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ACCESS AGREEMENT Doc#: 1727849313 Fee: \$86.00
Karen A. Yarbrough

THIS ACCESS AGREEMENT (this **Access Agreement** entered into this 15th day of August, 2017 (the "Effective Date"), by and between **Roosevelt Galleria LLC**, successor-in-interest to Roosevelt Venture, LLC, having an address c/o Acadia Realty Trust, 411 Theodore Fremd Avenue, Suite 300, Rye, New York 10580 ("Licensor") and **635-647 W. Roosevelt Road, LLC**, having an address at 1319 South State Street, Suite B, Chicago, Illinois 60605 ("Licensee").

Licensor and Licensee may hereinafter be referred to individually as a "Party" or collectively, as the "Parties".

RECITALS

WHEREAS, Licensor owns certain land, together with all buildings and improvements thereupon, located at 611-633 West Roosevelt Road, Chicago, Illinois, (the "Licensor's Property"), which Licensor's Property is adjacent to certain land, together with all buildings and improvements thereupon, located 635-647 West Roosevelt Road, Chicago Illinois, owned by Licensee (the "Licensee's Property");

WHEREAS, Licensor's Property and Licensee's Property are both encumbered by that certain Declaration of Easement, as amended, by and between American National Bank and Trust Company of Chicago, as Trustee under a Trust Agreement dated April 1, 1983 and known as Trust No. 57400 and by and among those persons or title holding land trusts listed on Exhibit "A" of such Declaration of Easement. Such Declaration of Easement is dated August 29, 1984 and was recorded with the Cook County Recorder as Document number 27338040 on November 15, 1984 (hereinafter, the "Easement"), a copy of which is attached hereto as Exhibit 1;

WHEREAS, the Easement permanently and irrevocably grants an easement for ingress and egress over and upon both Licensor's Property and Licensee's Property;

WHEREAS, Licensee and Licensor do not wish to disturb or impair the effect of the Easement but rather by this Access Agreement intend to extend the Easement solely for the purposes herein set forth;

WHEREAS, Licensee intends to undertake to demolish the existing building and construct a new building, at or upon Licensee's Property (the "Renovations"). In connection with such Renovations, certain "Licensee Work", as hereinafter defined, shall need to be done in, at or upon Licensor's Property; and

WHEREAS, Licensee hereby requests access to Licensor's Property for the performance of such Licensee's Work, and Licensor is willing to grant such access, subject to the terms and conditions set forth herein.

NOW THEREFORE, In consideration of the mutual covenants and agreements hereinafter set forth, Licensor and Licensee agree as follows:

1. **GRANT OF LICENSE.** Licensor hereby grants permission to Licensee and its agents, employees, contractors, and subcontractors the right to enter upon Licensor's Property, for the sole purpose of performing Licensee's Work, which Licensee's Work shall include certain underpinning and vibration monitoring, with additional work to include, but be not limited to, roof parapet wall connections and/or party wall flashings, as such additional work may be required, (collectively, the "Licensee Work"). Any such Licensee's Work that will affect Licensor's Property shall be first approved by Licensor and its engineer as more fully set forth herein.

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2. **TERM.** Licensee shall have access to Licensor's Property commencing upon the date Licensor and its engineer approve Licensee's Work until the earlier of (i) the date Licensee's Work is completed, or (ii) a period of twelve (12) months from the Effective Date, unless otherwise extended in writing between the Parties.

3. **COVENANTS OF LICENSEE.** (a) Licensee shall perform Licensee's Work, at its sole cost and expense. It being understood that Licensor shall have no obligation to perform any of Licensee's Work or any expense with regard to same. Additionally, Licensee shall reimburse Licensor for any reasonable costs and expenses in connection with this Agreement, including but not limited to any engineering or attorney fees and costs.

(b) All of Licensee's Work shall be accomplished in an expeditious, safe and diligent manner in accordance with all applicable "Governmental Regulations", as hereinafter defined. Licensee shall take all reasonable measures so as not to interfere with, disrupt or cause any inconvenience, including but not limited to ingress and egress, unreasonable noise, dust or garbage, in, at or upon Licensor's Property or to any of Licensor's tenants thereupon.

(c) Licensee shall promptly repair or restore, at its sole cost and expense, any and all damage caused to Licensor's Property by Licensee or its agents, employees, contractors, and subcontractors in the performance of Licensee's Work.

(d) Licensee shall provide Licensor, within ninety (90) days from the Effective Date, with its plans, specifications and drawings (the "Plans") relating to Licensee's Work, that will affect Licensor's Property, for review and approval by Licensor and its engineer. Licensee's Work in, at or upon Licensor's Property shall not commence unless and until Licensor and its engineer have approved the Plans, which approval shall not be unreasonably withheld, conditioned or delayed. Licensor and its engineer shall have fifteen (15) business days from receipt by Licensor of such Plans to approve or disapprove of same. In the event Licensor or its engineer fail to respond within such fifteen (15) day period, such Plans shall be deemed approved. Licensee shall provide Licensor and/or its engineer with weekly progress reports with respect to Licensee's Work.

Additionally, Licensee shall provide to Licensor a survey (the "Survey") of the condition of Licensor's Property existing prior to the commencement of any of Licensee's Work. Licensor makes no warranty or representation about the nature or condition of Licensor's Property, including (without limitation) its fitness for the intended purpose of Licensee's Work. Licensee acknowledges and agrees that it relies and shall rely solely on its Survey of Licensee's Property in order to determine the nature, scope and extent of Licensee's Work. Licensee accepts Licensor's Property in "as-is, where-is" condition for all purposes under this Agreement.

Licensee shall set in place a monitoring program that warrants the structural integrity and stability, in all respects, of the Licensor's Property throughout Licensee's Work. Licensee acknowledges that certain of Licensee's monitoring equipment that shall be installed on Licensor's Property will need to be powered using Licensor's electricity. Licensee shall pay to Licensor the actual cost, if any, for the use of such electricity in the amounts as determined by Licensor's engineer.

(e) Licensee's Work shall be performed on the days and the hours as allowed by the City of Chicago Department of Buildings and/or any other applicable governmental body having jurisdiction.

(f) Any notices required hereunder shall be sent via overnight mail, as follows:

To Licensor:

Roosevelt Galleria LLC
411 Theodore Fremd Avenue, Suite 300

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Rye, New York 10580
Attention: Legal Department

With a cc to:

Roosevelt Galleria LLC
411 Theodore Fremd Avenue, Suite 300
Rye, New York 10580
Attention: Property Management

To Licensee:

635-647 W. Roosevelt Road, LLC
c/o JOHNSONLAW, LLC
The Republic Bank Building
120 West Madison Street
Suite 600
Chicago, Illinois 60602

(g) Licensee shall remove and shall cause its agents, employees, contractors and subcontractors, to remove from Licensor's Property all debris, trash and garbage related to Licensee's Work on a daily basis so as to keep Licensor's Property free and clear of same at all times. As of the expiration date or sooner termination of this Agreement, Licensee shall cause to have removed all of the equipment and materials related to Licensee's Work promptly from Licensor's Property. Any equipment or materials not so promptly removed shall be deemed abandoned and Licensor shall have the right to have such equipment and materials removed at Licensee's sole cost and expense. In no event shall Licensor be liable to Licensee for any loss or claim (including, without limitation, any indirect, special or consequential loss or damage) arising out of Licensee's Work or this Agreement, whether caused by the negligence of Licensor, or otherwise, and Licensee shall indemnify and hold Licensor harmless from any such damages or liability, to the maximum extent permitted by law.

(h) Licensee shall defend, indemnify and hold harmless Licensor, its subsidiaries, employees, agents, partners, shareholders, officers, directors, successors and assigns from and against any and all direct demands, claims, payments, obligations, actions or causes of action, losses, damages, penalties, fines, liabilities, reasonable costs and expenses (including, without limitation, attorneys' fees and legal expenses) arising from or relating to (a) Licensee's access to Licensor's Property, or (b) the acts or omissions of Licensee or its agents, contractors, subcontractors, representatives and employees, in connection with activities undertaken pursuant to this Agreement and all loss and damage arising from any injury or claim of injury to, or death of, any person or damage to any property whatsoever.

(i) Licensee shall be responsible for all violations or other notices issued by the Chicago Department of Buildings or other governmental agency arising from or relating to Licensee's Work and any liens brought on or against Licensor's Property arising out of work performed, materials furnished, or obligations incurred by or on behalf of Licensee's Work. Licensee shall give Licensor prompt notice of such violation(s) and shall promptly undertake to cure and remove such violation(s), and pay all expenses related thereto, including all fines and professional fees incurred by either Party relating thereto.

(j) Licensee waives and releases any right of subrogation, indemnity or contribution, to the maximum extent permitted by law, against Licensor with respect to any claim by any third party arising from or relating to Licensee's Work.

(k) Prior to Licensee commencing Licensee's Work, Licensee shall provide to Licensor a certificate of insurance evidencing coverage for all of its obligations herein, issued by a reputable insurance company rated "A" or better by A.M. Best with policy limits of not less than Five Million and

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00/100 Dollars (\$5,000,000.00) for general liability, including coverage for property damage and bodily injury, and shall name Licensor as an additional insured under such policy. Nothing herein shall require Licensor to maintain insurance for the purposes hereof, or to look first to any such insurance coverage Licensor may have or maintain with respect to Licensor's Property.

(l) As used herein **Governmental Regulations** means all laws, statutes, ordinances, rules, regulations, zoning codes, building codes, standards and requirements now or hereafter in force of all governmental and quasi-governmental authorities, and of all board of fire insurance underwriters, having jurisdiction over the Premises and the Building.

4. **TERMINATION.** Notwithstanding anything contained herein to the contrary, the right hereunder to enter Licensor's Property shall not be deemed a possessory right but rather a license, immediately terminable by Licensor upon written notice to Licensee. Additionally, this Agreement shall be automatically revoked in the event of, or at such time that, (a) Licensee fails to materially comply with the terms of this Agreement, or (b) if any act or omission on the part of Licensee results in material damage or destruction to Licensor's Property, or (c) due to violation of any Governmental Regulations. The termination of this Agreement shall not, however, diminish or extinguish Licensee's obligations hereunder, including but not limited to, its obligation to indemnify Licensor and make repairs or restorations, as provided herein.

5. **MISCELLANEOUS.** (a) The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Illinois.

(b) The terms and conditions of this Agreement constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and shall supersede all previous communications, whether oral or written, between the Parties. No modification or waiver of the terms and conditions of this Agreement shall be binding upon either Party unless approved in writing by an authorized representative of the Parties.

(c) The failure by either Party to enforce its rights under this Agreement on any occasion shall not operate as or be deemed to be a waiver of any future endorsement or exercise of such rights.

(d) This Agreement and all the provisions herein shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

(e) This Agreement is solely for the benefit of the Parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.

(f) Titles and headings to sections herein are inserted for the convenience of reference only and not intended to be a part of or to effect the meaning or interpretations of this Agreement.

(g) Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

(h) This Agreement may be executed in counterparts, all which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by both Licensor and Licensee and delivered to the other Party.

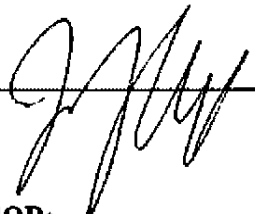
(i) The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this License Agreement, the relationship of Licensor and Licensee created hereby, the Licensee's use or occupancy of the Demised Premises, or any claim for injury or damage.

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(j) Notwithstanding anything contained herein to the contrary, the parties hereto agree that this Access Agreement herewith replaces, in its entirety, and supersedes that certain Access Agreement between the parties dated August 9, 2016 (the "Prior Agreement"). Such Prior Agreement is hereby deemed null and void and of no further force or effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives at of the day and year first above written.

LICENSEE:
635-647 W. Roosevelt Road, LLC

By: 
Name: _____
Title: _____

LICENSOR:
Roosevelt Galleria LLC

By: 
Name: **Jason Blacksberg**
Title: **Senior Vice President**

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 3 (EXCEPT THE NORTH 42.00 FEET THEROF TAKEN FOR STREET) AND LOT 6 IN SHOUP'S SUBDIVISION OF LOT 4 IN BLOCK 67 IN CANAL TRUSTEES' SUBDIVISION OF BLOCKS AND LOTS IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A PARCEL OF LAND IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, CONSISTING OF A PART OF LOT 2 AND ALL OF LOT 7 IN THE SUBDIVISION OF LOT 4 IN BLOCK 67 IN CANAL TRUSTEES' SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT BLOCKS 57 AND 58) SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, WITH THE EAST LINE OF SAID LOT 2 IN THE SUBDIVISION OF LOT 4 AND RUNNING THENCE SOUTH ALONG SAID EAST LINE OF LOT 2 AND ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 131.32 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 25.07 FEET TO THE SOUTHWEST CORNER OF LOT 7; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 7 AND ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 131.32 FEET TO THE SOUTH LINE OF SAID WEST ROOSEVELT ROAD AS WIDENED; AND THENCE EAST ALONG SAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, A DISTANCE OF 25.07 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1, 2 AND 3 PURSUANT TO GRANT OF EASEMENT RECORDED NOVEMBER 15, 1984 AS DOCUMENT 27336640 OVER THAT PART OF THE VACATED 12TH PLACE PER VACATION ORDINANCE RECORDED NOVEMBER 14, 1984 AS DOCUMENT 27336633.

PINS: 17-21-101-041, 042 AND 17-21-101-014

COMMON ADDRESS: 635-637 W. Roosevelt Road, Chicago, IL 60607

Prepared By and Mailed to:
Johnson Law, LLC
29 South LaSalle St
Suite 220
Chicago, IL 60603