

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY,  
AND AFTER RECORDING, PLEASE  
RETURN TO:

Kalpana Plomin  
City of Chicago  
Department of Law  
Real Estate and Land Use Division  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602



Doc# 2208115032 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 03/22/2022 01:45 PM PG: 1 OF 24

(Above Space for Clerk's Use Only)

## NOTICE

**THIS PROJECT IS SUBJECT TO SECTION 2-44-080 OF THE MUNICIPAL CODE OF THE CITY OF CHICAGO (THE AFFORDABLE REQUIREMENTS ORDINANCE). THE COVENANTS SET FORTH HEREIN RUN WITH THE LAND AND ARE BINDING ON AND ENFORCEABLE AGAINST SUCCESSORS AND ASSIGNS UNTIL THE EXPIRATION OF THE TERM.**

THIS AFFORDABLE HOUSING AGREEMENT (this "Agreement") is made on or as of March 22, 2022, by and between the **CITY OF CHICAGO**, an Illinois municipal corporation ("City"), acting by and through its Department of Housing ("Department"), and **1317-35 N. WESTERN LLC**, an Illinois limited liability company (together with its successors and assigns, the "Developer") and **ENDA RAFTERY**, an individual as the guarantor of Developer ("Guarantor"), personally, and jointly and severally with Developer. Capitalized terms not otherwise defined herein shall have the meanings given in Section 1.

## RECITALS

A. The Developer is the owner of the property located at 1317-1335 N. Western Avenue, Chicago, Illinois 60622 (the "Property"). That portion of the Property pertaining to Phase I (as defined in Recital B) is legally described on Exhibit A attached hereto.

B. The City Council approved the rezoning of the Property from C1-2 Neighborhood Commercial District to B3-3 Community Shopping District, by an ordinance adopted on May 26, 2021 for the construction of a five-story mixed-use building with 38 dwelling units on floors 2-5, and 2 commercial units, 2 loading births and 32 interior parking stalls on the ground floor (the "Project"), which will be developed in two phases: first, 1327-1335 N. Western Avenue will be developed ("Phase I") and second, 1317-1325 N. Western Avenue will be developed ("Phase II"). Phase I will include 19 dwelling units.

C. Section 2-44-080 of the Municipal Code (the "Affordable Requirements Ordinance" or the "ARO") obligates the City to impose certain affordability requirements upon developers who undertake Residential Projects that include ten (10) or more dwelling units and that receive City assistance in the form of the sale of City land, financial assistance, or approval of certain zoning changes.

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D. The Developer acknowledges and agrees that the Project is a Residential Project (as defined in Section 1) within the meaning of the ARO, and that the rezoning of the Property for the Project constitutes Zoning Assistance (as defined in Section 1) within the meaning of the ARO, thereby triggering the requirements of the ARO.

E. The ARO divides the city into three (3) zones for purposes of applying the ARO's affordable housing requirements. The three zones are referred to in the ARO and this Agreement as Low-Moderate Income Areas, Higher Income Areas and Downtown Districts.

F. The ARO requires developers of Residential Projects in every zone to (i) set aside 10% of the housing units in the Residential Project as ARO Units, or provide the ARO Units in an approved off-site location; (ii) pay a fee in lieu of the development of the ARO Units in the amounts set forth in Section 1.22; or (iii) any combination of (i) and (ii); provided, however, Residential Projects with 20 or more Units ("Larger Projects") in Low-Moderate Income Areas (rental and for-sale), Higher Income Areas (rental and for-sale) and Downtown Districts (rental only) must provide a minimum of 25% of the ARO Units (the "Required Units") on-site or (for projects in Higher Income Areas and Downtown Districts) off-site. In other words, in such Larger Projects, the developer may not pay a fee in lieu of the development of the Required Units. If the developer elects to provide ARO Units in an off-site location, the off-site ARO Units must be located within a two-mile radius from the Residential Project and in the same or a different Higher Income Area or Downtown District.

G. The City has established the Milwaukee Corridor ARO Pilot Area (the "Milwaukee Corridor Pilot Area") pursuant to ordinance adopted on October 11, 2017 and published in the Journal for such date at pages 56911 through 56913 (the "Milwaukee Corridor Pilot Ordinance"). The percentage of units required to be affordable in a Residential Housing Project in the Milwaukee Corridor Pilot Area, whether rental or for-sale, is increased from (i) 10% to 15% if all of the Affordable Units are provided on-site or (ii) 10% to 20% if any of the Affordable Units are provided off-site. The Milwaukee Corridor Pilot Ordinance does not allow developers to pay a fee in lieu of the establishment of ARO Units, and therefore all ARO Units in the Milwaukee Corridor Pilot Area constitute Required Units. The ARO Units may be located on-site or, subject to the Commissioner's approval under Subsection (V) of the 2015 ARO, off-site, but if located off-site such Units must be provided within the Milwaukee Corridor Pilot Area. Such off-site ARO Units may be located anywhere in the Milwaukee Corridor Pilot Area, regardless of distance from the Residential Housing Project or income area in which the Residential Housing Project is located. Notwithstanding the foregoing, when a Residential Housing Project receives financial assistance from TIF Funds, all ARO Units must be provided on-site.

H. The Project is in the Milwaukee Corridor Pilot Area and constitutes a Larger Project. As a result, the Developer's ARO obligation for Phase I is 3 Affordable Units (15% of 19, rounded up), if all Phase I ARO Units are provided on-site, or 4 ARO Units (20% of 19, rounded up) if one or more Phase I ARO Units are provided off-site.

I. The Developer has submitted, and the Department has approved, a proposal to provide three (3) Affordable Units on-site in Phase I.

J. Prior to the issuance of a building permit for any project subject to the ARO, the developer must do one or both of the following, as applicable: (i) execute and record an affordable housing agreement against the project (or off-site location) to secure the developer's obligation to provide Affordable Units, and/or (ii) pay the required in lieu Fee.

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K. The Developer is executing this Agreement to satisfy the requirements set forth in (l)(i) above relating to the construction of the Phase I Affordable Units.

NOW THEREFORE, the Developer covenants and agrees as follows:

**SECTION 1. INCORPORATION OF RECITALS; DEFINITIONS.** The recitals set forth above are, by this reference, fully incorporated into and made a part of this Agreement. For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the following meanings:

1.1 "*Acquisition Assistance*" means the City's sale of real property to a developer (a) upon which a Residential Project is subsequently developed, or (b) any portion of which is incorporated into a Residential Project site in order to satisfy minimum off-street parking, minimum lot area, setback or other zoning or Municipal Code requirements or standards.

1.2 "*Affordable*" means a sales price or monthly rent less than or equal to the amount at which total monthly housing costs, as specified in the Rules, would total not more than 30% of the income of a Household whose income is the maximum allowable for an Eligible Household.

1.3 "*Affordable Housing*" means rental or owner-occupied housing, as applicable, which is Affordable to Eligible Households.

1.4 "*Affordable Housing Profile Form*" means the form attached hereto as Exhibit B, specifying the number and types of Affordable Units required for the Project.

1.5 "*Affordable Requirements Ordinance*" or "ARO" is defined in the Recitals.

1.6 "*Affordable Units*" means those Units in the Project and/or, if applicable, an approved off-site location which will be sold to and occupied by Eligible Households, as more specifically identified in Section 4.1(a). The Affordable Units must comply with the requirements of Section 4.

1.7 "*Agent*" means any contractor or other agent, entity or individual acting under the control or at the request of a party.

1.8 "*Agreement*" means this Affordable Housing Covenant and Agreement, as supplemented, amended and restated from time to time.

1.9 "*Area Median Income*" or "AMI" means the median household income for the Chicago Primary Metropolitan Statistical Area as calculated and adjusted for household size on an annual basis by HUD.

1.10 "*Authorized Agency*" means the Chicago Housing Authority, the Chicago Low-Income Housing Trust Fund, or another non-profit agency acceptable to the City, which administers subsidies under HUD's McKinney-Vento Homeless Assistance Grants program, or the Veterans Administration Supportive Housing program, or another housing assistance program approved by the City.

1.11 "*Authorized Agency Agreement*" means (a) a 30-year lease agreement if the Authorized Agency is leasing the Affordable Unit from the Developer or (b) a 30-year deed restriction or similar instrument if the Authorized Agency is purchasing the Affordable Unit from

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the Developer. In either case, the Authorized Agency Agreement shall (x) require the Authorized Agency to lease the Affordable Units to households that meet the income eligibility requirements for rental housing under the ARO for a minimum of 30 years, (y) prohibit the Authorized Agency from selling, transferring, or otherwise disposing of such Affordable Units, and (z) require the Authorized Agency to submit an annual report identifying: the number of Affordable Units in the Authorized Agency's inventory, the monthly rental rates for each Affordable Unit, each tenant's household size and gross income, the operating expenses and revenues for the Affordable Units, and such other information as the Department may reasonably request from time to time.

1.12 "*CCLT Restrictive Covenant*" means an Affordable Housing Restrictive Covenant and Agreement in the CCLT's then-current form.

1.13 "*Certificate of Occupancy*" means a certificate of occupancy issued by the Department of Buildings of the City, certifying that a building conforms to the general, special, and structural requirements of the Chicago Building Code applicable to such building.

1.14 "*Chicago Community Land Trust*" or "*CCLT*" means the Illinois not-for-profit corporation established by ordinance adopted on January 11, 2006, and published at pages 67997 through 68004 in the Journal of Proceedings of the City Council of such date, as amended, and having as its primary mission the preservation of long-term affordability of housing units, or any successor organization.

1.15 "*City*" means the City of Chicago, Illinois, an Illinois municipal corporation and home rule unit of government, and its successors and assigns.

1.16 "*Commissioner*" means the commissioner of the Department of Housing of the City, or any successor department, or his or her designee.

1.17 "*Condominium*" means a form of property established pursuant to the Illinois Condominium Property Act, as amended.

1.18 "*Department*" means the Department of Housing of the City or any successor department.

1.19 "*Developer*" is defined in the Recitals.

1.20 "*Downtown District*" means a "D" zoning district pursuant to the Chicago Zoning Ordinance, Chapter 17-4 of the Municipal Code.

1.21 "*Eligible Household*" means a Household whose combined annual income, adjusted for Household size, does not exceed 120% of AMI at the time of the purchase of an Affordable Unit.

1.22 "*Fee*" means a fee in lieu of the establishment of Affordable Units in the following amounts, adjusted annually, based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers for the Chicago metropolitan area, or some other comparable index selected by the Commissioner in the Commissioner's reasonable discretion if this index no longer exists, and otherwise pursuant to the ARO:

- (a) \$56,130 per Unit in Low-Moderate Income Areas;

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- (b) \$140,325 per Unit in Inclusionary Areas and Community Preservation Areas; and
- (c) \$196,456 per Unit in Downtown Districts.

[Not applicable in the Milwaukee Corridor Pilot Area except to calculate the "fee" referenced in Section 5.4.]

1.23 "*Financial Assistance*" means any financing provided by the City for a Residential Project, or any portion thereof, or any related infrastructure.

1.24 "*Higher Income Area*" means an area that is not a Low-Moderate Income Area, provided that, if any portion of a Higher Income Area is located in a Downtown District, that portion of the area will be treated as a Downtown District for purposes of the ARO.

1.25 "*Household*" means and includes an individual, a group of unrelated individuals or a family, in each case residing in one Unit.

1.26 "*HUD*" means the United States Department of Housing and Urban Development or any successor department.

1.27 "*Larger Project(s)*" is defined in the Recitals.

1.28 "*Low-Moderate Income Area*" means an area designated by the Commissioner as a low-moderate income area in accordance with the ARO, provided, that, if any portion of a Low-Moderate Income Area is located in a Downtown District, that portion of the area will be treated as a Downtown District for purposes of the ARO.

1.29 "*Market-Rate Unit*" means a Unit in the Project or, if applicable, at an Off-Site location that is not an Affordable Unit and that may be sold or rented at any price.

1.30 "*Municipal Code*" means the Municipal Code of the City of Chicago.

1.31 "*Milwaukee Corridor Pilot Area*" is defined in the Recitals.

1.32 "*Milwaukee Corridor Pilot Ordinance*" is defined in the Recitals.

1.33 "*Off-Site*" means a location different from the site of the Project.

1.34 "*On-Site*" means the same location as the Project.

1.35 "*Phase I*" is defined in the Recitals.

1.36 "*Phase II*" is defined in the Recitals.

1.37 "*Project*" is defined in the Recitals.

1.38 "*Property*" is defined in the Recitals.

1.39 "*Required Unit(s)*" is defined in the Recitals.

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1.40 “*Residential Project*” means one or more buildings that collectively contain ten or more new or additional housing units on one or more parcels or lots under common ownership or control, including contiguous parcels, as further described in the ARO.

1.41 “*Term*” is defined in Section 2.

1.42 “*Unit*” means a room or suite of rooms designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping and sanitary facilities provided within the Unit for the exclusive use of the occupants of the Unit; provided that a “Unit” does not include dormitories, or a “hotel” as that term is defined in Section 13-4-010 of the Municipal Code.

1.43 “*Zoning Assistance*” means a change in the zoning of property in any of the following circumstances: (a) to permit a higher floor area ratio than would otherwise be permitted in the base district, including through transit-served location floor area premiums where the underlying base district does not change; (b) to permit a higher floor area ratio or to increase the overall number of housing units than would otherwise be permitted in an existing planned development, as specified in the Bulk Regulations and Data Table, even if the underlying base district for the planned development does not change; (c) from a zoning district that does not allow household living uses to a zoning district that allows household living uses; (d) from a zoning district that does not allow household living uses on the ground floor of a building to a zoning district that permits household living uses on the ground floor; or (e) from a Downtown District to a planned development, even if the underlying base district for the property does not change.

**SECTION 2. TERM OF AGREEMENT.** The Developer, for itself and its successors and assigns, agrees to be bound by the terms and provisions of this Agreement from the date hereof through the date on which the Developer closes the sale of all Affordable Units in accordance with this Agreement.

**SECTION 3. AGREEMENT RUNNING WITH THE LAND.** The Developer hereby declares its express intent that the covenants, restrictions and agreements set forth herein shall be deemed covenants, restrictions and agreements running with the land from the date hereof and shall pass to and be binding upon any person or entity to whom the Developer may sell or assign all or any portion of its interest in the Property or Project or any successor in title to all or any portion of the Property or Project (excluding purchasers of Units in the ordinary course of development). If the Developer sells or assigns all or any portion of the Property or Project (excluding the sale of Units to purchasers in the ordinary course of development) it shall notify the City within sixty (60) days of such sale or assignment.

## **SECTION 4. AFFORDABILITY RESTRICTIONS.**

4.1 Method of Compliance. The Developer acknowledges and agrees that the Project is subject to the ARO, and has agreed to comply with the ARO as follows:

(a) *Sale of Affordable Units in the Project.* The Developer shall construct and sell three (3) Affordable Units to Eligible Households as follows: two (2) 2-bedroom units, Units 204 and 404 each with a square footage of approximately 962 square feet for a price not to exceed \$210,000 each and one (1) 3-bedroom unit, Unit 302, with a square footage of approximately 1,398 square feet for a price not to exceed \$255,000.

(b) *Recalculation of Affordable Prices.* The foregoing affordable prices shall only be valid for a period of one (1) year from the date hereof. If any of the Affordable Units

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are not under contract within such one-year period, the Developer shall notify the Department and the Department shall re-calculate the affordable prices of such Affordable Units in accordance with the Department's then-current formula.

(c) *Payment of In Lieu Fee.* Not Applicable.

4.2 Standards for Construction of Affordable Units. The Affordable Units in the Project shall be constructed or rehabilitated, as the case may be, in accordance with the following minimum standards:

(a) *Distribution.* The Affordable Units shall be reasonably dispersed throughout the Project such that no single building or floor therein has a disproportionate percentage of Affordable Units. This requirement does not apply to Affordable Units in Off-Site Developments.

(b) *Comparable to Market-Rate Units.* The Affordable Units shall be comparable to the Market-Rate Units in the Project in terms of unit type, number of bedrooms per unit, quality of exterior appearance, energy efficiency, and overall quality of construction; provided, however, with the Commissioner's approval, (i) lots for Affordable Units may be smaller than lots for Market-Rate Units, (ii) one-story Condominium units may be substituted for multi-story townhomes, and (iii) attached homes may be substituted for detached homes.

(c) *Interior Finishes and Features.* The Affordable Units may have different interior finishes and features than Market-Rate Units in the Project, as long as such finishes and features are durable, of good and new quality, and are consistent with then-current standards for new housing.

(d) *Amenities.* The Affordable Units shall have access to all on-site amenities available to the Market-Rate Units in the Project, including the same access to and enjoyment of common areas and facilities.

(e) *Parking.* The Affordable Units shall have functionally equivalent parking when parking is provided to the other Units in the Project.

(f) *Timing of Construction of Affordable Units.* All Affordable Units in the Project shall be constructed, completed, ready for occupancy, and marketed concurrently with or prior to the Market-Rate Units in the Project. All off-site Affordable Units must receive Certificates of Occupancy prior to the issuance of the first Certificate of Occupancy for any Market-Rate Unit in the Project. At the Department's request, the Developer shall provide a report, in a form acceptable to the Department, on the progress of the construction of the Affordable Units in relation to the construction of the Market-Rate Units. Notwithstanding the foregoing, the Commissioner may approve an alternative timing plan, provided the Developer posts a bond or similar security in accordance with Section 2-44-080(U)(7) of the ARO.

(g) *Budget for Construction of Off-Site Affordable Units.* Not applicable

(h) *Compliance with Rules and Regulations.* The Developer shall comply with the rules and regulations adopted by the Commissioner from time to time during the Term pursuant to Section 2-44-080(O).

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4.3 Procedures for Sale of Affordable Units. The Developer shall sell the Affordable Units in accordance with the following procedures:

(a) *Pre-Marketing Meeting.* At least 90 days before marketing any Units in the Project, and at least 180 days before the anticipated closing of the first Unit in the Project, the Developer shall meet with the Department to present its marketing plan for the Affordable Units. The Department must approve the Developer's marketing plan before the Developer begins to market any Units in the Project. It is the responsibility of the Developer to ensure that this pre-marketing meeting is scheduled and held within the appropriate time frame.

(b) *Marketing Plan.* The Developer must comply with the terms of the approved Marketing Plan. At a minimum, the Developer shall (i) market the Affordable Units to the general public for at least 30 days prior to accepting any offers or applications to purchase Units, and (ii) hold at least three open houses during such 30-day marketing period.

(c) *Lottery.* If demand for the Affordable Units is anticipated to be high, the Department may require the Developer to sell the Affordable Units via a lottery.

(d) *Minimum Household Size.* The Department may establish minimum household sizes for Affordable Units based on the number of bedrooms, and may require prospective purchasers to complete homebuyer education training or fulfill other requirements.

(e) *Determination of Income Eligibility.* The Department must verify in writing that each purchaser meets the income eligibility requirements of this Agreement. The Developer shall deliver to the Department any information required by the Department to confirm each purchaser's income eligibility. The Department shall have ten (10) business days from the date of receipt of a "complete information package" to qualify purchasers. A "complete information package" shall include, by means of illustration and not limitation, the fully-executed real estate sales contract between the Developer and the purchaser, the W-2 forms from each purchaser's employers, U.S. 1040 income tax returns for each purchaser from the previous two (2) years, an affidavit or verification from each purchaser with regard to Household size, and the employer verification form utilized by Fannie Mae.

(f) Unless otherwise indicated by the Department, each purchaser of an Affordable Unit shall execute and record a CCLT Restrictive Covenant at the time of such purchaser's closing.

(g) Within ten (10) days after the date of execution of a contract for the purchase of an Affordable Unit, the Developer shall provide the City with a copy of such contract.

(h) The Developer shall notify the Department in writing at least twenty (20) business days prior to the projected date of closing an Affordable Unit.

(i) The Developer shall offer the Affordable Units for sale in accordance with the requirements of the ARO and in accordance with any rules and regulations promulgated, or as may be promulgated, in furtherance of the ARO.



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## SECTION 5. REMEDIES AND ENFORCEABILITY.

5.1 Time of the Essence. Time is of the essence in the Developer's performance of its obligations under this Agreement.

5.2 Cure. If the Developer defaults in the performance of its obligations under this Agreement, the Developer shall have thirty (30) days after written notice of default from the City, or such longer period as shall be reasonably necessary to cure such default provided the Developer promptly commences such cure and thereafter diligently pursues such cure to completion. Notwithstanding the foregoing, no notice or cure period shall apply to defaults under Sections 5.3(a) and 5.3(c).

5.3 Event of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Agreement:

(a) The Developer fails to provide the number and type of Affordable Units required pursuant to Section 4.1.

(b) The Developer fails to comply with the construction standards set forth in Section 4.2.

(c) The Developer sells an Affordable Unit at a price in excess of the affordable price set forth in Section 4.1 (or recalculated in accordance with such section), or to a Household that is not an Eligible Household.

(d) The Developer fails to sell the Affordable Units in accordance with the procedures set forth in Section 4.3.

(e) The Developer makes or furnishes a warranty, representation, statement or certification to the City (whether in this Agreement, an Economic Disclosure Statement, or another document) that is not true and correct.

(f) The Developer fails to perform, keep or observe any of the other covenants, conditions, promises, agreements or obligations under this Agreement or any other written agreement entered into with the City with respect to the Project.

5.4 Remedies. If an Event of Default occurs, and the default is not cured in the time period provided for in Section 5.2 (if applicable), the City may, without further notice to the Developer, invoke any of the enforcement measures authorized by Section 2-44-080(N), including the imposition of a fine in an amount equal to two times the Fee that would have been applicable if the Project were not located in the Milwaukee Corridor Pilot Area and, in the case of a residential real estate developer licensed pursuant to Chapter 4-40 of the Municipal Code or any successor chapter, the revocation of the Developer's residential real estate developer license. The City may also suspend or revoke any or all building or occupancy permits issued to the Developer for the Property, and/or suspend or deny the issuance of all subsequent permit requests by the Developer for the Property.

5.5 Cumulative Remedies. The City's remedies hereunder are cumulative and the exercise of any one or more of such remedies shall not be construed as a waiver of any other remedy herein conferred upon the City or hereafter existing at law or in equity.

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## SECTION 6. DEVELOPER'S REPRESENTATIONS AND COVENANTS.

The Developer hereby represents, warrants, covenants and agrees as follows:

6.1 The Developer is an Illinois limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois. The Developer has full power and authority to acquire, own and develop the Property, and the person signing this Agreement on behalf of the Developer has the authority to do so.

6.2 The Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement. The Developer's execution, delivery and performance of this Agreement has been duly authorized by all necessary action, and does not and will not violate the Developer's articles of organization or operating agreement, or any applicable laws, nor will such execution, delivery and performance, upon the giving of notice or lapse of time or both, result in a breach or violation of, or constitute a default under, or require any consent under, any other agreement, instrument or document to which the Developer, or any party affiliated with the Developer, is a party or by which the Developer or the Property is now or may become bound.

6.3 All of the statements, representations and warranties contained in the Affordable Housing Profile Form and any other document submitted by the Developer to the City in connection with this Agreement are true, accurate and complete.

## SECTION 7. GENERAL PROVISIONS.

7.1 Governing Law/Binding Effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of laws principles. Each of the parties hereto warrants and represents that this Agreement is valid, binding and enforceable against them in accordance with the terms and conditions of Illinois law.

7.2 Successors and Assigns. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties.

7.3 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

7.4 Modification. This Agreement may not be modified or amended in any manner without the prior written consent of the parties hereto. No term of this Agreement may be waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party benefited by such term

7.5 Notices. Unless otherwise specified, any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) facsimile or email, provided that there is written confirmation of such communication; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:

City of Chicago  
Department of Housing  
121 North LaSalle Street, Room 1003

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Chicago, Illinois 60602  
Attn: Commissioner

With a copy to:

City of Chicago Department of Law  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attn: Real Estate and Land Use Division

If to the Developer:

1317-35 N. WESTERN LLC  
1923 W. Diversey Parkway  
Chicago, IL 60614  
Attn: Enda Raftery

With a copy to:

Anderson & Moore, P.C.  
111 W. Washington Street, Suite 1720  
Chicago, IL 60602  
Attn: Thomas S. Moore

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon confirmed transmission by facsimile or email, respectively, provided that such facsimile or email transmission is confirmed as having occurred prior to 5:00 p.m. on a business day. If such transmission occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the business day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 7.5 shall constitute delivery.

7.6 Indemnification. The Developer hereby agrees to fully and unconditionally indemnify, defend and hold harmless the City, its elected officials, officers, employees, agents and representatives, from and against any judgments, losses, liabilities, claims, suits, actions, causes of action, damages (including consequential damages), costs and expenses of whatsoever kind or nature (including, without limitation, attorneys' fees, court costs, expert witness fees, and any other professional fees and litigation expenses) suffered or incurred by the City arising from or in connection with: (a) the failure of the Developer to perform its obligations under this Agreement or to comply with the requirements of the ARO; (b) the failure of the Developer to comply with any other law, code, or regulation that governs the construction, occupancy, sale or lease of any Affordable Unit; (c) breaches of the Developer's representations and warranties contained in this Agreement; (d) the construction and management of the Project; (e) any misrepresentation or omission made by the Developer or any Agent of the Developer with respect to the Project; (f) the responses or documents provided by the Developer or any Agent of Developer pursuant to the terms of this Agreement; and (g) any activity undertaken by the Developer or any Agent of the Developer on the Property. This indemnification shall survive the expiration or any termination of this Agreement (regardless of the reason for such termination).

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7.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same Agreement.

7.8 Effective Date. This Agreement shall be deemed to be in effect as of the date first set forth above.

7.9 Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

7.10 Form of Documents. All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

7.11 Headings. The headings of the various sections and subsections of this Agreement have been inserted for convenience of reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

7.12 No Third Party Benefits. This Agreement is made for the sole benefit of the City and the Developer and their respective successors and assigns and, except as otherwise expressly provided herein, no other party shall have any legal interest of any kind hereunder or by reason of this Agreement. Whether or not the City elects to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third party by reason of this Agreement or any of the City's actions or omissions pursuant hereto or otherwise in connection herewith.

7.13 Joint and Several Liability. If this Agreement is executed by more than one party as the "Developer," together such entities agree that they are jointly and severally liable to the City for the performance of all obligations under the ARO and this Agreement. Each obligation, promise, agreement, covenant, representation and warranty of each entity comprising the Developer shall be deemed to have been made by, and be binding upon, the other entities comprising the Developer and their respective successors and assigns. The City may bring an action against any such entity with respect to the obligations under the ARO and this Agreement without regard to whether an action is brought against the other entities comprising the Developer.

7.14 No Waiver. No waiver by the City with respect to any specific default by the Developer shall be deemed to be a waiver of the rights of the City with respect to any other defaults of the Developer, nor shall any forbearance by the City to seek a remedy for any breach or default be deemed a waiver of its rights and remedies with respect to such breach or default, nor shall the City be deemed to have waived any of its rights and remedies unless such waiver is in writing.

7.15 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

7.16 New Tax Parcels. If the Cook County Assessor's Office grants a Petition for Division and/or Consolidation of the Property, the Developer shall immediately (a) re-record this Agreement against any newly created tax parcels containing Affordable Units, and (b) deliver a copy of the re-recorded Agreement to the City.

# UNOFFICIAL COPY

7.17 Recordkeeping and Reporting. Upon request of the Department, the Developer shall promptly provide any additional information or documentation requested in writing by the Department to verify the Developer's compliance with the provisions of this Agreement. At the written request of the Department, the Developer shall, within a reasonable time following receipt of such request, furnish reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operations, and condition of the Property, and the Developer's compliance with this Agreement.

7.18 Additional Security to Secure Construction of Affordable Units. Guarantor hereby personally guarantees to the City the performance of the construction obligations of Section 4.1(a) hereof as if Guarantor were Developer hereunder. This guaranty shall in all respects be Guarantor's absolute, continuing, unconditional and irrevocable guaranty of the construction of the Affordable Units in accordance with the terms of this Agreement. Guarantor will pay without the necessity of prior demand beyond the notice required by Section 5.2 hereof, any and all amounts due and owing under this Agreement pursuant to Developer's default in complying with Section 4.1(a) hereof. The City shall not be obligated to exhaust any right or take any action against Developer or any other person or entity prior to the enforcement of its rights under this guaranty. Except as set forth below, this guaranty shall in no way be impaired or affected by any assignment of this Agreement, delay in enforcing any of the terms, conditions and covenants of this Agreement, bankruptcy or receivership (either voluntary or involuntary) of Developer, or assignment by Developer for the benefit of creditors. This guaranty shall expire upon the City's inspection of the Project confirming Developer's compliance with Section 4.1(a) hereof. Such inspection shall occur within 30 days after the pre-marketing meeting described in Section 4.6 hereof and before occupancy of the Affordable Units. Pursuant to Section 3, if the Developer sells or assigns the Property or the Project, the City shall release Guarantor from the obligations hereunder, within thirty (30) days of such purchase providing either a personal guaranty from a principal, or if the Department is provided with certified financials for same that are approved by the Department, a related corporate entity, or a letter of credit, in a form approved by the Department. If the Guarantor involuntarily loses control of the Property or Project, this guaranty shall have no further force or effect, unless the Guarantor regains control of the Property or Project.

**[Signature Page Follows]**

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**1317-35 N. WESTERN LLC**, an Illinois limited company

By: \_\_\_\_\_  
Enda Raftery  
Its Managing Member

**GUARANTOR OF DEVELOPER:**

\_\_\_\_\_, Enda Raftery,  
an individual and the Guarantor of Developer

STATE OF ILLINOIS )  
  ) ss.  
COUNTY OF COOK )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Enda Raftery, as Managing Member of 1317-35 N WESTERN, LLC, an Illinois limited liability company (the "LLC"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument pursuant to authority given by said LLC, as his free and voluntary act and deed and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
  ) ss.  
COUNTY OF COOK )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Enda Raftery, an individual and Guarantor of 1317-35 N WESTERN, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument, as his free and voluntary act and deed, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Notary Public

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**1317-35 N. WESTERN LLC**, an Illinois limited company

By: Enda Raftery  
Enda Raftery  
Its Managing Member

**GUARANTOR OF DEVELOPER:**

Enda Raftery, Enda Raftery,  
an individual and the Guarantor of Developer

**CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government

By: \_\_\_\_\_  
Marisa C. Novara  
Department of Housing Commissioner

Property of Cook County Clerk's Office

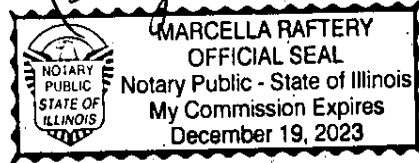
# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Enda Raftery, as Managing Member of 1317-35 N WESTERN, LLC, an Illinois limited liability company (the "LLC"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument pursuant to authority given by said LLC, as his free and voluntary act and deed and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 16<sup>th</sup> day of March, 2022

*Marcella Raftery*  
Notary Public

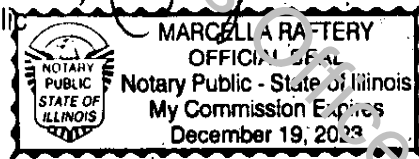


STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Enda Raftery, an individual and Guarantor of 1317-35 N WESTERN, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument, as his free and voluntary act and deed, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 16<sup>th</sup> day of March, 2022

*Marcella Raftery*  
Notary Public





# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government

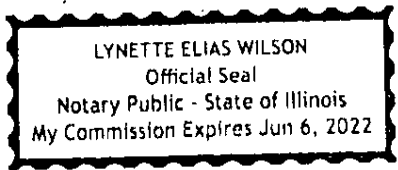
By: Marisa Novara  
Marisa C. Novara  
Department of Housing Commissioner

STATE OF ILLINOIS )  
                                  ) ss.  
COUNTY OF COOK )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Marisa C. Novara, personally known to me to be the Commissioner of the Department of Housing of the City of Chicago, Illinois (the "City"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Commissioner she signed and delivered the said instrument pursuant to authority given her on behalf of the City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal on March 22, 2022

Lynette Elias Wilson  
Notary Public



Property of Cook County Office

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## EXHIBIT A

### LEGAL DESCRIPTION OF PHASE I OF THE PROPERTY

LOTS 37, 38, 39 AND 40 (EXCEPT THAT PART OF SAID LOTS TAKEN FOR STREETS) IN WATSON'S SUBDIVISION OF BLOCK 12 IN WATSON TOWER AND DAVIS SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART OF SAID PREMISES LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SECTION 6), IN COOK COUNTY, ILLINOIS

ADDRESS: 1327-1335 N. WESTERN AVE; CHICAGO, ILLINOIS 60622

PIN: 17-06-114-010-0000; 17-06-114-011-0000; 17-06-114-012-0000; 17-06-114-013-0000

Property of Cook County Clerk's Office

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EXHIBIT B

AFFORDABLE HOUSING PROFILE FORM

(ATTACHED)

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

(REMAINING PAGE LEFT BLANK)

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## ARO Affordable Housing Profile Form (AHP)

Submit this form for projects that are subject to the 2015 ARO, Near North/Near West Pilot, Milwaukee Pilot or Pilsen/Little Village Pilot Ordinances (all projects submitted to City Council after October 13, 2015). More information is online at [www.cityofchicago.gov/ARO](http://www.cityofchicago.gov/ARO). Submit the completed to the Department of Housing (DOH), 121 N LaSalle Street, 10th Floor, Chicago, IL 60602. **E-mail:** [denise.roman@cityofchicago.org](mailto:denise.roman@cityofchicago.org) or [justin.root@cityofchicago.org](mailto:justin.root@cityofchicago.org). Applications that include off-site units should submit documentation listed on page two.

Date: 10/14/21

### DEVELOPMENT INFORMATION

Development Name: 1335 N. WESTERN AVE  
Development Address: 1335 N. WESTERN AVE, CHICAGO, IL 60622  
Zoning Application Number, if applicable: Ward: 1<sup>ST</sup>

If you are working with a Planner at the City, what is his/her name?

- Type of City Involvement** *check all that apply*
- City Land
  - Financial Assistance
  - Zoning increase
  - Planned Development (PD)
  - Transit Served Location (TSL) project

**REQUIRED ATTACHMENTS:** the AHP will not be reviewed until all required docs are received

- ARO Web Form completed and attached - or submitted online on
- ARO "Affordable Unit Details and Square Footage" worksheet completed and attached (*Excel*)
- If ARO units proposed, Dimensioned Floor Plans with affordable units highlighted are attached (*pdf*)
- If ARO units proposed are off-site, required attachments are included (see next page)
- If ARO units are CHA/Authorized Agency units, signed acceptance letter is attached (*pdf*)

### DEVELOPER INFORMATION

Developer Name: 1317-35 N. WESTERN LLC  
Developer Contact: ENDA RAFTERY  
Developer Address: 1923 W. DIVERSEY, CHICAGO, IL 60614  
Email: [enda@rafteryconstructionco.com](mailto:enda@rafteryconstructionco.com)  
Developer Phone: 773-697-8305  
Attorney Name: Thomas Moore  
Attorney Phone: 312-251-1500

### TIMING

Estimated date marketing will begin: 9/1/2022  
Estimated date of building permit\*: 12/1/2021  
Estimated date ARO units will be complete: 10/1/2022

\*the in-lieu fee, recorded covenant and \$5,000 per unit administration fee (for off-site units) are required prior to the issuance of any building permits, including the foundation permit.

### PROPOSED UNITS MEET REQUIREMENTS (to be executed by Developer & ARO Project Manager)

<u>Enda Raftery</u>	<u>10/14/21</u>
Developer or their agent	Date
<u>Paul Fry</u>	<u>12/10/2021</u>
ARO Project Manager, DOH	Date



AFFORDABLE REQUIREMENTS ORDINANCE

# UNOFFICIAL COPY

## ARO Web Form

### Applicant Contact Information

Name: Enda Raftery

Email: enda@rafteryconstructionco.com

### Development Information

#### Address

Submitted Date: 10/06/2021

Number From: 1317

Number To: 1335

Direction: N

Street Name: Western Ave

Postal Code: 60622

#### Development Name

Are you rezoning to downtown?: No

Is your project subject to the ARO Pilots?: PILOTS APPLY

#### Information

Ward: 1

ARO Zone: Higher Income

Pilot Area: Milwaukee Corridor

#### Details

ARO Trigger: Zoning Change

Total Units: 19

Development Type: Sale

Date Submitted: 10/06/2021

### Requirements

Onsite Units: 3 Off-Site units: 4

#### How do you intend to meet your ARO Unit obligations?

On-Site: 3

Off-Site: 0

On-Site to CHA or Authorized agency: 0

Off-Site to CHA or Authorized agency: 0

Total Units: 3

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**Summary**

unit type	market rate		ARO		affordabl
	how	% of total	how	% of total	
studio	0	0%	0	0%	0%
one-bed	0	0%	0	0%	0%
two-bed	8	50%	1,087	67%	89%
three-bed	8	50%	1,415	1%	99%
four-bed	0	0%	0	0%	0%

Project Name: 1335 N. Western Ave  
 Zoning Application number, if applicable: 20667T1  
 Address: 1335 N Western Ave, Chicago, Illinois 60622  
 Is this a For Sale or Rental Project? Sale  
 Anticipated average psf rent/price? \$400

Total Units in Project: 19  
 Total Affordable units: 3

All projects with proposed ARO units must complete this tab

	Market Rate Units	Affordable Units
Parking	16	3
Laundry	Yes	Yes
Appliances		
Refrigerator	GE	GE
Dishwasher	GE	GE
age/EnergyStar/make/model/color		
Stove/Oven	GE	GE
age/EnergyStar/make/model/color		
Microwave	GE	GE
age/EnergyStar/make/model/color		
Bathroom(s)	2 UNITS HAVE 1 BATHROOM. 14 UNITS HAVE 2 BATHROOMS	2 UNITS HAVE 1 BATHROOM. 1 UNIT HAS 2 BATHROOMS
how many?		
Half bath? Full bath?		
Kitchen countertops material	QUARTZ	QUARTZ
Flooring material	HARDWOOD	HARDWOOD
HVAC	YES, INDIVIDUAL FURNACE AND AC	YES, INDIVIDUAL FURNACE AND AC
Other		

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**jsa**  
jonathan sputt  
architects ltd.

4001 north revere wood ave.  
suite 801  
chicago illinois 0613  
773 883 1017  
773 883 3081  
jasa@jsearch-ltd.com



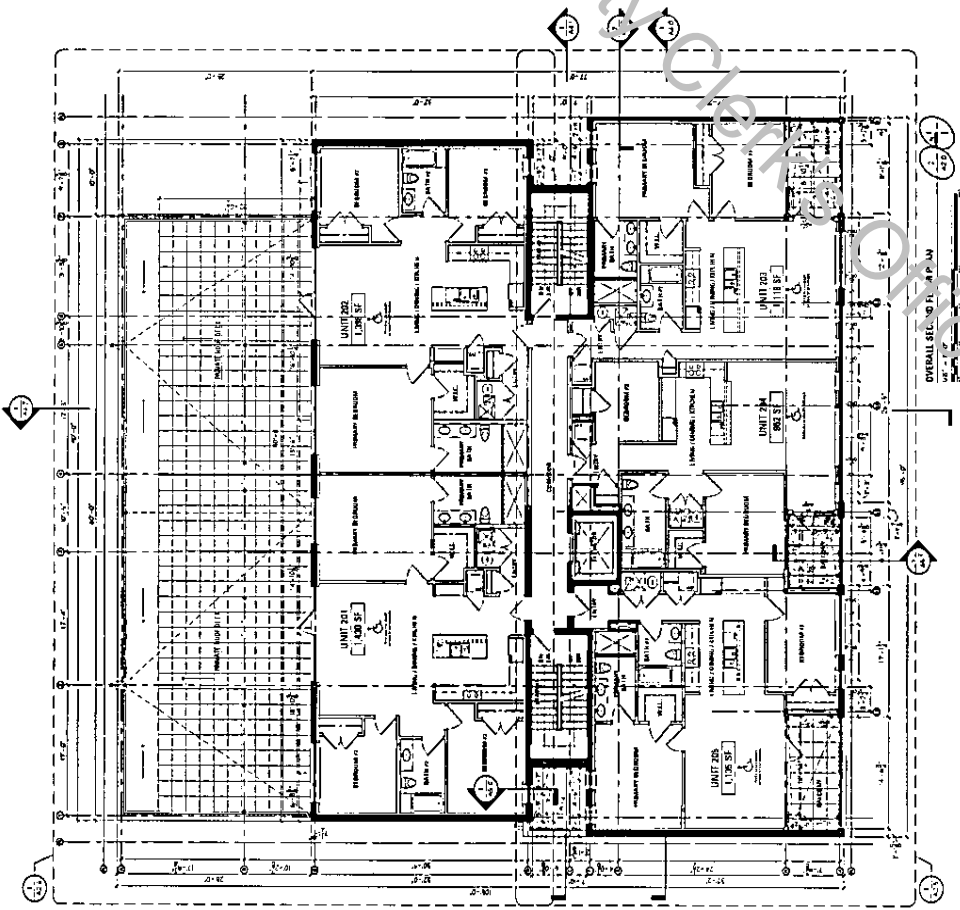
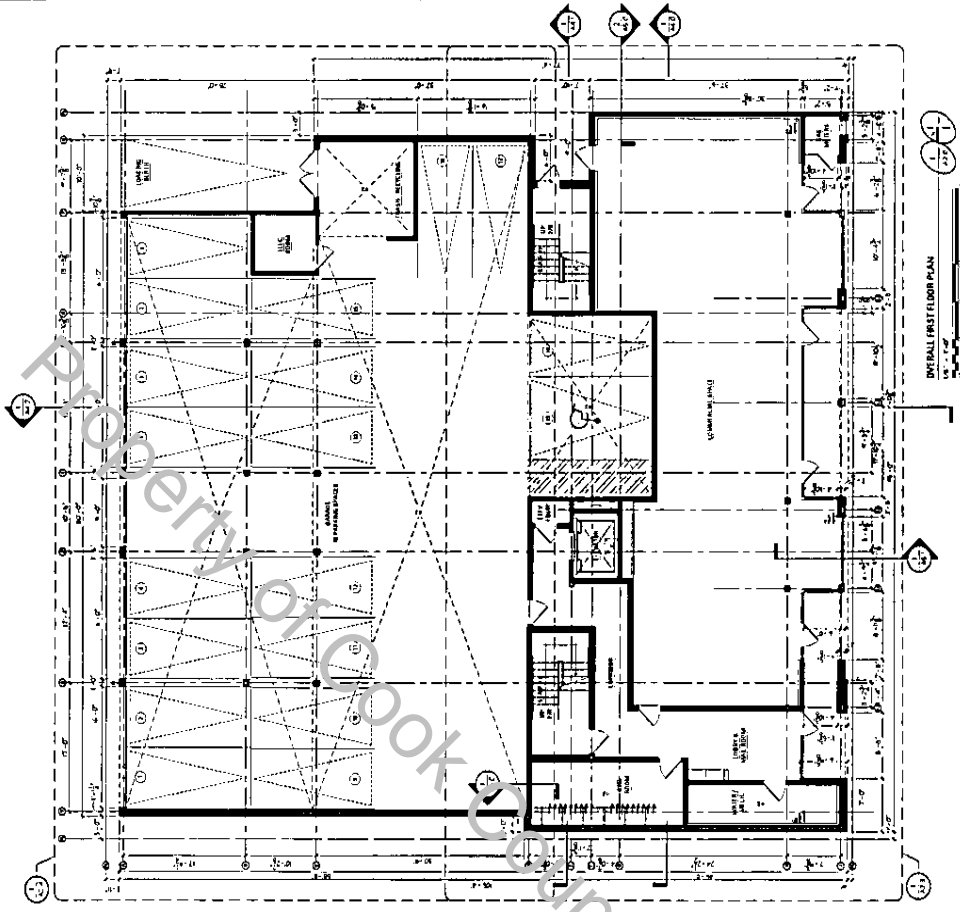
general notes:

# UNOFFICIAL COPY

DATE: 06/17/2022  
ISSUED FOR PERMIT REVIEW

PROJECT NO.:  
PROJECT:  
BATTERY CONSTRUCTION  
1000 N. WILSON AVENUE  
CHICAGO, ILLINOIS 60622

DESCRIPTION:  
OVERALL FIRST FLOOR PLAN  
OVERALL SECOND FLOOR PLAN  
**A**  
2.0



**jsa**  
Jonathan Spurr  
architects ltd.

4001 north revere wood ave.  
suite 601  
chicago illinois 0613

773 883 1017  
773 883 3081  
jse@jsearch-ld.com



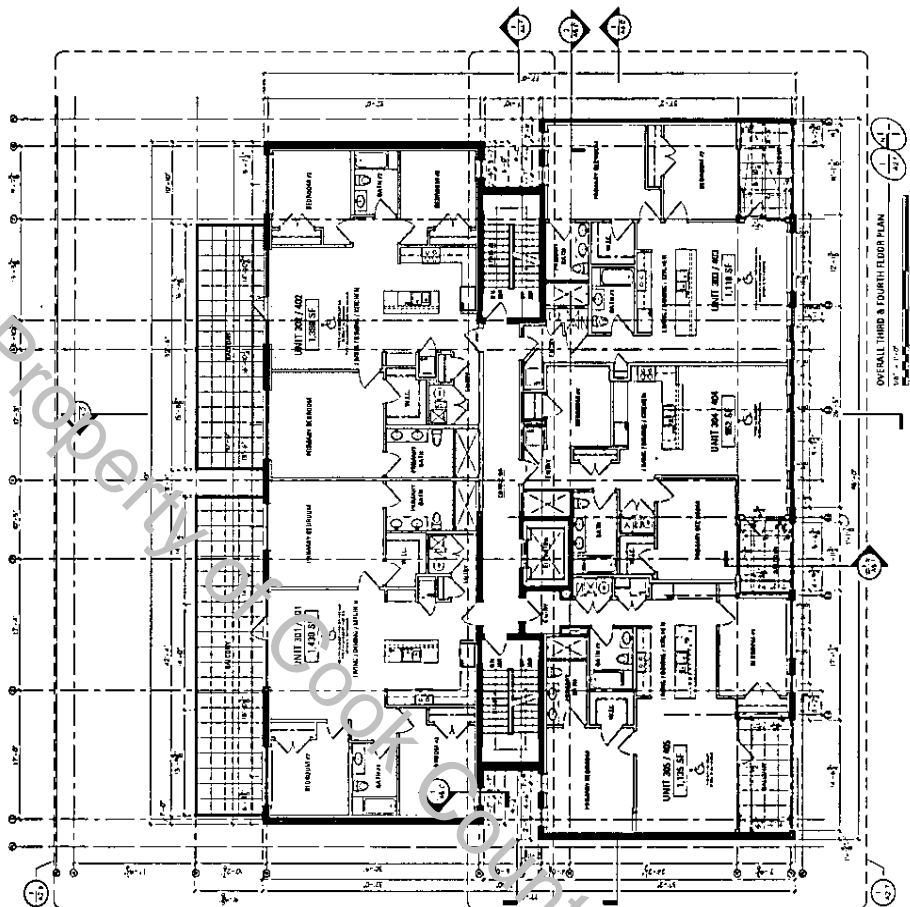
GENERAL NOTES:

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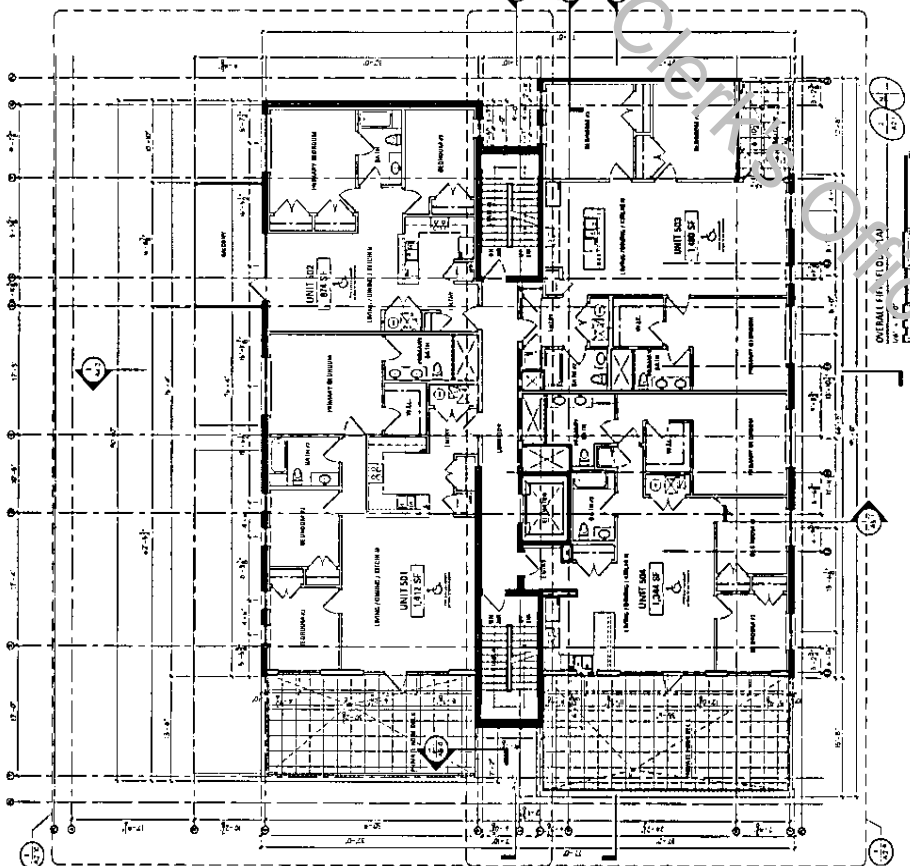
ISSUED FOR PERMIT REVIEW

PROJECT NO. 2023  
PROJECT: BATTERY CONSTRUCTION  
1200 N WESTERN AVENUE  
CHICAGO, ILLINOIS 60622

DESCRIPTION:  
OVERALL THIRD & FOURTH FLOOR PLAN  
OVERALL FIFTH FLOOR PLAN  
A  
2.1



OVERALL THIRD & FOURTH FLOOR PLAN



OVERALL FIFTH FLOOR PLAN