This instrument was prepared
by, and after recorded return to:

Kathryn Kovitz Arnold, Esq.
Taft Stettinius & Hollister LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601

2203822031
Doc# 2203822031 Fee $88.00
RHSP FEE:$9.00 RPRF FEE: $1.00
KAREN A. YARBROUGH
COOK COUNTY CLERK
DATE: 02/07/2022 02:44 PM PG: 1 OF 55

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is made as of November 30, 2021 by and between Ogden Plaza Garage Company, L.L.C., an Illinois limited liability company ("Assignor"), and NPG CHI2 OGDEN LLC, a Delaware limited liability company ("Assignee").

RECITALS:

WHEREAS, pursuant to that certain Assignment of Rights and Assignment of Lease dated December 30, 1991, attached hereto as Exhibit A, Chicago Dock and Canal Trust ("Trust") assigned to CDCT Plaza Corporation ("CDCT") all of Trust's "rights and interests of any kind which the Trust has or may have in, to or with respect to" Mayor Ogden Plaza ("Plaza"), including any "reversionary rights," and "rights of enforcement" granted to Trust pursuant to that certain Quit Claim Deed of Dedication and Agreement dated December 29, 1988 (the "Deed"), and easement rights, among others, as well as its interest in and to that certain Lease by and between Trust and the Chicago Park District dated July 10, 1991 (the "Lease");

WHEREAS, on April 18, 1997, CDCT assigned to The Hotel Land Company, L.L.C., an Illinois limited liability company ("HLC"), the Lease and "all intangible property owned by CDCT in connection" with the Lease, and HLC assigned same to Assignor (the "April 1997 Assignment");

WHEREAS, the April 1997 Assignment was intended by the parties to transfer to Assignor all right and interest of CDCT in and to the property commonly known as Ogden Plaza, including any reversionary rights and other rights under the Deed;

WHEREAS, a question was raised by a third party as to whether the above assignments were effective to transfer any reversionary and other rights in the Deed held by CDCT, and to eliminate any uncertainty and confirm that all such rights were transferred to Assignor, HLC and Assignor entered into that certain Assignment and Assumption Agreement dated as of May 31,

2012 (the "May 2012 Assignment"), attached hereto as Exhibit B, pursuant to which HLC assigned to Assignor all of HLC's right, title, obligation, liability, and interest in and to the Deed;

WHEREAS, pursuant to that certain decision issued by Judge Novak on August 8, 2013 in the matter of Chicago Park District vs. Ogden Plaza Garage Company, L.L.C., 10 CH 28526, attached hereto as Exhibit C, the Lease was declared void.

WHEREAS, Assignor has agreed to sell, and Assignee has agreed to purchase, the property commonly known as 300 East North Water Street, Chicago, Illinois, including all easement rights under the Deed to use as a parking facility the subsurface portion of the property legally described on Exhibit D attached hereto, and as a condition of closing, Assignee has required that Assignor assign to Assignee all of Assignor's right, title, obligation, liability and interest in and to the Deed, which Assignor acquired from HLC by, through or under the April 1997 Assignment and the May 2012 Assignment.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby stipulate, covenant and agree as follows:

1. Recitals. The Recitals set forth above are hereby incorporated into this Assignment by this reference, and by execution hereof the parties acknowledge the truth and accuracy thereof.

2. Assignment. Effective as of the date set forth above, Assignor does hereby convey, grant, bargain, sell, transfer, assign, deliver, and confirm unto Assignee, and Assignee's successors and assigns, all of Assignor's right, title, obligation, liability, and interest in and to the Deed, including specifically, any and all reversionary rights and other rights in the Deed, as such rights may be more fully described or identified in Exhibit A hereto (collectively, the "Assigned Interest").

3. Assumption. Assignee hereby agrees to accept the assignment of the Assigned Interest and hereby assumes, and agrees to be liable for, bound by and perform, the covenants, agreements, and obligations of Assignor, in, to and under the Assigned Interest.

4. Authority. Assignor hereby represents and warrants that it has all requisite power and authority to enter into this Assignment.

5. Binding Effect. This Assignment shall inure to, and be binding upon, each of the parties hereto and their respective successors and assigns.

6. Further Assurances. Assignor shall execute and deliver such further and additional instruments, agreements, and other documents, and shall take such further and additional actions, as may be appropriate or necessary to carry out the provisions of this Agreement.

7. Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by Assignor and Assignee.

8. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, without regard to the conflicts of law rules of such state.

9. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed one and the same instrument.

10. Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting any other provision of this Assignment.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date set forth above.

ASSIGNOR:

OGDEN PLAZA GARAGE COMPANY, L.L.C., an Illinois limited liability company

By: _____
Name: Catherine E Danz
Title: Manager

State of Illinois)
) ss
County of Cook)

I, Camille Dziewiontka, a Notary Public in and for said County and State, certify that Catherine E Danz, the Manager of OGDEN PLAZA GARAGE COMPANY, L.L.C., an Illinois limited liability company, personally known to me to be the person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16th day of November, 2021.

_____
Notary Public

My Commission expires: 1-12-24

CAMILLE DZIEWIONTKA
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires Jan 12, 2024

[Assignor's signature page to Assignment and Assumption Agreement]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date set forth above.

ASSIGNEE:

NPG CHI2 OGDEN LLC, a Delaware limited liability company

By: _____

Name: Michael Jackowitz

Title: Vice President

[Assignee's signature page to Assignment and Assumption Agreement]

State of Illinois)
) ss
County of Cook)

I, Kathryn Kovitz Arnold, a Notary Public in and for said County and State, certify that Michael Jaworski, the Vice President of NPG CHI2 OGDEN LLC, a Delaware limited liability company, personally known to me to be the person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19 day of November, 2021.

Notary Public

My Commission expires: _____

"OFFICIAL SEAL"
KATHRYN KOVITZ ARNOLD
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10/29/2022

EXHIBIT A

(see attached)

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

DECEMBER 30 91

91690671

ASSIGNMENT OF RIGHTS
AND ASSIGNMENT OF LEASE
(Mayor Ogden Plaza)

91690674

THIS ASSIGNMENT OF RIGHTS AND ASSIGNMENT OF LEASE is made this 30th day of December, 1991, by and between THE CHICAGO DOCK AND CANAL TRUST, an Illinois business trust (the "Trust"), and CDCT PLAZA CORPORATION, an Illinois corporation ("Plaza Corporation").

WHEREAS, By Quit Claim Deed of Dedication and Agreement dated as of December 29, 1988 and recorded December 30, 1988 as Document No. 88600125 (the "Original Deed of Dedication"), the Trust conveyed, quitclaimed and dedicated to the Chicago Park District (the "Park District") for park purposes, among other property, all of the Trust's interest in certain parcel property located in the City of Chicago, County of Cook, commonly known as Mayor Ogden Plaza, and legally described in Exhibit A attached hereto (the "Plaza"); and

WHEREAS, by Reformation of Agreement and Release and Abrogation of Easement dated July 10, 1991, but made effective as of December 29, 1988 and recorded December 12, 1991 as Document No. 91654995 (the "Reformation Agreement") by and between the Trust and the Park District, the Original Deed of Dedication was reformed and amended so as to abrogate a certain easement retained by the Trust in the subsurface area of the Plaza and to grant to the Trust in lieu thereof an option to lease said subsurface area, which option was confirmed by a certain Option Agreement dated as of July 10, 1991, between the Trust and the Park District (the "Lease Option"); the Original Deed of Dedication as reformed and amended by the Reformation Agreement is herein referred to as the "Deed of Dedication"; and

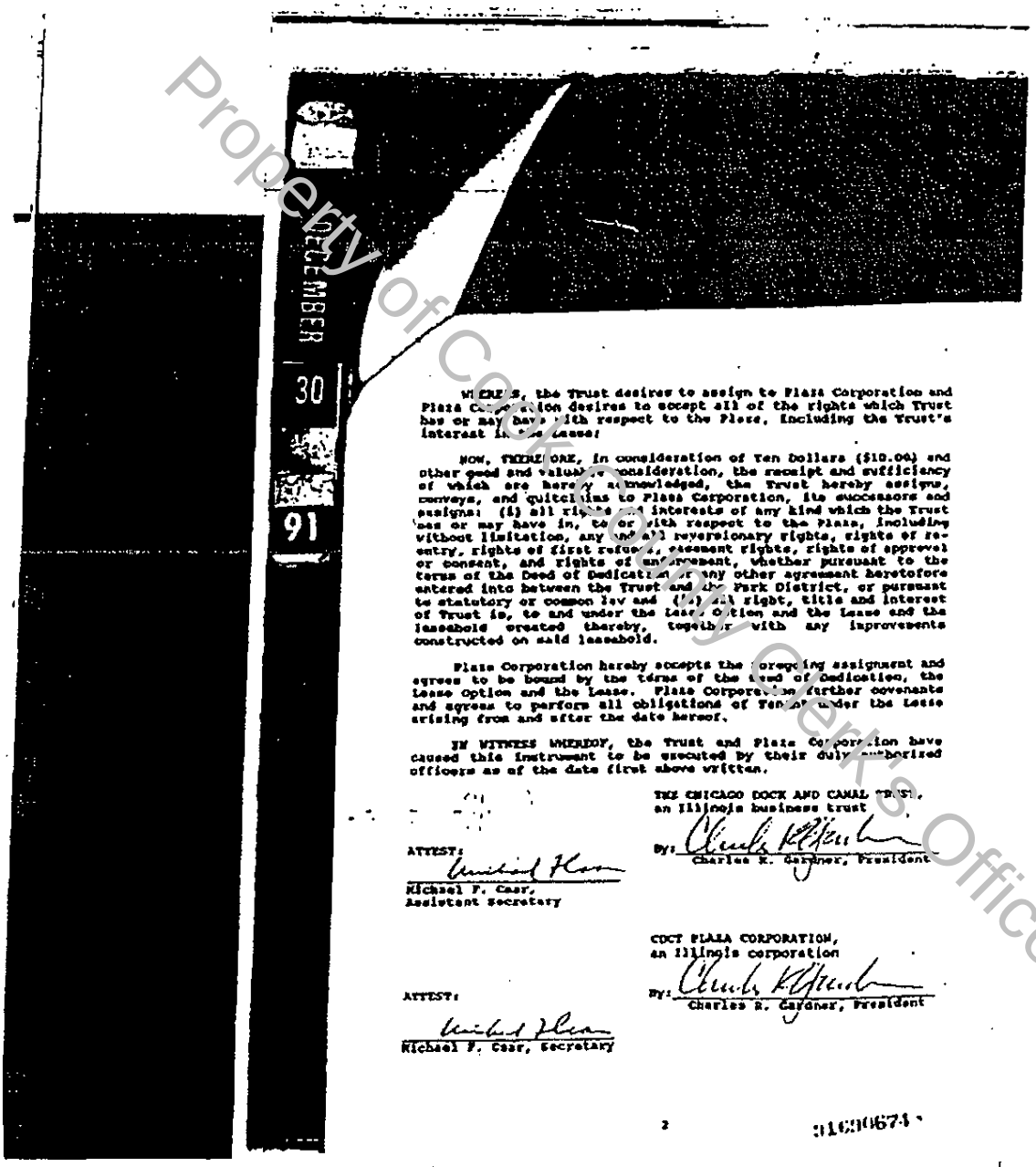
WHEREAS, in accordance with the Lease Option, the Park District leased to the Trust the subsurface area of the Plaza pursuant to a Lease dated July 10, 1991 (the "Lease"), which Lease was memorialized in a Memorandum of Lease dated as of July 10, 1991 and recorded December 23, 1991 as Document No. 91675158; and

WHEREAS, the Trust has or may have certain reversionary rights, enforcement rights and other rights with respect to the Plaza either pursuant to the terms of the Deed of Dedication or otherwise; and

This instrument was prepared by
(and return after recording to): Box 326
Michael F. Carr
Burke, Wilson & McIlvaine
500 West Madison Street
Suite 3700
Chicago, Illinois 60661
(312) 715-5000

91690674

OG 001657



WHEREAS, the Trust desires to assign to Plaza Corporation and Plaza Corporation desires to accept all of the rights which Trust has or may have with respect to the Plaza, including the Trust's interest in the Lease;

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trust hereby assigns, conveys, and quitclaims to Plaza Corporation, its successors and assigns: (i) all rights and interests of any kind which the Trust has or may have in, to or with respect to the Plaza, including without limitation, any and all reversionary rights, rights of re-entry, rights of first refusal, easement rights, rights of approval or consent, and rights of enforcement, whether pursuant to the terms of the Deed of Dedication or any other agreement heretofore entered into between the Trust and the Park District, or pursuant to statutory or common law and (ii) all right, title and interest of Trust in, to and under the Lease Option and the Lease and the leasehold created thereby, together with any improvements constructed on said leasehold.

Plaza Corporation hereby accepts the foregoing assignment and agrees to be bound by the terms of the Deed of Dedication, the Lease Option and the Lease. Plaza Corporation further covenants and agrees to perform all obligations of Tenant under the Lease arising from and after the date hereof.

IN WITNESS WHEREOF, the Trust and Plaza Corporation have caused this instrument to be executed by their duly authorized officers as of the date first above written.

THE CHICAGO DOCK AND CANAL TRUST,
an Illinois business trust

By: _____
Charles R. Gardner, President

ATTEST:

_____
Michael P. Caar,
Assistant Secretary

CDCT PLAZA CORPORATION,
an Illinois corporation

By: _____
Charles R. Gardner, President

ATTEST:

_____
Michael P. Caar, Secretary

2 91690674

OG 001658

DECEMBER 30 91

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

The foregoing instrument was acknowledged before me, a Notary Public, this 30th day of December, 1991, by Charles R. Gardner and Michael F. Cmar, the President and Assistant Secretary, respectively, of THE CHICAGO DOCK AND CANAL TRUST, an Illinois business trust, on behalf of said trust for the uses and purposes therein set forth.

"OFFICIAL SEAL"
RICHARD P. BLESSEN
Notary Public, State of Illinois
My Commission Expires 9/14/92

Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

The foregoing instrument was acknowledged before me, a Notary Public, this 30th day of December, 1991, by Charles R. Gardner and Michael F. Cmar, the President and Secretary, respectively, of COCT PLAZA CORPORATION, an Illinois corporation, on behalf of said corporation for the uses and purposes therein set forth.

"OFFICIAL SEAL"
RICHARD P. BLESSEN
Notary Public, State of Illinois
My Commission Expires 9/14/92

Notary Public

91690674

OG 001659

DECEMBER 30 91

EXHIBIT A
To Assignment of Rights
And Assignment of Lease
(Mayor Ogden Plaza)

Legal Description

ALL OF BLOCK 9 IN CITY[illegible] CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL [illegible].

Address of Property:

East of Columbus Drive, between East Illinois Street and East North Water Street, Chicago, Illinois

Permanent Index Numbers: 17-10-3[illegible]-039
17-10-219-[illegible]

91690674

91690674

OG 001660

EXHIBIT B

(see attached)

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

Doc#: 1215334089 Fee: $88.00
Eugene "Gene" Moore RHSP Fee:$10.00
Cook County Recorder of Deeds
Date: 06/01/2012 02:07 PM Pg: 1 of 9

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is made as of May 31, 2012, by and between the Hotel Land Company, L.L.C., an Illinois limited liability company ("Assignor"), and Ogden Plaza Garage Company, L.L.C. ("Assignee"), an Illinois limited liability company.

RECITALS:

WHEREAS, pursuant to that certain Assignment of Rights and Assignment of Lease dated December 30, 1991, attached hereto as Exhibit A, Chicago Dock and Canal Trust ("Trust") assigned to CDCT Plaza Corporation ("CDCT") all of Trust's "rights and interests of any kind which the Trust has or may have in, to or with respect to" Mayor Ogden Plaza ("Plaza"), including any "reversionary rights," and "rights of enforcement" granted to CDCT pursuant to that certain Quit Claim Deed of Dedication and Agreement dated December 29, 1988 (the "Deed"), and easement rights, among others, as well as its interest in and to that certain Lease by and between Trust and Chicago Park District ("Park District") dated July 10, 1991 (the "Lease");

WHEREAS, on April 18, 1997, CDCT assigned to Assignor, the Lease and "all intangible property owned by [CDCT] in connection" with the Lease, and Assignor assigned same to Assignee (the "April 1997 Assignment") and Assignor simultaneously became the sole shareholder of CDCT;

WHEREAS, the April 1997 Assignment was intended by the parties to transfer to Assignee all right and interest of CDCT in and to the property commonly known as Ogden Plaza, including any reversionary rights and other rights under the Deed;

WHEREAS, a question has been raised by a third party as to whether the above assignments were effective to transfer any reversionary and other rights in the Deed held by CDCT. The parties hereto wish to eliminate any uncertainty and confirm that all such rights were transferred and are transferred hereby to Ogden Garage;

WHEREAS, CDCT was dissolved on October 17, 2003;

WHEREAS, at the time of dissolution, Assignor was the sole shareholder of CDCT and was the interest holder in any remaining assets of CDCT by operation of law;

WHEREAS, Assignor, in turn, was dissolved on February 24, 2010; and

WHEREAS, NWB Real Estate Company ("NWB") was the Manager of Assignor at the time of its dissolution and pursuant to Section 35-20 of the Illinois Limited Liability Company Act is authorized, as trustee for the member(s) and creditors of Assignor, to convey any property that is discovered after dissolution on behalf of and in the name of Assignor.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby stipulate, covenant and agree as follows:

1. Recitals. The Recitals set forth above are hereby incorporated into this Assignment by this reference, and by execution hereof the parties acknowledge the truth and accuracy thereof.

2. Assignment. Effective as of the date set forth above, Assignor does hereby convey, grant, bargain, sell, transfer, assign, deliver, and confirm unto Assignee, and Assignee's successors and assigns, all of Assignor's right, title, obligation, liability, and interest in and to the Deed, including specifically any and all reversionary rights and other rights in the Deed, as such rights may be more fully described or identified in Exhibit A hereto (collectively, the "Assigned Interest").

3. Assumption. Assignee hereby agrees to accept the assignment of the Assigned Interest and hereby assumes, and agrees to be liable for, bound by and perform, the covenants, agreements, and obligations of Assignor, in, to and under the Assigned Interest.

4. Authority. NWP hereby represents and warrants that it has all requisite power and authority to enter into this Assignment and to act on behalf of Assignor and its member and creditors.

5. Binding Effect. This Assignment shall inure to, and be binding upon, each of the parties hereto and their respective successors and assigns.

6. Further Assurances. Assignee shall execute and deliver such further and additional instruments, agreements, and other documents, and shall take such further and additional actions, as may be appropriate or necessary to carry out the provisions of this Agreement.

7. Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by Assignor and Assignee.

8. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, without regard to the conflicts of law rules of such state.

9. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed one and the same instrument.

10. Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting any other provision of this Assignment.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date set forth above.

ASSIGNOR:

The Hotel Land Company, L.L.C.

By: NWB Real Estate Company, its Manager at dissolution, as trustee for the member and creditors of the Hotel Land Company, L.L.C., acting in the name of The Hotel Land Company, L.L.C. pursuant to Section 35-20 of the Illinois Limited Liability Company Act

By: _____
Name: CHARLES FRANK GROSS
Its: President

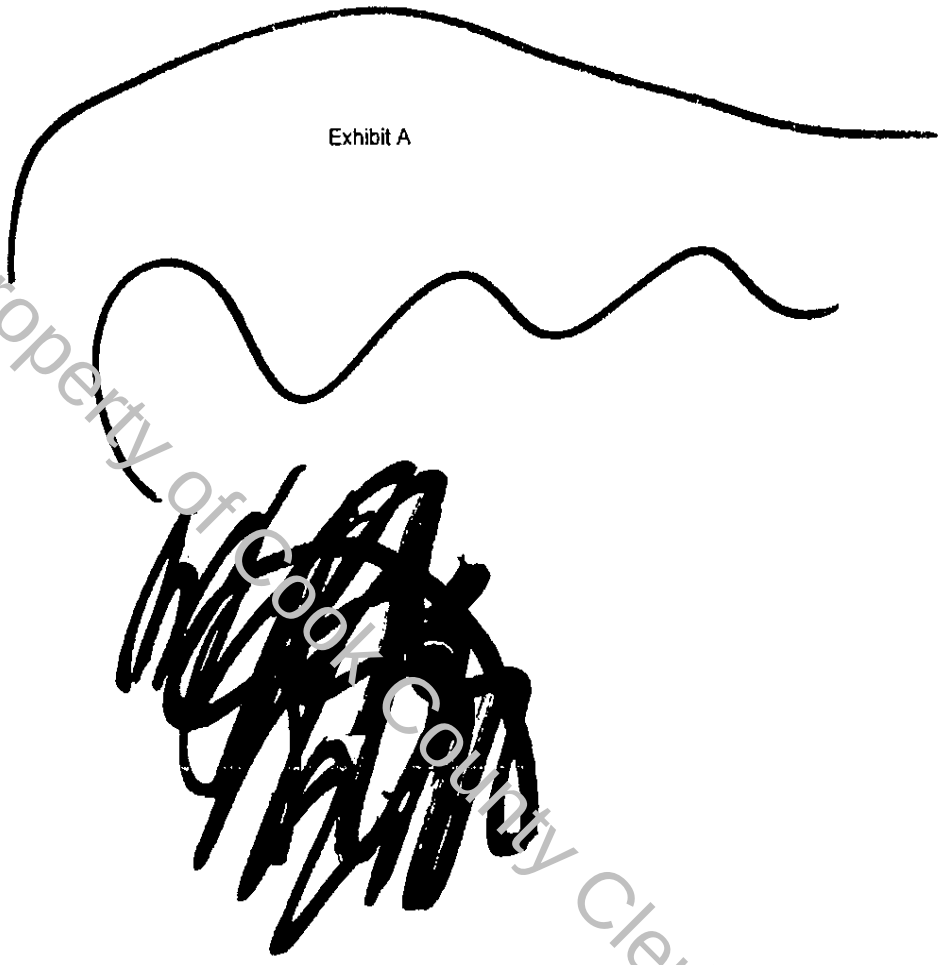
ASSIGNEE:

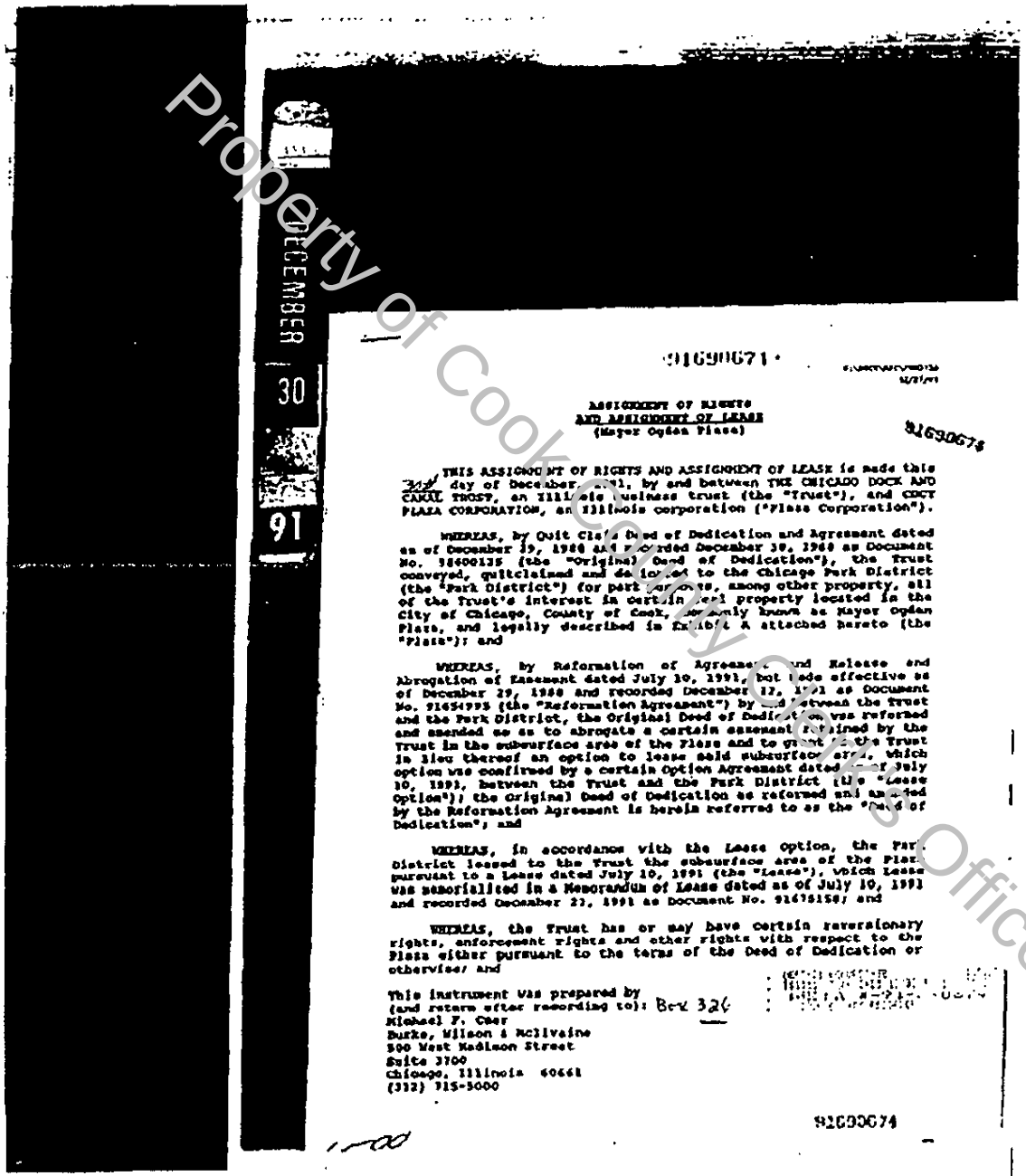
Ogden Plaza Garage Company, L.L.C., an Illinois limited liability company

By: NWB Real Estate Company, its Manager

By: _____
Name: CHARLES FRANK GROSS
Its: President

Exhibit A





91690671

ASSIGNMENT OF RIGHTS
AND ASSIGNMENT OF LEASE
(Mayor Ogden Plaza)

91690674

THIS ASSIGNMENT OF RIGHTS AND ASSIGNMENT OF LEASE is made this 30th day of December, 1991, by and between THE CHICAGO DOCK AND CANAL TRUST, an Illinois business trust (the "Trust"), and CDCT PLAZA CORPORATION, an Illinois corporation ("Plaza Corporation").

WHEREAS, by Quit Claim Deed of Dedication and Agreement dated as of December 29, 1988 and recorded December 30, 1988 as Document No. 88600135 (the "Original Deed of Dedication"), the Trust conveyed, quitclaimed and dedicated to the Chicago Park District (the "Park District") for park purposes, among other property, all of the Trust's interest in certain real property located in the City of Chicago, County of Cook, commonly known as Mayor Ogden Plaza, and legally described in Exhibit A attached hereto (the "Plaza"); and

WHEREAS, by Reformation of Agreement and Release and Abrogation of Easement dated July 10, 1991, but made effective as of December 29, 1988 and recorded December 12, 1991 as Document No. 91654995 (the "Reformation Agreement") by and between the Trust and the Park District, the Original Deed of Dedication was reformed and amended so as to abrogate a certain easement retained by the Trust in the subsurface area of the Plaza and to grant to the Trust in lieu thereof an option to lease said subsurface area, which option was confirmed by a certain Option Agreement dated as of July 10, 1991, between the Trust and the Park District (the "Lease Option"); the Original Deed of Dedication as reformed and amended by the Reformation Agreement is herein referred to as the "Deed of Dedication"; and

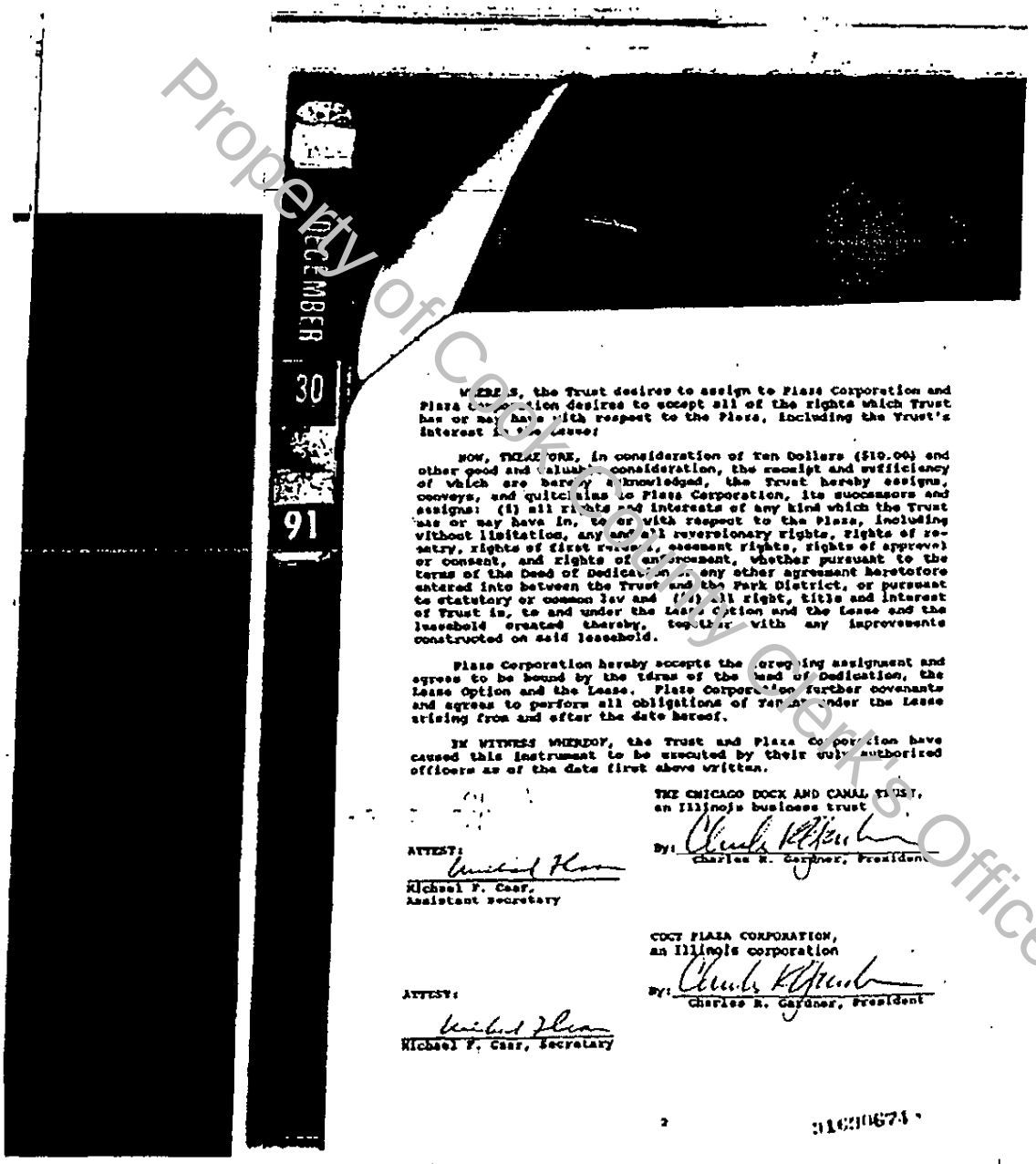
WHEREAS, in accordance with the Lease Option, the Park District leased to the Trust the subsurface area of the Plaza pursuant to a Lease dated July 10, 1991 (the "Lease"), which Lease was memorialized in a Memorandum of Lease dated as of July 10, 1991 and recorded December 23, 1991 as Document No. 91675158; and

WHEREAS, the Trust has or may have certain reversionary rights, enforcement rights and other rights with respect to the Plaza either pursuant to the terms of the Deed of Dedication or otherwise; and

This instrument was prepared by
(and return after recording to): Box 326
Michael F. Ober
Burke, Wilson & McIlvaine
500 West Madison Street
Suite 3700
Chicago, Illinois 60661
(312) 715-5000

91690674

OG 001657



WHEREAS, the Trust desires to assign to Plaza Corporation and Plaza Corporation desires to accept all of the rights which Trust has or may have with respect to the Plaza, including the Trust's interest in the Lease;

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trust hereby assigns, conveys, and quitclaims to Plaza Corporation, its successors and assigns: (i) all rights and interests of any kind which the Trust has or may have in, to or with respect to the Plaza, including without limitation, any and all reversionary rights, rights of re-entry, rights of first refusal, easement rights, rights of approval or consent, and rights of enforcement, whether pursuant to the terms of the Deed of Dedication or any other agreement heretofore entered into between the Trust and the Park District, or pursuant to statutory or common law and (ii) all right, title and interest of Trust in, to and under the Lease Option and the Lease and the leasehold created thereby, together with any improvements constructed on said leasehold.

Plaza Corporation hereby accepts the foregoing assignment and agrees to be bound by the terms of the Deed of Dedication, the Lease Option and the Lease. Plaza Corporation further covenants and agrees to perform all obligations of Tenant under the Lease arising from and after the date hereof.

IN WITNESS WHEREOF, the Trust and Plaza Corporation have caused this instrument to be executed by their duly authorized officers as of the date first above written.

THE CHICAGO DOCK AND CANAL TRUST,
an Illinois business trust

By: _____
Charles R. Gardner, President

ATTEST:

_____
Michael F. Caer,
Assistant Secretary

CDCT PLAZA CORPORATION,
an Illinois corporation

By: _____
Charles R. Gardner, President

ATTEST:

_____
Michael F. Caer, Secretary

2 91600674

OG 001658

DECEMBER 30 91

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

The foregoing instrument was acknowledged before me, a Notary Public, this 30th day of December, 1991, by Charles R. Gardner and Michael F. Cear, the President and Assistant Secretary, respectively, of THE CHICAGO DOCK AND CANAL TRUST, an Illinois business trust, on behalf of said trust for the uses and purposes therein set forth.

"OFFICIAL SEAL"
RICHARD F. BLESSEN
Notary Public, State of Illinois
My Commission Expires 8/4/92

Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

The foregoing instrument was acknowledged before me, a Notary Public, this 30th day of December, 19[illegible], by Charles R. Gardner and Michael F. Cear, the President and Secretary, respectively, of CDCT PLAZA CORPORATION, an Illinois corporation, on behalf of said corporation for the uses and purposes therein set forth.

"OFFICIAL SEAL"
RICHARD F. BLESSEN
Notary Public, State of Illinois
My Commission Expires 8/4/92

Notary Public

91690674

OG 001659

DECEMBER 30 91

EXHIBIT A
To Assignment of Rights
And Assignment of Lease
(Mayor Ogden Plaza)

Legal Description

ALL OF BLOCK 9 IN CITY [illegible] CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL [illegible].

Address of Property:

East of Columbus Drive, between East Illinois Street and East North Water Street, Chicago, Illinois

Permanent Index Numbers: 17-10-2[illegible]-09
17-10-219-0[illegible]

91690671

91690671

OG 001660

rder: 214138
oc: 91690674

LEGAL DESCRIPTION

ALL OF BLOCK 9 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN.

Property Address: 303 E. Illinois Street, Chicago, Illinois 60611

PIN: 17-10-219-015-8002

COOK COUNTY CLERK'S OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

EXHIBIT C

(see attached)

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

DENTONS US LLP
Attn: Scott B. Toban
233 South Wacker Drive, Suite 7800
Chicago, Illinois 60606

Doc#: 1329834109 Fee: $100.00
RHSP Fee:$9.00 RPRF Fee: $1.00
Karen A.Yarbrough
Cook County Recorder of Deeds
Date: 10/25/2013 12:13 PM Pg: 1 of 32

AFFIDAVIT FOR RECORDING OF MEMORANDUM DECISION AND ORDER

The undersigned does hereby certify that attached hereto as **Exhibit A** is a true and correct copy (so certified by the Cook County Clerk of the Circuit Court) of the Memorandum Decision and Order (the "Order") filed on August 8, 2013, with the Cook County Circuit Court, relating to Case No. 10 CH 28526, naming **Chicago Park District**, as Plaintiff/Counter-Defendant and **Ogden Plaza Garage Company, LLC**, as Defendant/Counter-Plaintiff.

The undersigned does hereby further certify that under the filed Order, the Cook County Circuit Court orders, among other things, that (1) the Lease (as defined in the Order) is declared to be an *ultra vires* act and void *ab initio*; and (2) the Deed (as defined in the Order), with the Easement (as defined in the Order), is revived. The Lease, Deed and Easement each relate to all or a portion of the real property described on **Exhibit B** attached hereto.

The undersigned so certifies as stated above and does hereby cause the Order attached hereto as **Exhibit A** to be filed with the Cook County Recorder of Deeds.

(Signature Page Follows)

81289046

IN WITNESS WHEREOF, the undersigned has hereunto set forth its hand and seal this 21st day of October, 2013.

Scott B. Toban

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On the 21st day of October, 2013 before me, the undersigned, personally appeared Scott B. Toban, and acknowledged to me that he executed the attached instrument in his capacity, and that such individual made such appearance before the undersigned on the day and year first mentioned above.

Notary Public

OFFICIAL SEAL
KATIE SEIDELMAN
Notary Public, State of Illinois
My Commission Expires
March 21, 2015

Print Name: Katie Seidelman
My Commission Expires: 03/21/15

[Notary Seal]

EXHIBIT A

Memorandum Decision and Order

(See Attached)

81239046

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

CHICAGO PARK DISTRICT,

Plaintiff/Counter-Defendant,

v.

OGDEN PLAZA GARAGE COMPANY, LLC,

Defendant/Counter-Plaintiff.

No. 10 CH 28526

4380 10
5380-0
8002

JUDGE RITA M. NOVAK
AUG 06 2013
Circuit Court-1741

MEMORANDUM DECISION AND ORDER

This case involves property interests in the subsurface of Mayor Ogden Plaza ("Ogden Plaza"), located in the River East area of the City of Chicago. Plaintiff, Chicago Park District ("Park District"), owns the property. The Park District leases the subsurface to Defendant, Ogden Plaza Garage Company, LLC ("Ogden Garage"), under a lease executed on July 10, 1991 ("Lease"). Ogden Garage is the successor in interest to the leasehold interests of Chicago Dock and Canal Trust ("Chicago Dock").[1] Ogden Garage operates a parking garage in the subsurface of Ogden Plaza. The Park District's use of the surface for public park purposes and Ogden Garage's use of the subsurface as a parking garage was established in the original conveyance, the Quit Claim Deed of Dedication and Agreement ("Deed" or "Deed of Dedication"). The Deed contained a reservation of rights in Chicago Dock for a perpetual easement for the purpose of constructing and operating a parking garage ("Easement"). The controversy resolves around the Lease, which was intended to replace the Easement. The Park District seeks to void the

[1] The Park District contends that Ogden Garage is not Chicago Dock's successor in interest to rights under the Quit Claim Deed of Dedication and Agreement. However, it does not challenge Ogden Garage's status as assignee to the rights and obligations under the Lease.

Lease, claiming that it had no statutory authority to enter into it. It claims, therefore, that the Lease is void *ab initio*.

The matter is currently before the court on the parties' Cross-Motions for Summary Judgment, pursuant to 735 ILCS 5/2-1005. The Park District asks the Court to: (1) declare that the Lease is void *ab initio*; (2) order that Ogden Garage cease and desist any activity and vacate the premises; (3) enjoin Ogden Garage from conducting activity on the property, including the parking garage; and (4) require Ogden Garage to pay the District compensation in an amount by which Ogden Garage has been unjustly enriched. Ogden Garage, in turn, refutes the Park District's claims and also asserts certain affirmative defenses. In general, it asks the Court to find that the Lease is valid or, alternatively, if the Lease is invalidated, to revive the Easement created in the Deed of Dedication. It seeks summary judgment in its favor on all counts of the Park District's complaint, and it requests an award of attorneys' fees under a provision of the Deed on its counter-claim.

BACKGROUND

Chicago Dock-Equitable Venture Planned Development & Initial Deed

In the late 1980s, Chicago Dock was engaged in a large development project in the River East area pursuant to a planned development ordinance. (Pl. Ex. B). Generally, this area consisted of over 40 acres bordered on the west by Columbus Drive, on the east by Lake Shore Drive, on the south by the Chicago River, and on the north by Illinois Street. The development would consist of a hotel, commercial and residential buildings, public thoroughfares, pedestrian walkways, and open spaces.

In addition to requirements pertaining to the use of the land for private purposes, the planned development ordinance required Chicago Dock to provide certain "publicly dedicated open space amenities." (Pl. Ex. B ¶16). Accordingly, on December 29, 1988, in the Deed of

Dedication, Chicago Dock donated three parcels of property to the Park District subject to the terms and conditions of the Deed: the River Esplanade, Mayor Ogden Plaza, and Jean Baptiste Pointe Du Sable Park. (Pl. Ex. G). All of the parcels were donated with the intent that they be used as public park areas, and each was subject to specific restrictions set out in the Deed. (*Id.* at 1-8). Ogden Plaza is the only parcel involved in this litigation.

Ogden Plaza is legally described as follows: "All of Block 9 in Cityfront Center, being a resubdivision in the north fraction of section 10, township 39 north, range 14 east of the third principal meridian." (*Id.* at 26). It is located at 300 E. North Water Street, in Chicago.

The Deed restricted how Ogden Plaza could be used, namely as "a formal open space with landscaping and paved walkways." (*Id.* at 4). Chicago Dock agreed to construct the improvements on Ogden Plaza, consistent with the Park District's wishes, and to maintain, at its (Chicago Dock's) expense, all of the improvements, with the right to assign the maintenance obligations to a property owners' association.

The Deed also provided: "[Chicago Dock] hereby reserves for itself, its successors and assigns, a perpetual easement in and to the part of Parcel 2 [Ogden Plaza] lying below the finished grade or finished elevation improved for use as an open area, for the purpose of constructing, maintain, repairing, and operating a parking facility...." (*Id.* ¶4, at 13). The Deed goes on to impose upon Chicago Dock the obligation to maintain any such parking facility or other improvement and permits the assignment of maintenance obligations.

Tax Exemption Proceedings

In June of 1990, shortly after the Deed was executed, the Park District filed an application to obtain a property-tax exemption for the three parcels acquired by the Deed, including Ogden Plaza. (Def. Ex. B). The parties contemplated that the park portion of Ogden Plaza used as Park District property would be tax exempt, whereas the subsurface portion, which

Chicago Dock would use as a parking garage, would be taxable property. To that end, Chicago Dock resolved, with the agreement of the Park District, to write a letter to the Illinois Department of Revenue in support of the Park District's application. In that letter, Chicago Dock explained:

> Chicago Dock retained an easement right for the construction of a parking facility in the area below Ogden Plaza and intends now to proceed with the construction of that facility. . . . It was anticipated by the Park District and Chicago Dock that, if Chicago Dock availed itself of the easement area, that area would become subject to real estate taxes as a separate tax parcel. Accordingly, Chicago Dock and the Park District intend to notify the Cook County Assessor's office of the construction of the parking facility; and the associated real estate taxes will be borne by Chicago Dock.

(Def. Ex. C at 2).

However, on September 6, 1990, the Illinois Department of Revenue denied the tax exemption on all three parcels, finding the property was not in exempt use. The Park District and Chicago Dock requested a hearing.

Apparently, the denial made clear that the parties' initial expectations that the taxing bodies would be satisfied with a supporting letter from Chicago Dock and its commitment to pay property tax on the subsurface were not borne out. Accordingly, on July 3, 1991, Robert C. Penn, the Park District's General Superintendent, and Nancy L. Kaszak, the Park District's General Attorney, addressed a memorandum to the Board of Commissioners recommending that the easement retained by Chicago Dock in the Deed be converted into a leasehold. (Pl. Ex. L; Def. Ex. F). The memoranda stated in pertinent part:

> The [Chicago Dock] Trust has requested that its easement be converted into a leasehold. Therefore, the following documents have been drafted to accomplish such a conversion: (i) Release and Abrogation of Easement; (ii) Option Agreement (with a form of Lease attached as an Exhibit); and (iii) Lease between the District, as Landlord, and the Trust, as Tenant. The forgoing documents suggest that the conversion of the easement to a leasehold be effective as of December 29, 1988, the date of the Deed of Dedication. The Option Agreement and the Lease provide for a ninety-nine (99) year term with three renewal periods. The rental under the Lease is Ten Dollars ($10.00) per year, in

recognition of the fact that the leasehold is being given in exchange for the release of the substantially equivalent perpetual easement.

Because the District's general practice is to grant permits, rather than leases, for the use of the District's property, the Trust is requesting that the Distict approve the Lease and also grant a Permit on the same terms. The Lease and the Permit would be "parallel" grants to the trust of the same rights in the same property.

(Pl. Ex. L at 1-2; Def. Ex. F. at 1-2).

In presenting the matter to the Board of Commissioners, Joseph Gunn, the Assistant General Attorney, explained that Park District staff sought immediate consideration of the reformation because "the Board of Tax Appeals has expressed some reservation about granting our tax exemption" due to the Chicago Dock's retention of an easement interest in the property. (Def. Ex. G at 4). The Park District anticipated that the Board of Tax Appeals would recommend the exemption on its behalf to the Illinois Department of Revenue. The Board of Commissioners then voted unanimously to approve the reformation converting the easement to a lease and permit. The vote was reported in proceedings of July 9, 1991, in Resolution No.: 7-9-91#15. (Pl. Ex. M; *see also* Def. Ex. H). The Resolution concludes: "the Chicago Park District hereby authorizes the reformation of the easement retained by The Chicago Dock and Canal Trust in the sub-plaza level of Mayor Ogden Plaza into a leasehold and a conterminous permit, effective as of December 28, 1988." (*Id.*; *see also* Def. Ex. H).

The next day, July 10, 1991, various documents were executed memorializing the Board of Commissioners' action: Reformation of Agreement and Release and Abrogation of Easement ("Reformation Agreement") (Pl. Ex. K; Def. Ex. I); Option Agreement (Pl. Ex. P; Def. Ex. J); Memoranda of Lease (Def. Ex. K); and Lease (Pl. Ex. O; Def. Ex. L).

On December 16, 1991, the Illinois Department of Revenue held a hearing on the Department's decision to deny the Park District a tax exemption on all three parcels, including

the Ogden Plaza parcel. Both the Park District and Chicago Dock supported the exemption and offered evidence at the hearing. The Park District emphasized that "the parcels are essential for the development of the river mouth" and that it "derived numerous benefits from the conveyance," including by "getting completed parks" to be constructed and maintained by Chicago Dock. (Def. Ex. M Tr. at 11-12). It added that the Park District "is financially strapped, as most governmental bodies are" and that without the private-public arrangement resulting in the conveyance, it would "be impossible for the Park District to enhance its acreage." (*Id.* Tr. at 12). It noted the "tremendous benefit" obtained from the parcels. (*Id.*).

Similarly, Chicago Dock took the position that the Park District owned each of the parcels during the year 1989. It commented that the Park District held fee simple title and exercised the right to use and control the parcels. Chicago Dock did not "use or control the properties in 1989." (*Id.* Tr. at 13).

At the hearing, Charles R. Gardner, Chicago Dock's president, testified concerning the acquisition of the parcels. He relayed that the Park District, along with certain civic groups, "encouraged [Chicago Dock] . . . to make the transfer. They had indicated their strong desire to own and control each of these parcels, especially those adjacent to the River." (*Id.* Tr. at 29). With respect to Ogden Plaza in particular, Mr. Gardner recounted that the Park District was "not interested in acquiring the subsurface" right to the parcel and that the easement was converted to a leasehold interest because the Board of Tax Appeals considered it "more common and more readily understandable and, therefore, more acceptable." (*Id.* Tr. at 45). Chicago Dock expected to pay taxes on its leasehold.

Edward K. Uhlir, the Park District's assistant superintendent for research and planning, confirmed Mr. Gardner's assessment of the Park District's interest in the parcels in that "we considered them essential to complete a major goal of the Park District" to connect the north

river system to the lakefront park system. (*Id.* Tr. at 61). However, receiving the parcels with improvements was considered essential. "We'd take the dedication of the property only if those improvements were made." (*Id.* Tr. at 69). At the same time, Mr. Uhlir testified that the Park District "had no interest in" the subsurface of Ogden Plaza that was to be used for parking. (*Id.* Tr. at 76). According to his testimony, "We looked at it [the subsurface], the cost of maintaining it, the cost, the size of it, and it's [sic] nonrecreational aspects being underneath a –underground. In effect, we made the decision that we had no interest in it." (*Id.*).

In the joint brief before the Illinois Department of Revenue, both parties emphasized that Chicago Dock's right to use the subsurface would not interfere with the Park District's control of the surface and would benefit the Park District by providing necessary parking. "This benefit is particularly significant because the Park District would not have constructed a parking lot itself, due to the cost of constructing and maintaining such a facility and the limited return from a small parking lot." (Def. Ex. P Br. at 30).

The Illinois Department of Revenue granted the tax exemption for the three parcels for Tax Year 1989. (Def. Ex. Q). The Administrative Law Judge found that the reservation of an easement permitting the construction and maintenance of a parking facility under Ogden Plaza did not defeat the dedication, permitted the Park District to maintain control of the property and was consistent with public policy. (*Id.*).

Terms of the Reformation and Lease Documents

On July 10, 1991, the Park District and Chicago Dock entered into the Reformation Agreement, which was made retroactive to December 29, 1988, the date of original Deed. In the Reformation Agreement, the parties acknowledged that the Easement "was intended to serve as the functional equivalent of a leasehold" and that Chicago Dock "desires to release unto District all right, title and interest . . . in and to the Easement." (Pl. Ex. K ¶¶ C & D, at 2; Def. Ex. I ¶¶ C

& D, at 2). The Park District agreed to pay Chicago Dock $10.00 and to grant the option to lease, which Chicago Dock exercised, as consideration of Chicago Dock's release and abrogation of the Easement. (*Id.* ¶¶ 2 & 4, at 3; Def. Ex. 1 ¶¶ 2 & 4, at 3).

On the same day, July 10, 1991, the parties also entered into an Option Agreement and a Lease. Under the Option Agreement, Chicago Dock exercised an option to lease the subsurface of Ogden Plaza for $10.00 a year, for a period of 99 years, with an option to extend the lease for three successive periods of 99 years each. (Pl. Ex. P; Def. Ex. J). At the same time, the parties executed a Lease consistent with the Option Agreement.

The Lease recited that the parties intended the Easement to "serve as the functional equivalent of a leasehold and that the Deed of Dedication is reformed as of December 29, 1988 so that the interest of Tenant in the Plaza be expressly described as and constitute a leasehold . . . ." (Pl. Ex. O at 1-2; Def. Ex. L at 1-2). The term of the lease was 99 years, from December 29, 1988 through December 28, 2087 and the rent was set at $10.00 a year to be paid annually. Under the Lease, the tenant (Chicago Dock) agreed to pay property taxes and other charges. It was permitted to construct a parking garage and would be responsible for the maintenance of the garage.

The Option Agreement also provided that the Park District would grant a permit to Chicago Dock "to use and occupy the [premises] on the same terms and conditions as described in the Lease . . . ." (Pl. Ex. P ¶13, at 7; Def. Ex. J ¶13, at 7). The Option Agreement stated: "Such Permit is distinct and independent of this Lease and the leasehold created thereby, but under said Lease shall be co-extensive. . . . Regardless of whether said Lease is considered as a permit or as a lease, the interest of [Chicago Dock] thereunder shall be taxable as a leasehold . . . ." (*Id.*). The rights under the Permit were assignable. (*Id.*).

The Lease recited nearly identical provisions in Article XI, namely that the Lease and Permit were "distinct and independent" and that the rights and obligations under both were "co-extensive." (Pl. Ex. O Art. XI, at 9); Def. Ex.L Art. XI, at 9). In addition, the Lease retained the same provisions as the Option Agreement regarding taxation and assignability of the interest. (*Id.*).

Over the years, Ogden Garage and its predecessors paid property taxes on the subsurface portion of the real estate. They did not pay rent to the Park District, however, and the Park District did not demand rental payments. When this controversy began, Ogden Garage offered to pay all outstanding back rent. The Park District refused to accept it.

The Park District submitted evidence to show that Ogden Garage has been a very profitable enterprise. The Park District calculates that Ogden Garage has earned almost $3.8 million from the parking area under Ogden Plaza.

Assignment of Chicago Dock's Interests

On December 30, 1991, Chicago Dock assigned its rights in the Deed of Dedication, the Lease Option and the Lease to Chicago Dock and Canal Trust Plaza Corporation ("Plaza Corporation"). (Def. Ex. O). In April of 1997, Plaza Corporation assigned its interest in the Lease to Hotel Land Company, L.L.C. (Pl. Ex. V; Def. Ex. S). In June of 1997, Hotel Land Company assigned its interest in the Lease to Defendant, Ogden Garage. (Pl. Ex. W; Def. Ex. T). Then, on May 31, 2012, while this case was pending, the trustee for the member and creditors of Hotel Land Company, on behalf of Hotel Land Company, a dissolved corporation, assigned to Ogden Garage "all of the Assignor's right title, obligation, liability, and interest in and to the Deed, including specifically, any and all reversionary rights and other rights in the Deed . . . . " (Def. Ex. II). Since the June 1997 assignment, Ogden Garage has operated a parking garage in the subsurface of Ogden Plaza.

Prelude to the Litigation

In September 2009, the Park District undertook an analysis of the River East properties. According to the Park District, the analysis was prompted by a standard issued in 2007 by the Government Accounting & Standard Board proposing that government entities comply with proper accounting standards. After review, on September 10, 2009, the Park District wrote Ogden Garage and notified it that the lease was "void" because the Park District did not have authority to enter into the lease. (Def. Ex. W). The Park District invited Ogden Garage to discuss a "mutually acceptable agreement" that would comply with the Park District's statutory authority. (*Id.*). At some point, Ogden Garage tendered a claim to its title insurance company. Then, in April 2010, the Park District offered to enter into a licensing agreement under which Ogden Garage would pay the Park District $290,000 per year and "back charges" for using the Park District's property. (Def. Ex. X, at 2). When Ogden Garage refused to negotiate, the Park District brought this lawsuit.

The Litigation

On July 2, 2010, the Park District filed a seven-count complaint for declaratory, injunctive and other relief. Count I seeks a declaration that the Lease is void because it is an *ultra vires* act in violation of the Chicago Park District Act (the "Act"). 70 ILCS 1505/0.01 *et seq.* Count II seeks an injunction based on violation of the Act. Count III seeks a declaration that the Lease violates the Illinois Constitution, Article VIII, §1, and Count IV seeks an injunction based on a violation of the same provision. Count V seeks a declaration that the Lease violates the public trust doctrine under the United States Constitution, and Count VI seeks an injunction on the same theory. The last count, Count VII, seeks relief on the basis of unjust enrichment, alleging that Ogden Garage has earned millions of dollars while failing to properly compensate the Park District for its use of the subsurface.

In addition to filing an answer, Ogden Garage asserted affirmative defenses and filed a counter-claim. The affirmative defenses allege that the Easement should be revived if the Lease is declared invalid and that the Park District's claims should be barred under a number of other theories, including statute of limitations, laches, estoppel, waiver, and adverse possession. In its counterclaim, Ogden Garage seeks costs and attorneys' fees pursuant to Section 6 of the Deed.

The Park District answered the counter-claim and asserted affirmative defenses. Ogden Garage answered the Park District's affirmative defenses.

ANALYSIS AND DISCUSSION

Summary judgment should be granted when the pleadings, depositions and affidavits, viewed in a light most favorable to the non-movant, fail to establish a genuine issue of material fact. 735 ILCS 5/2-1005; *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 127-28 (2005). Both parties agree that there are no issues of material facts, and the Court agrees. Thus, the parties' cross motions for summary judgment "invite the court to decide the issues based on the record." *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010).

I. Is the Lease an *Ultra Vires* Act of the Park District's Statutory Authority and Therefore Void *Ab Initio*?

The Park District contends that the Lease is void because it had no statutory authority to enter into it. As a non-home rule unit of local government, the Park District possesses no inherent power, and its authority must be grounded in powers granted by the legislature. According to the Park District, its authority to enter into leases is very circumscribed.[2] It concludes, therefore, the Lease constitutes an *ultra vires* act and is void *ab initio*.

[2] The Park District points out that the General Assembly considered an amendment that would have granted it authority to lease park lands under certain conditions. The amendment did not pass. Ogden Garage counters that the amendment incorporates a provision stating that it is declarative of existing law. These arguments demonstrate why "[u]nsuccessful attempts to amend legislation generally are an uncertain guide to legislative intent." *Roberts v.*

The Park District relies on *Lincoln Park Traps v. Chicago Park District*, 323 Ill. App. 107 (1st Dist. 1944), and claims that it is indistinguishable from the circumstances presented here. According to the Park District, *Lincoln Park Traps* dictates the result in this case.

Ogden Garage argues that the Park District is authorized to enter into the Lease because it may exercise powers that are necessarily implied from the powers conferred by statute. It urges the Court to consider the history between the parties and insists that the various powers the Park District possesses—the power to acquire land, to manage and control its property and to "contract in furtherance of any of its corporate purposes" (70 ILCS 1205/8-1(a))—supply the statutory authority to enter into the Lease.

Ogden Garage also points out that the Board of Commissioners voted in favor of reforming the Easement and converting it into the Lease and that this action was taken based on the recommendation of counsel. Further, Ogden Garage claims that *Lincoln Park Traps* is distinguishable because the lease in that case resulted in curtailing the public's use of the park, whereas the parking garage was never intended to be public property.

It is well established in Illinois that municipal bodies possess no inherent powers. *Village of River Forest v. Midwest Bank & Trust Co.*, 12 Ill. App. 3d 136, 139 (1st Dist. 1973). Rather, they derive their powers from the Constitution and the statutes of the State of Illinois. *Lindahl v City of Des Plaines*, 210 Ill. App. 3d 281, 289 (1st Dist. 1991); *Village of River Forest*, 12 Ill. App. 3d at 139. If a municipal body engages in acts that are not authorized by statute, the act is *ultra vires* and void. *Ashton v. County of Cook*, 384 Ill. 287, 300-301 (1943).

While municipal bodies, like the Park District, may only exercise powers "expressly given by law," they also possess such powers "as arise by necessary implication from the powers

Western-Southern Life Ins. Co., 568 F. Supp. 536, 551 n. 38 (N.D. Ill. 1983). The proposed amendment offers no assistance in resolving the issue.

granted or are indispensable to carry into effect the object and purpose of their creation." *Ashton*, 384 Ill. at 299. Ogden Garage argues that because the Park District was empowered to acquire the property granted under the Deed, permitted the reservation of right through the Easement and then subsequently reformed the Deed with the Lease, it acted within the powers implied under the Chicago Park District Act ("Act"). Ogden Garage's argument invites an analysis of the powers specified in the Act.

Under section 7.01 of the Act, the Park District "may acquire, lay out, establish, construct, and maintain parks, driveways and boulevards . . . and control, manage, and govern such parks, driveways and boulevards and the use thereof and exercise powers stipulated in Section 15 hereof." 70 ILCS 1505/7.01. Section 15 authorizes the Park District to "acquire by gift, grant, purchase, or condemnation . . . any real estate lands . . . and other property . . . required or needed for any park . . . or for extending, adorning, or maintaining the same for the purpose of establishing, acquiring, completing, enlarging, ornamenting, building, rebuilding, and improving public parks . . . ." 70 ILCS 1505/15(a). Section 15 then lists various types of appurtenances to public parks, such as wharfs, piers, air landing fields, and shore protection works, that fall within the Park District's authority to extend, adorn and maintain. *Id.* The provision then identifies the types of construction and building the Park District may undertake. *Id.*

With respect to leasing Park District land, Section 15(c-5) permits the Park District "to sell, lease, or otherwise convey all or any portion of District-owned property that is used solely and exclusively as office or administrative space." 70 ILCS 1505/15(c-5). In addition, Section 7.4 permits the Park District to lease its property to the State for use as an armory. 70 ILCS 1505/7.4. Scattered throughout the Act, other provisions authorize leases for specific purposes, such as obtaining machinery and equipment (70 ILCS 1505/15c); carrying out obligations related

to an "assistance agreement" under the Illinois Sports Facilities Authority Act (70 ILCS 1505/15d); obtaining office or administrative space from any public building commission (70 ILCS 1505/15(a)); or acquiring, owning controlling parking facilities, which may be done by lease subject to the requirements in sections 25.1 to 25.9 (70 ILCS 1505/25.8). None of these provisions apply to the situation presented here

Contrary to Ogden Garage's argument, the enumerated powers do not permit a determination that the Park District had statutory authority to enter into the Lease. The powers to acquire, manage and control property all relate to the use of that property for public parks, parkways, driveways or boulevards, not the private parking garage that occupies the subsurface of Ogden Plaza. When the General Assembly empowered the Park District to enter into leases, it expressly identified the subject matter. Significantly, some of the provisions contain the prefatory language, "In addition to the powers and authority now possessed by it the Chicago Park District shall have the power: . . ." *See, e.g.*, 70 ILCS 1505/15a; 70 ILCS 1505/15d.

No case specifically interprets the current Act to hold that the Park District lacks authority to enter into a lease like the one involved in this case.[3] Nevertheless, the Park District is correct that *Lincoln Park Traps*, 323 Ill. App. 107, dictates the result on the *ultra vires* issue in this case.

Lincoln Park Traps involved an agreement whereby the Commissioners of Lincoln Park (Commissioners) leased a portion of Lincoln Park to a not-for-profit corporation, Lincoln Park Traps, to conduct a shooting club for a period of 26 years at $50 per year. After approximately 20 years of operation, the Commissioners attempted to terminate the lease. Lincoln Park Traps

[3] In *Millennium Park*, however, the Supreme Court noted that "there is a serious question as to whether the Park District would have authority to enter into a lease . . . ." 241 Ill. 2d at 291. That issue was not addressed in light of the Court's ruling that the agreement at issue was a license.

sued to enforce the lease. The Commissioners then sought dismissal of complaint on the ground that the lease was void because it was *ultra vires* and violated public policy.

In ruling that the Commissioners lacked power to enter into the lease, the Appellate Court stated: "The law is well settled that a park board cannot lease a portion of its lands to a private individual, club or corporation, when by the terms of such lease the demised land and facilities located thereon are not available equally to all the people of the State of Illinois." *Id.* at 112. Then, referring to the powers granted to the Commissioners to manage and control the parks, the Court noted that such authority must be exercised "for public use and not in the promotion of a purely corporate purpose." *Id.* (quoting *LePitre v. Chicago Park District*, 374 Ill. 184, 188 (1940), in turn quoting *Gebhardt v. Village of La Grange Park*, 354 Ill. 234 (1933)) (internal quotation marks omitted). Because the lease "was tantamount to an exclusive use of a portion of a public park" and "could under the terms thereof effectually bar the general public from the use of" the premises, the Appellate Court concluded that the agreement "was not a valid lease." *Lincoln Park Traps*, 323 Ill. App. at 117.

The decision in *Lincoln Park Traps* disposes of the arguments presented by Ogden Garage. First, the Appellate Court made clear that the Park District's general powers to manage and control the parks cannot be implied to authorize a lease to use park land for a private enterprise. Second, the Commissioners in that case, like the Park District Commissioners here, authorized the lease years before they sought to have it declared void. Still, the Appellate Court concluded that action taken by the Commissioners was beyond the powers conferred by statute and was an *ultra vires* act.

Ogden Garage attempts to distinguish *Lincoln Park Traps* on the ground that a) the reserved interest was never intended to be public property and b) that the garage serves the public interest. These arguments are not persuasive.

The Deed conveyed the entire parcel constituting Ogden Plaza to the Park District in fee simple, so ownership of the property is not at issue. Rather, the crucial issue, like the one in *Lincoln Park Traps*, is the nature of the reserved interest and whether it is one that can be squared with the Park District's statutory authority. Similarly, whether the availability of parking is useful to the public is not a basis to distinguish *Lincoln Park Traps*. There is no dispute that the parking garage is a commercial enterprise. In that way, the parking garage is no different than the members' use of the shooting club in *Lincoln Park Traps*. On the *ultra vires* issue, the case is not distinguishable.

In contrast, the cases on which Ogden Garage relies do not dictate a different result in this case. For example, unlike the situation here, *Friends of the Park v. Chicago Park District*, 203 Ill. 2d 312 (2003), involved the Illinois Sports Facilities Authority Act, a statute that expressly authorized the Park District to enter into a lease. In *Packard v. Rockford Professional Baseball Club*, 244 Ill. App. 3d 643 (2nd Dist. 1993), the Park District Code, unlike the Chicago Park District Act, authorized the park district involved there to lease real estate that was not required for recreational purposes. In *People v. Spring Lake Drainage & Levee Dist.*, 253 Ill. 479 (1912), the authority to enter into the stipulation challenged as *ultra vires* was tied to specified powers of the drainage district, such as the general authority to enter into contracts and to engage in litigation. Finally, in *Hagerman v. South Park Commissioners*, 178 Ill. App. 3d 33 (1st Dist. 1934), the court was careful to point out that the contract did not convey "any interest" in the park district's property and that the concession operators' possession of the property was limited. Thus, the nature of the interest was distinct from the interest conveyed to Ogden Garage in the Lease.

Ogden Garage also argues that cases such as *D.C. Consulting Engr's, Inc. v. Batavia Park Dist.*, 143 Ill. App. 3d 60 (2nd Dist. 1986); *South Suburban Safeway Lines, Inc. v. Regional*

Transp. Auth., 166 Ill. App. 3d 361 (1st Dist. 1988); and *Nielsen-Massey Vanillas, Inc. v. City of Waukegan*, 276 Ill. App. 3d 146 (2nd Dist. 1995), are distinguishable because in each of them, the action was found to be invalid because of a defect in the process by which the resulting contract or government action was obtained. Here, there was no defect in obtaining approval by Park District officials, and the parties observed all the requisite formalities to execute the Lease.

This argument fails to recognize the distinct bases on which the actions of municipal body may constitute *ultra vires* acts. In certain instances, the acts of a municipal body are *ultra vires* because the municipal officials did not follow the prescribed method for binding the municipal corporation. That was the basis for the invalidity of contracts in *D.C. Consulting*, *South Suburban*, and *Nielsen-Massey*. In other instances, the actions are *ultra vires* because the municipal body has no statutory authority to engage in them regardless of the process used to approve the act. That was the basis for the invalidity of the agreements in *Lincoln Park Traps* and *Ashton*, 384 Ill. 287. In the latter category, the actions of the municipal officials cannot bind the municipal corporation regardless of the officials' attempt to approve or ratify the actions. *See Ashton v. County of Cook*, 384 Ill. at 299. Consequently, the approval of the Lease by the Commissioners does not salvage it from a declaration that it is invalid.[4]

II. Since the Lease Is Void, Is the Easement in the Deed of Dedication Revived?

In its First Additional Defense, Ogden Garage asserted that if the Lease is determined to be void *ab initio*, then the parties are returned to the status quo prior to the Reformation, and the Easement reserved in the Deed is revived. In support, Ogden Garage argues that if the Park District lacks authority to enter into the Lease, then the Reformation Agreement is also void and the parties are returned to their original agreement, which is contained in the Deed. It also

[4] Having determined that the Lease is invalid on this basis, there is no need to address the alternative grounds of invalidity presented by the Park District under the public trust and public fund theories.

asserts that the Reformation Agreement is invalid for failure of consideration. According to Ogden Garage, if the Park District had no authority to enter into a lease, it provided no benefit in exchange for the reformation of the Deed and release of the Easement. It also maintains that the Easement must be revived in order to prevent an unconstitutional taking. Alternatively, it contends that if the Deed is not revived, Ogden Garage should be granted ownership in Ogden Plaza outright.

The Park District responds by claiming that the Easement cannot be revived because, in reforming the Deed, the parties expressed their intent that the reserved interest was to be considered a leasehold retroactive to the parties' initial agreement. According to this argument, the Reformation Agreement remains effective to eliminate the Easement from the Deed but because the Lease is not incorporated into the Deed, the Deed contains no defect and remains in effect. Under this interpretation, the Park District would obtain ownership of the entire parcel constituting Ogden Plaza, including the subsurface and the existing garage. Alternatively, the Park District argues, even if a lease had been inserted into the Deed, it would be severed under the Deed's severability clause.

In response to Ogden Garage's arguments, the Park District claims that 1) no consideration is needed to reform the Deed and 2) if consideration were necessary, the permit constituted sufficient consideration. It also claims that Ogden Garage lacks standing to seek revival of the Deed because it was assigned rights under the Lease only, not under the Deed.

As to the consequences of the Lease's invalidity, Ogden Garage's position prevails for various reasons. First, revival of the Deed with the inclusion of the Easement is consistent with the parties' original intent. Second, since the Park District lacked authority to enter into the Lease, the Reformation Agreement, whose sole purpose was to create a leasehold in the subsurface of Ogden Plaza, is invalid. Third, the Reformation Agreement was not supported by

consideration. Finally, interpreting the Deed without a reserved interest, as the Park District proposes, would be inconsistent with the parties' clear intentions and could, in the very least, raise significant constitutional questions about whether such a confiscation would constitute a taking.

The evidence presented with the motions for summary judgment leads to the inescapable conclusion that the parties intended Chicago Dock and its successors in interest to retain an interest in the subsurface of Ogden Plaza. The Deed of Dedication specified conditions of the conveyance, many of which related to the structure and use of the parcels as public parks. However, concerning Ogden Plaza, the Deed reserved additional rights to Chicago Dock. Specifically, in conveying the property to the Park District, Chicago Dock "reserves for itself, its successors and assigns a perpetual easement in and to the part of [Ogden Plaza] lying below the finished grade." (Pl. Ex. G ¶4, at 13; Def. Ex. A ¶4, at 13). The Deed also permits—but does not require—Chicago Dock to construct and maintain a parking garage.

The circumstances surrounding the decision to reform the Deed do not suggest that the parties intended to alter this arrangement. Rather, they reveal that the entire motivation in reforming the Deed and characterizing the reserved interest as a lease was to ensure that the Park District could obtain a tax exemption.

The tax-exemption situation arose a short time after the Deed was executed. When the Park District applied for a property tax exemption on the parcels, the taxing officials questioned their exempt status. Regarding Ogden Plaza, they raised questions about how the subsurface could be designated as taxable property while the surface was designated as exempt. In the end, the IDOR denied the exemption.

The parties cooperated to resolve the exemption issue, all the while looking for a solution that would effectuate the basic features of the initial agreement. That is, the surface was

intended to be park property and therefore tax exempt, whereas the subsurface was intended to be used by Chicago Dock as a commercial parking garage and therefore subject to taxation. Because the taxing officials were accustomed to leasing arrangements in deciding exemption issues for parcels with shared purposes, the parties settled on identifying Chicago Dock's reserved interest as a lease rather than an easement. And because the Park District was more accustomed to using permits, it included permit language in the Option to Lease and the Lease. (See Def. Ex. C at 2; Def. Ex. G at 4). The permit concept was not reflected in the Reformation Agreement, however.

The proceedings before the Department of Revenue confirm this arrangement. Both parties supported obtaining an exemption for the Park District and maintaining the taxable status for the sub-plaza. Edward K. Uhlir, assistant superintendent of research and planning, testified that the Park District "looked at [the subsurface], the cost of maintaining it, the cost, the size of it and it's [sic] nonrecreational aspects being underneath a – underground. In effect, we made the decision that we had no interest in it." (Def. Ex. M, Tr. at 76). On the other hand, the Park District and its patrons would benefit by the availability of parking in a congested area. Similarly, Charles R. Gardner of Chicago Dock explained that the Park District was "not interested in acquiring the subsurface." (*Id.* Tr. at 45). The Easement was converted to a Lease because the Board of Tax Appeals considered it "more common and more readily understandable and, therefore, more acceptable." (*Id.*). The parties' positions were re-asserted in the joint brief filed before the IDOR. (Def. Ex. P).

As this history demonstrates, regardless of Chicago Dock's cooperation in the exemption proceedings, it was the Park District that stood to benefit by designating the reserved interest as a lease instead of an easement. Chicago Dock expected to pay property taxes regardless of the form of the reserved interest. In contrast, the Park District would only obtain its statutory

exemption if the taxing officials were satisfied that the Park District retained ownership and control of the parcel. In any event, the evidence all points to the same conclusion: the form of the reserved interest in the subsurface became important to the parties only because it affected the Park District's tax exemption.

Given this history, the Park District's argument that the Deed should stand without the Easement because the parties intended to create a leasehold from the beginning must be rejected. The parties' intent throughout was to reserve an interest for Chicago Dock and its successors in the subsurface of Ogden Plaza. To accept the Park District's argument would fundamentally alter the original Deed and the expectations of the parties that existed until this case was brought.

The Reformation Agreement supports this interpretation, as well. It states that the Easement was "intended to serve as the functional equivalent of a leasehold." (Pl. Ex. K ¶C). It also provides that it was "not intended to amend or alter any of the other covenants, conditions and restrictions contained in the Deed of Dedication." (*Id.* ¶3, at 3). Thus, the Park District's attempt to convert the Deed into a conveyance with no reservation of rights in the subsurface must fail.

A. The Validity of the Reformation Agreement.

Ogden Garage argues that if the Park District lacked authority to enter into the Lease, it likewise lacked authority to enter into the Reformation Agreement. It, therefore, maintains that the Reformation Agreement is invalid, and the parties' original agreement, the Deed of Dedication, is revived.

The Reformation Agreement recites the history of the Deed of Dedication and the fact that the Deed reserved a perpetual easement in favor of Chicago Dock. It goes on to state that the reserved interest in the subsurface was "intended to serve as the functional equivalent of a leasehold" and that the parties desired to reform the Deed so that the "interest [in the subsurface]

will be expressly described as and constitute a leasehold and be limited to a finite period of time, for the same purposes and for the same uses, however, as set forth in the Deed . . . ." (Pl. Ex. K ¶C, at 2). The recital also states that the Park District desires to acquire and Chicago Dock desires to release the rights to the Easement "[i]n furtherance of implementing the foregoing reformation." (*Id.* ¶D, at 2).

The Reformation Agreement then states the rights and obligations the parties exchanged, including a release by Chicago Dock of the Easement, the payment by the Park District of $10.00, and the grant of the option to lease, Chicago Dock's exercise of the option, and a reservation that all other covenants, conditions and restrictions will remain the same.

As these terms demonstrate, the Park District's authority to Lease the subsurface was central to the Reformation Agreement. Without the power to effectuate the option to lease and release the Easement, any promises made by the Park District in entering into the agreement would be illusory. In addition, a contract to enter into a lease was *ultra vires* and contrary to the Act. Accordingly, the Reformation Agreement cannot operate to create any rights or obligations.

B. Failure of Consideration

Ogden Garage argues that the Reformation Agreement is not supported by consideration. The Park District counters that consideration is not required to reform a contract. Alternatively, it contends, even if consideration is required, the permit constitutes adequate consideration. Neither of the Park District's arguments is persuasive.

The Reformation Agreement provides that "as consideration [for the] release and abrogation of the Easement and in furtherance of the reformation of the Deed of Dedication, District agrees to pay to [Chicago Dock] the sum of Ten and no/100 Dollars ($10.00) and to grant . . . the option to lease the Subject Area." (Pl. Ex. K, at ¶2). Thus, the Reformation Agreement did not merely operate to reform the Deed. Rather, it accomplished the release of the

Easement. Significantly, the Easement was a perpetual interest, and the interest Chicago Dock obtained was an option to lease for a term of years albeit a long term.

A release is a contract and is governed by contract law. *Farm Credit Bank v. Whitlock*, 144 Ill. 2d 440, 447 (1991). To be valid, a release must be supported by consideration. *Johnson v. Maki and Assoc., Inc.*, 289 Ill. App. 3d 1023, 1026 (2nd Dist. 1997). "'Where the promisor receives no benefit and the promisee suffers no detriment the whole transaction is in its nature a *nudum pactum*.'" *Id.* (quoting *Toffenetti v. Mellor*, 323 Ill. 143, 148 (1926)).

In this case, the release of the Easement in the Reformation Agreement has two defects. The crucial consideration given for the release has now been determined to be a nullity. Also, the purpose and intent for releasing the Easement have now been determined to be legally impossible. The Park District's claim that it may retain all rights and obligations in the Deed except the reserved interest in the sub-plaza is not consistent with the law or equity. The Park District "cannot hold the benefits of agreements...while disclaiming [its] power to perform the very contract by which those benefits were acquired." *Lehmann v. Lovell*, 354 Ill. 262, 274-75 (1933). Accordingly, since the Lease fails, then the Reformation Agreement also fails.

The Park District posits an alternate theory. It asserts that the Permit constitutes consideration even if the Lease does not. This position cannot be squared with the terms of the agreements and the evidence presented.

The recitation of consideration in the Reformation Agreement does not mention the Permit. The reference to the Permit is contained in the Option Agreement and the Lease only. No evidence has been presented to show that a Permit was ever issued. This situation stands in contrast to the Lease, which was executed the same day as the Option Agreement and is contained in the evidence presented.

More importantly, paragraph 13 of the Option Agreement and Article XI of the Lease, which govern the Permit, use identical terms to define its elements. Under the Lease, the "Landlord has granted to Tenant a permit authorizing Tenant to use and occupy the Premises on the same terms and conditions as described herein applicable to the leasehold interest." (Pl. Ex. L Art. XI, at 9). Further, while the provision purports to make the Lease and the Permit "distinct and independent," it describes the rights and obligations as "co-extensive." (*Id.*). The terms of, and the rights and obligations under, the Permit would include the right of Chicago Dock and its successors to occupy and possess the subsurface at the rent of $10.00 per year for a term of 99 years. Regardless of the name assigned, then, the Lease and the Permit are the same. *Millennium Park Joint Venture*, 241 Ill. 2d at 309-11 (analyzing various factors to determine that a contractual agreement constitutes a license rather than a lease). Accordingly, the Permit affords no additional consideration for the release of the Easement.

C. **Revival of the Easement**

Since the Reformation Agreement and the Lease are void, the parties return to their original position, that is, the terms of the Deed.

> It is undoubtedly the law that, if a void or voidable contract is substituted for a valid pre-existing obligation, and the substituted contract is later rescinded, because void or voidable, the pre-existing valid contract is restored, as if nothing had happened. A valid contract is not extinguished by an attempt to substitute therefor an invalid one.

Indiana Flooring Co. v. Grand Rapids Trust Co., 20 F. 2d 63, 65 (6th Cir. 1927); *Accord Penkala v. Tomczyk*, 317 Ill. 356, 361 (1925); Corbin on Contracts §71.1[4].

There is no disagreement that the Deed provides Ogden Garage with an easement in the subsurface of Ogden Plaza. In addition, there is no disagreement that Ogden Garage sought to reserve an interest in the subsurface of Ogden Plaza. No party has asserted that the dedication of land to the Park District subject to an easement was improper. The Park District holds dedicated

land "subject to the terms and conditions of the deed." *Nichols v. City of Rock Island*, 3 Ill. 2d 531, 534 (1st Dist. 1954). Accordingly, in the absence of an effective Lease and Reformation Agreement, the plain language of the Deed permits Ogden Garage to have an easement in the subsurface of Ogden Plaza.[5]

D. Ogden Garage's Standing

The Park District challenges Ogden Garage's standing to claim that the Deed was revived. Although Ogden Garage was assigned Chicago Dock's rights under the Lease, the Park District argues, it was not assigned any rights pertaining to the Deed.

Regardless of any limits in the earlier assignments, the May 31, 2012 assignment extends to rights under the Deed, as well as rights under the Lease. That assignment recites the authority of the trustee of the Hotel Land Company to convey property discovered after dissolution. The Park District has not presented evidence or any serious argument that the claim of authority or the assignment is not valid to confer standing. The challenge to Ogden Garage's standing fails.

III. Is Ogden Garage Entitled to Attorney's Fees under Section 6 of the Deed?

In its counter-claim, Ogden Garage requests attorneys' fees pursuant to Section 6 of the Deed. The Park District objects, arguing that the litigation pertains to the Lease, not the enforcement of the Deed, and, alternatively, that Section 6 is limited to the subjects listed in that provision, which in turn correspond to Section 1 only.

Section 6 provides that Ogden Garage will be entitled to "reimbursement of all costs and expenses (including attorneys' fees) of enforcing the provisions hereof . . . ." (Pl. Ex. A, at p. 16). In general, Section 6 contains provisions governing enforcement of "said covenants, conditions and restrictions," the right of re-entry, amendment and waiver. The right of

[5] Since the Court has determined that the Deed should be revived, it does not address the other defenses that Ogden Garage has asserted.

reimbursement appears following the specified rights of re-entry, to regain title, and to perform any obligations of the grantee. The reference to "said covenants, conditions and restrictions" is found in the introductory sentence, which states that the grantee accepts the conveyance "upon the express condition" and "subject to the covenants, conditions and restrictions set forth herein."

The Park District's interpretation of Section 6 is unduly narrow. By referring to covenants, conditions and restrictions, Section 6 mirrors that the language that describes the terms of the conveyance at the beginning of the Deed. (*Id.* at 1). The Deed then contains various categories in separately enumerated paragraphs identified as restrictions; construction and maintenance of improvement, which contain various covenants; and conditions of title. The two remaining paragraphs refer to reservations of rights for easements in two of the parcels and the names of the parcels. Thus, contrary to the Park District's position, various paragraphs correspond to the list contained in Section 6. Specifically, the reservation of an easement would seem to fall squarely into the category of a restriction on the conveyance. In short, when read as a whole, Section 6 does not limit the availability of attorneys' fees to the enforcement of Section 1 alone. Rather, it applies to the conditions, covenants and restrictions generally found in the Deed, including the Easement.

Nonetheless, the Park District is correct that Section 6 does not provide a contractual basis for an award of fees in this case. The case was not brought to enforce the Easement or to hold the Park District liable for breaching the Easement. Instead, the challenge pertained to the validity of the Lease and by extension the validity of the Reformation Agreement. As discussed, the Deed never incorporated the Lease, and the Deed with the Easement was simply revived because it represented a prior valid agreement of the parties. By its terms, Section 6 does not apply to this situation. Therefore, the counter-claim is denied.

IT IS THEREFORE ORDERED:

1. Plaintiff's Motion for Summary Judgment on Count I is granted. The Lease is declared to be an *ultra vires* act and void *ab initio*.

2. Defendant's Motion for Summary Judgment on Counts II and VII is granted. The Court finds that the Deed, with the Easement, is revived. Therefore, the requests for an injunction preventing Defendant from using the property and for compensation under the theory of unjust enrichment are denied.

3. Defendant's Motion for Summary Judgment on its counter-claim for attorneys' fees is denied.

4. Having made the foregoing determinations, the remaining claims in Counts III, IV, V, VI and the remaining defenses are moot for purposes of the proceedings before this Court.

August 8, 2013
Date:

Rita M. Novak
Judge Presiding

JUDGE RITA M. NOVAK
AUG 08 2013
Circuit Court-1741

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

I hereby certify that the document to which this certification is affixed is a true copy.

Date 10-18-13

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL

EXHIBIT B

Legal Description

ALL OF BLOCK 9 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN.

PROPERTY ADDRESS: 303 E. Illinois Street, Chicago, Illinois 60611

PIN: 17-10-219 0[illegible]-8002

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

01319046

EXHIBIT D

LEGAL DESCRIPTION

ALL OF BLOCK 9 IN CITYFRONT CENTER, BEING A RESUBDIVISION OF THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING THE PLAT THEREOF RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106320.

Property Address: 303 E. Illinois Street, Chicago, Illinois 60611

PIN: 17-10-219-015-8002