or assigns, by the acceptance of a deed of conveyance, a mortgage or a trust deed, or a ground lease, as the case may be, accepts said deed, mortgage or trust deed, or ground lease, as the case may be, subject to all easements, restrictions, conditions and covenants created by this Declaration. Each deed of conveyance, ground lease, assignment, mortgage, trust deed, other evidence of obligation, or other recorded instrument granting a real property interest in a Parcel shall refer to the provisions of this Declaration, but failure to do so shall not affect the validity and enforceability of this Declaration or such instrument, and all of the easements, restrictions, conditions and covenants which are granted, created, or declared by this Declaration, shall be deemed a part of such instrument as fully and completely as though they were set forth in their entirety therein.

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## ARTICLE III

### ALLEY EASEMENT

3.1 Alley Easement. The University hereby grants to the Owner of the 29 Land, its successors and assigns, Tenant, lessees and sublessees, a non-exclusive, perpetual easement over, under and across the Alley, and all connections therewith to any current or future public street, alley, pedestrian way or other public thoroughfare (the "Alley Easement"), for the purposes of: (i) permitting access to and from the 29 Land and 29 Improvements from and to a public way and access to the Alley for the other uses of the Alley by the 29 Land Owner and/or 29 Users permitted hereby; (ii) permitting incidental storm water runoff from the sides of the 29 Improvements and permitting storm water runoff from gutters, downspouts and other engineered collection and transmission devices now or hereafter existing on the 29 Land and 29 Improvements, in all cases to storm water collection devices in, on or under the Alley; (iii) allowing for garbage and waste from the 29 Land and 29 Improvements to be stored in covered receptacles which may be placed, used, removed and replaced by the 29 Land Owner on the portions of the north eight feet (8') of the Alley depicted on Exhibit B hereto and marked "2" or "4" (collectively, the "Waste Management Activities"); (iv) permitting the temporary staging and use of equipment, vehicles, personnel and supplies on the north eight feet (8') of the Alley for purposes of maintaining, repairing, cleaning, tuckpointing, painting, removing, replacing or reconstructing any improvement on the 29 Land or installing or constructing any new or added improvements on the 29 Land and demolishing and constructing as required improvements to tenant suites and other interior spaces (collectively, "Construction Activities"); (v) allowing to be continued and maintained any encroachment over the Alley by any portion of the 29 Improvements to the extent, and in the manner, existing on the date hereof, including, without limitation, fire escapes, landing areas for fire escapes, signs, vents, brick structure for fresh air intake, lights, emergency generator, bollards and other projections; (vi) allowing for the installation, inspection, repair, replacement, enlargement, or removal of any underground pipe, conduit, cable or other supply instrument or related underground pump, valve, restrictor, transformer, meter or other appliance for electric, gas, water, sewer, cable, chilled water, telephone and other utilities now or hereafter existing and serving the 29 Land and the 29 Improvement; (vii) permitting move-in and move-out activities for the 29 Land, including without limitation, furniture moving trucks and equipment; (viii) permitting installation, maintenance, repair, inspection, replacement and removal of underground pipes originating with the Unicom Facilities and running through and connecting with pipes installed pursuant to the Unicom Connection Easement (as hereinafter defined), which underground pipes in the Alley shall be located in the hatch-marked area shown on Exhibit B hereto as area "6"; (ix) permitting the maintenance, repair, replacement and removal of the concrete pads located in areas "1" and "3" as shown on Exhibit B hereto, and the installation, repair, maintenance, replacement and removal of HVAC and/or generator equipment on such pads; (x) permitting loading and unloading and staging of materials in front of the 29 Improvements' freight elevator lobby access doors in area "5" as shown on Exhibit B hereto; and (xi) permitting emergency ingress and egress to and from the 29 Land and the 29 Improvements.

The Alley Easement, and its and the Alley's use and enjoyment, shall be subject to the following terms and conditions:

a) Except to the extent arising from the negligence or willful misconduct of the 39 Land Owner and/or the 39 Users, the 29 Land Owner shall indemnify and hold harmless the 39 Land Owner and the 39 Users, and their respective representatives, contractors, agents, Tenants, customers, invitees, vendors and subtenants (collectively, the "39 Parcel Indemnitees"), from and against any and all claims, damages, actions, penalties, liens, proceedings, liabilities or judgments, arising out of or related to the use of the Alley Easement by the 29 Land Owner and the 29 Users.

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b) The 29 Land Owner covenants that all work or other activities performed by it or the 29 Users within the Alley shall be done in a good and workmanlike fashion. The 29 Land Owner or the 29 Users shall purchase and maintain during the term of any Construction Activities undertaken by any of them insurance for protection against claims under workers' or workmen's compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages, other than to the 29 Land. This insurance shall be written for not less than \$1,000,000 combined bodily injury and property damage for each occurrence and \$2,000,000 per project aggregate or for such greater amount as may be required by law. Each such policy's coverage limits shall be subject to increase on each tenth (10th) anniversary of the date of this Declaration to the extent necessary to make such coverage reasonably equivalent to comparable coverage then customary in the Chicago area for similar commercial properties.

The Commercial General Liability policy shall name the 39 Land Owner and Tenant of the 39 Land as an additional insured, and shall contain a provision that coverage afforded under the policy will neither be canceled nor failed to be renewed without at least thirty (30) days' prior written notice given to the 39 Land Owner and Tenant of the 39 Land. Each such policy shall be issued by an insurer admitted to engage in the insurance business in the State of Illinois with a credit rating of "A" or better and a financial size rating of "VIII" or better issued by A.M. Best Co., Inc. or a comparable rating from a comparable rating agency. Certificates of such insurance shall be filed with the 39 Land Owner and Tenant of the 39 Land.

c) In connection with their respective use of the Alley, the 29 Land Owner and the 29 Users and the 39 Land Owner and the 39 Users, as the case may be, shall use their respective commercially reasonable efforts to minimize interference with, damage to and disturbance to one another, their respective property, and the conduct of business thereon. In the event of any such interference or disturbance as between the 29 Users and the 39 Users, the 39 Land Owner shall have the right from time to time, subject to applicable laws and ordinances, by notice to the 29 Land Owner, after good faith consultation with the 29 Land Owner, to make reasonable schedules prioritizing the times and days of access and use for the Alley to minimize such interference and disturbance giving due regard to the respective needs of the 29 Users and the 39 Users, but nothing in this paragraph shall limit the 29 Users' or 39 Users' emergency ingress and egress.

d) 29 Land Owner and the 29 Users, at their sole cost and expense, shall repair any and all damage to the Alley or the 39 Land or 39 Improvements to the extent arising from or in connection with the 29 Land Owner's and 29 Users' exercise of their easement rights granted under this Article 3.

3.2 Liability Insurance. As to their respective Parcels, the Owners shall each maintain or cause to be maintained at all times a commercial general liability insurance policy with combined bodily injury and property damage with minimum coverage of \$1,000,000 per occurrence and \$2,000,000 per general aggregate at all times and contain contractual liability coverage. Such policy's coverage limits shall increase on each tenth (10th) anniversary of the date of this Declaration to the extent necessary to make such coverage reasonably equivalent to comparable coverage then customary in the Chicago area for similar commercial properties. Such insurance policy shall name the 39 Land Owner and Tenant of the 39 Land as an additional insured, and shall, if permitted by the insurer, contain a provision that coverage afforded under such policy will neither be canceled nor failed to be renewed without at least thirty (30) days' prior written notice given to such other Owner. Each such policy shall be issued by an insurer admitted to engage in the insurance business in the State of Illinois with a credit rating of "A" or better and a financial size rating of "VIII" or better issued by A.M. Best Co., Inc. or a comparable rating from a comparable rating agency. Certificates of such insurance shall be delivered by one Owner to the other within thirty (30) days following written request to do so.

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3.3 Maintenance. The 39 Land Owner shall maintain the pavement of the Alley, or cause it to be maintained, in good order, condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, and keep the Alley free from lien, in all events subject to the obligations of the 29 Users as set forth herein. The reasonable cost to 39 Land Owners or its Tenant, as the case may be, of hiring contractors and other service providers to so maintain the Alley shall be shared equally between the Owners. Accordingly, the 29 Land Owner shall reimburse the 39 Land Owner within thirty (30) days of 29 Land Owners' receipt of a reasonably detailed written invoice therefor from time to time, together with reasonable and customary supporting documentation.

3.4 Laws. The Owners, 29 Users and 39 Users shall use the Alley only in accordance with all applicable laws and ordinances, and nothing herein shall serve to diminish or increase rights and obligations under applicable laws and ordinances.

3.5 39 Use. Neither the 39 Land Owner nor any 39 Users shall have the right to place, store, keep or maintain any equipment, object or other tangible thing within the north eight feet (8') of the Alley, except for (i) Alley pavement, and (ii) areas higher than the horizontal plane having an elevation of +30 feet above Chicago City Datum not interfering with 29 Land Owner's rights and privileges hereunder.

## ARTICLE IV

### CONNECTION TO UNICOM FACILITIES

4.1 Unicom Connection Easement. The University hereby grants to the 29 Land Owner, its successors and Tenant, an exclusive (shared only with the rights of the operator of the Unicom Facilities), perpetual easement (the "**Unicom Connection Easement**") over and through the 36 inch (36") wide by 16 inch (16") high volume of space in the basement of the 39 Improvements, the horizontal center line of which is 52.5 feet (52.5') east of the west property line of the 39 horizontal center line of the Land, except that the horizontal center line of the east-west portion of the Unicom Connection Easement is 55 feet (55') north of the south property line of the 39 Land and the horizontal center line of the portion of the Unicom Connection Easement between said east-west portion and the north property line of the 39 Land is 67.5 feet (67.5') east of the west property line of the 39 Land, all as depicted on Exhibit B hereto, and the bottom of which is 94 inches (94") off the floor of the basement, said easement to run from the Unicom Facilities, including any volume required to connect the elevation of the Unicom Connection Easement as aforesaid with the elevation of the Unicom Facilities through the foundation wall of the 39 Improvements at the area depicted on Exhibit B hereto as area "6", and continuing through said area "6" on a depth below the surface of the Alley reasonably determined by 29 Land Owner in accordance with sound engineering standards, all for the design, installation, use, maintenance, repair, replacement and removal of pipes, valves, meters and other devices for the transmission of chilled water from the Unicom Facilities (the "**Chilled Water Piping**"), including affixing the Chilled Water Piping to the 39 Improvements. In addition, the University hereby grants to the 29 Land Owner, its successors and Tenant, a non-exclusive perpetual easement over that portion of the basement of the 39 Improvements immediately above and below the volume subject to the Unicom Connection Easement for the limited purpose of installing, maintaining, use, repair, replacement and removal of supports for the Chilled Water Piping, including affixing said supports to the floor and ceiling structural elements (the "**Support Easement**"). The parties acknowledge that the precise location of the Unicom Connection Easement and Chilled Water Piping may vary from that which is set forth above and agree to use their best efforts to coordinate their initial placement. Once the Chilled Water Piping is installed in all material respects as provided for herein, the Owners shall determine if the installation varies from the provisions hereof, in one or more non-material respects, and if so the Owners shall reasonably revise the provisions of this Section 4.1 to match such installation.

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4.2 Construction and Maintenance Easement. The University hereby grants to the Owner of the 29 Land, its successors and Tenant, a non-exclusive, perpetual easement (the "**Construction and Maintenance Easement**") over and through the 39 Land and 39 Improvements to allow for access for personnel, equipment and materials to the Unicom Connection Easement and the Support Easement areas, provided that such access shall be on the following terms:

- a) 29 Land Owner shall give to the 39 Land Owner and Tenant of the 39 Land not less than ten (10) business days' advance written notice of each use of the Construction and Maintenance Easement and the contemplated duration of each such use;
- b) The path of such access shall be reasonable for the purpose intended and prescribed by the 39 Land Owner and/or Tenant of the 39 Land from time to time;
- c) All work by or for 29 Land Owner pursuant to this Article IV shall be designed and constructed in accordance with good engineering and construction practices and pursuant to plans approved by 39 Land Owner and/or Tenant of the 39 Land, which approval shall not be unreasonably withheld, conditioned or delayed; and
- d) 39 Land Owner or any Tenant of the 39 Land may impose reasonable rules, regulations, and restrictions with respect to the 29 Land Owner's access and use, including for security purposes.

4.3 Additional Requirements. The Unicom Connection Easement, the Support Easement and the Construction and Maintenance Easement, and their respective use and enjoyment, shall be subject to the following terms and conditions:

- a) Except to the extent arising from the negligence or willful misconduct of the 39 Parcel Indemnitees, the 29 Land Owner shall indemnify and hold harmless the 39 Parcel Indemnitees from and against any claims, damages, actions, penalties, liens, proceedings, liabilities or judgments, arising out of or related to the use of the Unicom Connection Easement, the Support Easement, and/or the Construction and Maintenance Easement by the 29 Land Owner and/or the 29 Users.
- b) The 29 Land Owner covenants that all work or other activities performed by it or the 29 Users within the 39 Improvements shall be done in a good and workmanlike fashion. The 29 Land Owner or the 29 Users shall purchase and maintain during the term of any construction activities undertaken by any of them within the 39 Improvements insurance for protection against claims under workers' or workmen's compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages, other than to the 29 Land. This insurance shall be written for not less than \$1,000,000 combined bodily injury and property damage for each occurrence and \$2,000,000 per project aggregate or for such greater amount as may be required by law. Each such policy's coverage limits shall be subject to increase on each tenth (10th) anniversary of the date of this Declaration to the extent necessary to make such coverage reasonably equivalent to comparable coverage then customary in the Chicago area for similar commercial properties.

Each such insurance policy shall name the 39 Land Owner and Tenant of the 39 Land as an additional insured, and shall, if permitted by the insurer, contain a provision that coverage afforded under the policies will not be canceled, changed or altered, nor failed to be renewed without at least thirty (30) days' prior written notice given to the 39 Land Owner and Tenant of the 39 Land. Each such policy shall be issued by an insurer admitted to engage in the insurance business in the State of Illinois with a credit rating of "A" or better and a financial size rating of "VIII" or better issued by A.M. Best Co., Inc. or a

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comparable rating from a comparable rating agency. Certificates of such insurance shall be filed with the 39 Land Owner and Tenant of the 39 Land.

c) The 29 Land Owner and the Tenant of the 29 Land shall use their respective commercially reasonable efforts to minimize interference with or damage to the 39 Land, the 39 Land Owner and the 39 Users, their respective property, and the conduct of business thereon. To that end, where commercially reasonable, 29 Land Owner and the Tenant of the 29 Land shall exercise their Construction and Maintenance Easement rights granted under this Article 4 during only those hours of the day when each such exercise will cause the least possible or minimal disturbance to the 39 Land Owner, the 39 Users and the occupants of the 39 Improvements.

d) The 29 Land Owner and the 29 Users, at their sole cost and expense, shall repair any and all damage to the Alley or the 39 Land or 39 Improvements to the extent arising from or in connection with the 29 Land Owner's and 29 Users' exercise of their easement rights granted under this Article 4.

## ARTICLE V

### DEFAULT PROVISIONS

5.1 Default. Each Owner is bound by and shall comply with the terms of this Declaration. A failure by an Owner to comply with this Declaration, or any amendment hereto, or a failure by an Owner to cause any User of its Parcel who is violating this Declaration to cure such violation, as the case may be, shall constitute a default if not cured by the applicable Owner (or the applicable User, as the case may be) within thirty (30) days following receipt of written notice thereof to such Owner by the non-defaulting Owner ("Default"). If a Default occurs, the non-defaulting Owner shall have the right to recover damages at law, to procure injunctive relief, or to avail itself of any other rights or remedies permitted by law or in equity from and against either the defaulting Owner or the applicable User of such Parcel, or both. In any proceeding commenced by an Owner, its successors or assigns, based upon or arising out of an alleged Default, if such Owner, or its successors or assigns, is the prevailing party thereunder, it shall be entitled to recover from the party at Default all expenses of the proceeding, including reasonable attorneys' fees and expenses.

5.2 Enforcement. Any Owner may enforce the provisions of this Declaration by any proceeding at law or in equity. All rights and remedies may be exercised at any time and from time to time, cumulatively, or otherwise, and failure of an Owner to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter.

5.3 No Termination. No Default shall terminate this Declaration or any easement, right or obligation contained herein.

## ARTICLE VI

### SELF-HELP

#### 6.1 Self Help.

(a) Each Owner shall have the right, but not the obligation, to enforce the terms of this Declaration. In the event an Owner does not comply with the terms of this Declaration, or any of its obligations set forth herein (or does not cause a User of its Parcel to so comply), then upon forty-five (45) days' written notice by an Owner to such other Owner (or User, in which event a copy of such notice shall be simultaneously sent to such other Owner), and failure of such non-compliant Owner to comply



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with the terms of this Declaration (or to cause such User to comply with the terms of this Declaration) within said time, or in the event of an emergency such shorter notice as shall be reasonable and practical under the circumstances, such Owner shall have the right, but not the obligation, to enter upon the applicable Parcel, and perform any work required hereunder not being performed by the non-compliant Owner or User, as the case may be. Such Owner so performing such work is herein referred to as a “Self-Performing Party.”

(b) The non-compliant Owner shall reimburse the Self-Performing Party for any reasonable amounts that the Self-Performing Party actually expends for such work and shall do so within thirty (30) days of receipt of a reasonably detailed invoice (together with reasonable and customary supporting documentation) for such work. In the event the non-compliant Owner fails to pay such bill within the time required, the Self-Performing Party may commence an action to collect said unpaid sums and its right of recovery shall include, but is not limited to, the Self-Performing Party’s reasonable attorney’s fees, expenses, and costs of investigation, settlement and litigation, and enforce a judgment lien to the full extent allowed by law, including, but not limited to, foreclosure of the same.

6.2 Tenants. It is acknowledged and agreed by the University, as the ground lessor under the Ground Lease and as the current Owner of the Parcels, and by Tenant, as the ground lessee under the Ground Lease, that the Parcels are subject to the Ground Lease, and may in the future each be subject to separate ground leases, each of the tenants therein being a “Tenant” herein during the term of their tenancy, and that each Tenant, its successors or assigns, may, with the permission of such Owner, act in its own right or as the agent of the Owner of the Parcel which it is ground leasing in regards to exercising and enforcing the rights and performing the obligations of an Owner under this Declaration, and shall have the right to exercise and enforce the rights and perform the obligations of such Tenant under this Declaration. No other lessee, sublessee, licensee or tenant other than the Tenant under the Ground Lease, shall qualify as a “Tenant” for purposes of this Declaration. Notwithstanding anything herein to the contrary, it is specifically acknowledged, understood, and agreed as follows: (i) any exercise or purported exercise by any Tenant of any rights or obligations hereunder shall be and remain subject to all of the terms and provisions of the Ground Lease; (ii) the University, as the ground lessor under the Ground Lease and as the current Owner of the Parcels, does not currently procure or maintain, nor is the University obligated to so procure or maintain, insurance of any type whatsoever with respect to the Ground Lease, the Parcels, or any improvements located thereon; (iii) so long as the University is the Owner of the Parcels, or either of them, and the Ground Lease remains in effect with respect to the Parcels, or either of them, any and all insurance required to be procured or maintained by any Owner hereunder shall instead be procured and maintained by Tenant at its sole risk, cost, and expense (provided, the University shall be named as an additional insured thereon), and in no event shall the University have any obligation or liability with respect thereto, nor shall the University have any indemnification or other obligations hereunder arising in connection therewith or otherwise; and (iv) any insurance maintained by the University, whether in connection with the Ground Lease, the Parcels, or otherwise, shall be for the sole benefit of the University, and in no event shall any Owner, Tenant, or User have any right or claim with respect thereto.

## ARTICLE VII

### AMENDMENT

7.1 Amendments and Modifications. This Declaration may be amended or terminated only by a recorded written instrument signed by the Owners and the Tenants at such time. The Alley shall not be modified from its configuration and improvements as existing on the date hereof, except as may be required by law or ordinance, or with the written consent of the Owners and Tenants set forth in a recorded amendment to this Declaration.

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## ARTICLE VIII

### MISCELLANEOUS

8.1 Duration. Except as otherwise provided herein, this Declaration shall remain in full force and effect in perpetuity.

8.2 Non-liability. No Owner shall be liable to any Owner or to any others for any mistake in judgment for its enforcement or failure to enforce the terms of this Declaration, all such liability being hereby waived.

8.3 Indemnification by Owners. To the extent of its insurance required pursuant to this Declaration, and except to the extent arising from the negligence or willful misconduct of the indemnified party hereunder, each Owner shall indemnify, defend and hold harmless the other Owner from and against all loss, cost or damage that may arise or be asserted against such indemnified party to the extent arising out of, or relating to, the negligence or willful misconduct of the indemnifying party anywhere upon or about the Parcels, including reasonable attorney's fees incurred in connection with the defense of any such claim.

8.4 Severability. Invalidation of any one of the provisions of this Declaration by judgment or court order in no way shall affect any of the other provisions hereof, which shall remain in full force and effect.

8.5 Notices. Each Owner and Tenant of a Parcel shall file its correct mailing address with the other Owner and shall notify the other Owner promptly in writing of any subsequent change of address. All notices, except Default notices, given pursuant to this Declaration or in connection therewith shall be in writing and shall be delivered either in person, by nationally-recognized commercial overnight courier service, or by U.S. certified mail, return receipt requested. Delivery of notices to the Owner shall be made to such address as is furnished by the Owner or, absent the Owner furnishing its address, to the address listed on the county assessor's tax records for the particular Parcel shall be sufficient. As of the date hereof, and unless and until a different address is furnished by an Owner, notices to the University shall be sent to:

The University of Chicago  
Office of Legal Counsel  
Edward H. Levi Hall  
5801 South Ellis Avenue, Suite 619  
Chicago, Illinois 60637  
Attn: Russell J. Herron, Esq.

With a copy to:

The University of Chicago  
Office of Investments  
401 North Michigan Avenue, Suite 900  
Chicago, Illinois 60611  
Attn: Managing Director - Real Assets

And with a copy to Tenant (for so long as there is a Tenant):

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ROC II IL LaSalle LLC  
 c/o Real Estate Opportunity Capital Fund II  
 5295 South Commerce Drive, Suite 100  
 Murray, Utah 84107  
 Attn: Jonathan P. Slager

Default notices under the terms of this Declaration shall be delivered in the same manner described above. Notices shall be deemed delivered on the date personal delivery is made (or refused), the next business day following deposit with a nationally-recognized commercial overnight courier service, or on the third (3rd) business day following posting with the U.S. mail.

8.6 Waivers. Except as otherwise provided herein, no conditions, covenants, restrictions, reservations, easements, grants or other provisions of this Declaration shall be deemed to have been waived by silence, inaction, or failure to enforce rights or by any other matters whatsoever, other than a writing executed by the party against whom the waiver is asserted, which expressly states that a specified right or remedy is being waived. No waiver shall be deemed to have been effected by the failure to enforce rights or remedies of which a party is possessed, regardless of the number of breaches or violations of said rights which have occurred.

8.7 Rule Against Perpetuities. Should any provision of this instrument be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) or any other statutory or common law rules imposing time limits, then such provisions shall be deemed to be operative only until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of George W. Bush, former President of the United States.

8.8 No Merger. There shall be no merger or extinguishment of this Declaration or the easements set forth herein by reason of both Parcels being under common ownership, whether or not the Tenants are the same Person or there are no Tenants; provided, however, at such time as both Parcels are either under the same ownership or the respective Owners thereof desire to terminate this Declaration, the Ground Lease has expired or otherwise been terminated, and there are no remaining Tenants of or to either of the Parcels hereunder, the then-existing Owner(s) of the Parcels may, at its (or their) sole election, terminate this Declaration by recording a written instrument to that effect.

8.9 Title. The University represents and warrants that, subject to matters of record, it is the owner of and fee title holder to the Parcels.

8.10 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of this Declaration.

8.11 Estoppel Certificates. Upon request by an Owner or Tenant, the other Owner or Tenant shall, within twenty (20) days of such request, provide the requesting Owner or Tenant with an estoppel certificate in form and content substantially as set forth on Exhibit C attached hereto.

*[SIGNATURES ON FOLLOWING PAGES]*

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IN WITNESS WHEREOF, the University, has caused its corporate seal to be affixed hereunder and has caused its name to be signed to these presents, this 9th day of January, 2014.



THE UNIVERSITY OF CHICAGO, an Illinois not-for-profit corporation

By: [Signature]  
Name: Nimalan Chinniah  
Its: Exec. VP for Administration and CFO

STATE OF ILLINOIS  
COUNTY OF COOK )

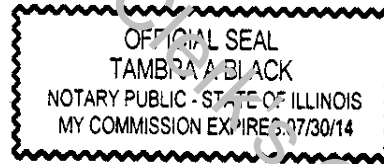
I, the undersigned, a Notary Public in and for the above County and State, DO HEREBY CERTIFY that Nimalan Chinniah and \_\_\_\_\_, personally known to me to be the Exec. VP for Admin + CFO of the University which is the grantor, and personally known to me to be the \_\_\_\_\_ of the corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they had signed and delivered the instrument as their free and voluntary act, and as the free and voluntary act of the University, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 8th day of January, 2014.

[Signature]  
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Jeffrey Jahns  
Seyfarth Shaw LLP  
131 South Dearborn Street  
Suite 2400  
Chicago, IL 60603  
(312) 460-5819



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## TENANT CONSENT

The undersigned ground lessee of the Parcels hereby consents to the execution and recording of the within Declaration as of the date first above written.

ROC II IL LASALLE, LLC,  
a Delaware limited liability company

By: ROC II REAL ESTATE HOLDINGS, LLC, a  
Delaware limited liability company,

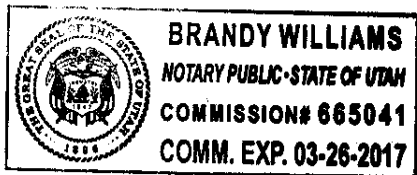
Its: Managing Member

By:   
Jonathan P. Slager, Manager

STATE OF UTAH )  
                          ) SS  
COUNTY OF SALT LAKE)

I, the undersigned, a Notary Public in and for the above County and State, DO HEREBY CERTIFY that Jonathan P. Slager, personally known to me to be the Manager of ROC II Real Estate Holdings, LLC, the managing member of ROC II IL LaSalle, LLC, a Delaware limited liability company and personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that ~~he~~she had signed and delivered the instrument as his/her free and voluntary act, and as the free and voluntary act of the said company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 7<sup>th</sup> day of January, 2014.



Brandy Williams  
NOTARY PUBLIC

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## EXHIBIT A

### LEGAL DESCRIPTION

#### 29 LAND:

LOTS 29, 30, 31 AND 32 OF ASSESSOR'S DIVISION OF BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK 169 OF MAPS, PAGE 82, IN COOK COUNTY, ILLINOIS.

Address: 29 South LaSalle Street, Chicago, Illinois

#### 39 LAND:

1. The Alley.

THE VACATED PUBLIC ALLEY, LYING NORTH OF AND ADJOINING LOTS 21 TO 28, BOTH INCLUSIVE; LYING SOUTH OF AND ADJOINING LOTS 29, 31, 32 AND 33; LYING EAST OF THE EAST LINE OF SOUTH LASALLE STREET, AS WIDENED, AND LYING WEST OF AND ADJOINING LOTS 18 AND 19 IN ASSESSOR'S DIVISION OF PLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 28 AFORESAID; THENCE EAST ALONG THE NORTH LINE OF LOTS 28, 27, 26, 25, 24, 23, 22 AND 21 AFORESAID TO THE NORTHEAST CORNER OF LOT 21 AFORESAID; THENCE NORTH ALONG THE WEST LINE OF LOTS 18 AND 19 TO THE SOUTHEAST CORNER OF LOT 33 AFORESAID; THENCE WEST ALONG THE SOUTH LINE OF LOTS 33, 32 AND 31 AND PART OF LOT 29 TO A POINT 45.10 FEET EAST OF THE WEST LINE OF SAID LOT 29; THENCE SOUTH PARALLEL WITH SAID WEST LINE, A DISTANCE OF 8.00 FEET; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 29 TO THE SOUTHWEST CORNER OF LOT 29, BEING ALSO THE EAST LINE OF SOUTH LASALLE STREET, AS WIDENED; THENCE SOUTH ALONG SAID EAST LINE OF SOUTH LASALLE STREET, AS WIDENED, TO THE POINT OF BEGINNING, EXCLUDING THEREFROM THE EAST 22.75 FEET THEREOF, ALL IN COOK COUNTY, ILLINOIS.

2. Balance of 39 Land:

THE SOUTH 80.00 FEET OF LOTS 6, 7 AND 8 (EXCEPT THAT PART OF LOT 8 TAKEN AND USED FOR LASALLE STREET) IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 39 South LaSalle Street, Chicago, Illinois

PINS: 17-16-204-024-0000, 17-16-204-005-0000

# UNOFFICIAL COPY

## EXHIBIT B

### DEPICTION OF ALLEY

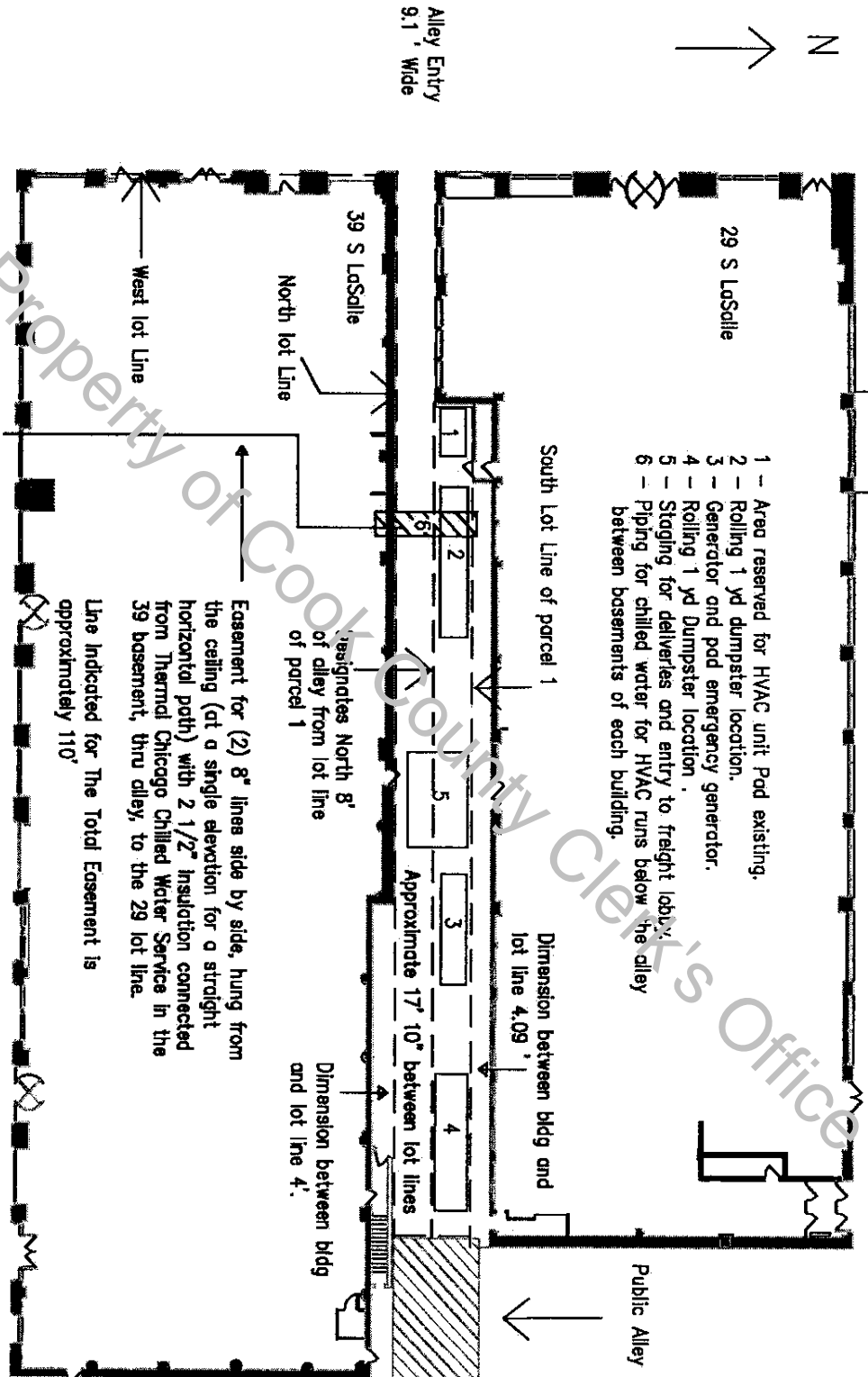
See Attached

*[Handwritten signature]*

Property of Cook County Clerk's Office

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### EXHIBIT B -- Depiction of Alley





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## EXHIBIT C

### FORM OF ESTOPPEL CERTIFICATE

#### DECLARATION ESTOPPEL CERTIFICATE

\_\_\_\_\_, 201\_\_

THIS DECLARATION ESTOPPEL CERTIFICATE is made this \_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date") by \_\_\_\_\_, a \_\_\_\_\_ ("Owner A"), in favor of \_\_\_\_\_, a \_\_\_\_\_ ("Requesting Party").

#### RECITALS:

WHEREAS, the University of Chicago, an Illinois not-for-profit corporation, entered into that certain Declaration of Covenants, Conditions, Restrictions and Easements for 29-39 South LaSalle St., Chicago, Illinois, dated January \_\_, 2014, which document was recorded \_\_\_\_\_, 2014, in the Cook County Recorder of Deeds as Document No. \_\_\_\_\_ (the "Declaration"); and

WHEREAS, Owner A is the fee simple owner of the \_\_\_ Land, as described in the Declaration; and

WHEREAS, Requesting Party, as either Owner or Tenant of the \_\_\_ Land, as described in the Declaration, pursuant to Section 8.11 of the Declaration, has requested Owner A to execute and deliver this Declaration Estoppel Certificate to Requesting Party.

NOW, THEREFORE, Owner A hereby certifies to Requesting Party its tenants and its and their respective mortgagees, as follows, as of the date hereof:

1. The Declaration is in full force and effect and is binding upon Owner A's and Requesting Party's Property.
2. The Declaration has not been amended, terminated or otherwise altered in any way, except as otherwise set forth hereinabove in the definition of "Declaration".
3. To the actual knowledge of Owner A as of the Effective Date hereof, without further investigation or inquiry, there are no defaults under the Declaration affecting or arising from Owner A's or Requesting Party's Property, or the use thereof, except as follows:  
\_\_\_\_\_  
[if none, please write "none"].
4. To the actual knowledge of Owner A as of the Effective Date hereof, without further investigation or inquiry, there are no unpaid amounts that have been billed pursuant to Section \_\_\_ of the Declaration, except \_\_\_\_\_ [if none, please write "none"].

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OWNER A:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, Notary Public in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_ whose name is signed to the foregoing Declaration Estoppel Certificate, having personally appeared before me, in my jurisdiction aforesaid, acknowledged the same.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_..

\_\_\_\_\_  
Notary public  
My commission expires: \_\_\_\_\_