

**BARRY CALLEBAUT NORTH AMERICAN HEADQUARTERS  
REDEVELOPMENT AGREEMENT**

BY AND BETWEEN

THE CITY OF CHICAGO

AND

BARRY CALLEBAUT USA, LLC

This agreement was prepared by  
and after recording return to:  
Keith A. May, Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 600  
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## LIST OF EXHIBITS

Exhibit A	*Legal Description of Redevelopment Area
Exhibit B	*Description of Project
Exhibit C	*Legal Description of Property
Exhibit D	*Construction Requirements
Exhibit D-1	Lease
Exhibit E-1	*Project Budget
Exhibit E-2	*MBE/WBE Project Budget
Exhibit F	*Permitted Liens
Exhibit G	Approved Prior Expenditures
Exhibit H	Requisition Form
Exhibit I	*TIF-Funded Improvements
Exhibit J	Form of Subordination Agreement
Exhibit K	Opinion of Developer's Counsel
Exhibit L	Insurance Requirements

(An asterisk(\*) indicates which exhibits are to be recorded.)

This agreement was prepared by and after recording return to: Keith A. May, Esq. City of Chicago Law Department 121 North LaSalle Street, Room 600 Chicago, IL 60602

**BARRY CALLEBAUT NORTH AMERICAN HEADQUARTERS  
REDEVELOPMENT AGREEMENT**

This Barry Callebaut North American Headquarters Redevelopment Agreement (this "Agreement") is made as of this 18<sup>th</sup> day of November, 2010, by and between the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Community Development ("DCD"), and Barry Callebaut USA, LLC, a Delaware limited liability company duly authorized to do business in the State of Illinois (the "Developer"). Capitalized terms not otherwise defined herein shall have the meaning given in Section 2.

**RECITALS**

A. City Council Authority: To induce redevelopment pursuant to provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (the "Act") the City Council of the City (the "the City Council") adopted certain ordinances on April 12, 2000 (1) approving a redevelopment plan for the Chicago/Kingsbury Redevelopment Project Area (the "Redevelopment Area"), (2) designating the Redevelopment Area as a "redevelopment project area" under the Act, and (3) adopting tax increment allocation financing for the Area (the "TIF Adoption Ordinance" and collectively with items (1) and (2), the "TIF Ordinances"). The Redevelopment Area is legally described in Exhibit A hereto.

B. The Project: The Developer intends to undertake the redevelopment project described in Exhibit B hereto (the "Project") with respect to certain property leased by the Developer located within the Redevelopment Area and commonly known as 600 West Chicago Avenue, 8<sup>th</sup> Floor, Chicago, Illinois 60610 and legally described on Exhibit C (the "Property"). The commencement and completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement. The Project will be carried out in accordance with this Agreement and the City of Chicago Chicago/Kingsbury Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan (the "Redevelopment Plan"). The Project is intended to proceed in phases (each, a "Phase") over the term of this Agreement, with each Phase representing an addition of new facilities to the Property.

C. City Financing: The City agrees to use Incremental Taxes to reimburse the Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

## SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

"Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer.

"Annual Compliance Report" shall mean a signed report from the Developer to the City (a) itemizing each of the Developer's obligations under the RDA during the preceding calendar year, (b) certifying the Developer's compliance or noncompliance with such obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance and (d) certifying that the Developer is not in default with respect to any provision of the RDA, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) compliance with the Operating Covenant (Section 8.05), (2) compliance with the Jobs Covenant (Section 8.05), (3) delivery of Financial Statements and unaudited financial statements (Section 8.09), (4) delivery of updated insurance certificates, if applicable (Section 8.10), (5) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 8.11), and (6) compliance with all other executory provisions of the RDA.

"Available Incremental Taxes" shall mean an amount equal to ninety percent (90%) of the Incremental Taxes deposited in the Redevelopment Area TIF Fund, which amount reflects the allocation of the City Fee described in Section 4.05 hereof.

"Average Minimum Occupancy" shall have the meaning as set forth in Section 8.05 hereof.

"Certificate" shall mean the Certificate of Completion described in Section 7.01 hereof.

"City Council" shall have the meaning set forth in the Recitals hereof.

"City Fee" shall mean the fee described in Section 4.05 hereof.

"City Funds" shall mean the funds described in Section 4.02 hereof.

"Closing Date" shall mean the date of execution and delivery of this Agreement, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

"Completion Date" shall mean the date Developer has substantially completed and commenced occupancy of and operations at any phase of the Project, as documented by the Developer and approved by DCD. The approved "Completion Date" shall be stated in the City's Certificate of Completion with respect to any Phase of the Project.

"Compliance Period" shall have the meaning as set forth in Section 8.05 hereof.

"Corporation Counsel" shall mean the City's Office of Corporation Counsel.

"Employer(s)" shall have the meaning set forth in Paragraph E of Exhibit D hereto.

"Environmental Laws" shall mean any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended.

"Equity" shall mean funds of the Developer (other than funds derived from Lender Financing, if any) in an amount not less than that set forth in Section 4.01 hereof.

"Event of Default" shall have the meaning set forth in Section 12 hereof.

"FTE" shall mean the following: (1) at the Initial Completion Date, in order to determine the payment of the first Installment payment of City Funds in accordance with Section 4.02 hereof, and at March 1, 2008, in order to determine the payment of the second installment in accordance with Section 4.02 hereof, an employee who works for the Developer at the Property a minimum of 35 hours per week; or (2) for every successive 12-month period thereafter until all City Funds have been paid, an employee who worked for the Developer at the Property for a minimum of 1,800 annual hours, with the calculation of the number of full-time equivalent employees being made by dividing the total hours worked for the Developer at the Property (including part-time employees) during the applicable 12-month period by 1,800 hours.

"General Contractor" shall mean the general contractor(s) hired by the Developer for the Project.

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the Redevelopment Area TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.



"Initial Completion Date" shall mean the date Developer has substantially completed and commenced occupancy of and operations at the first Phase of the Project, as documented by the Developer and approved by DCD. The approved "Initial Completion Date" shall be stated in the City's Certificate of Completion with respect to the first Phase of the Project.

"Lease" shall mean the lease executed by Developer for approximately 11,207 square feet at certain property located within the Redevelopment Area and commonly known as 600 West Chicago Avenue, 8<sup>th</sup> Floor, Chicago, Illinois 60610 and attached hereto as Exhibit D-1.

"Lender Financing" shall mean funds borrowed by the Developer from lenders and used to pay for Costs of the Project otherwise secured by the Property.

"MBE(s)" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the procurement program or the construction program, as applicable.

"MBE/WBE Budget" shall mean the budget attached hereto as Exhibit E-2.

"Municipal Code" shall mean the Municipal Code of the City of Chicago.

"Non-Governmental Charges" shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Developer, the Property or the Project.

"Occupancy Report" shall have the meaning as set forth in Section 8.05 hereof.

"Permitted Liens" shall mean those liens and encumbrances against the Property and/or the Project set forth on Exhibit F hereto.

"Prior Expenditure(s)" shall mean those prior expenditures relating to the Project set forth in Exhibit G hereto.

"Prohibited Use" shall mean a fast-food chain restaurant, a national chain business, a branch bank, an employment agency, a currency exchange, a payday loan store, a pawn shop, a psychic or astrological or palm-reading business, a bar or liquor store, an adult bookstore, a massage parlor, a hotel or motel, an off-track betting facility, a trailer-storage yard, a scrap yard, or any use similar to the preceding uses or otherwise identified in writing by DCD. The Commissioner of DCD shall have discretion to consent to a waiver of any of the foregoing prohibited uses for any specific development, which discretion shall be in the Commissioner's sole discretion.

"Project Budget" shall mean the budget attached hereto as Exhibit E-1, showing the total cost of the Project by line item, as the same may be amended from time to time with the consent of DCD as set forth in Section 3.02 hereof.

"Redevelopment Area TIF Fund" shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

“Redevelopment Project Costs” shall mean redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget set forth in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

“Reimbursement Event” shall mean an act or omission of by the Developer or its Affiliate resulting in an Event of Default relating to: (i) a material misrepresentation to the City related to the Project that the City relied upon (as reasonably determined by the City) in its decision to provide City Funds for the Project or to pay any such City Funds to the Developer; (ii) a fraudulent act or omission related to the Project; (iii) a misappropriation of funds from the uses set forth in the Project Budget resulting in the receipt by the Developer or its Affiliates of additional fees, commissions or compensation not disclosed in such Project Budget or otherwise approved in writing by DCD; (iv) any intentional or material waste to the Project improvements or any portion thereof; (v) any unapproved use of City Funds for payment or reimbursement of amounts other than costs of the TIF-Funded Improvements; (vi) a breach of the transfer and assignment restrictions contained in this Agreement; (vii) any material breach of the representations, warranties or covenants regarding environmental matters contained in this Agreement, as applicable; (viii) the occurrence of any material uninsured casualty event to any portion of the Project improvements unless the portion of the improvements damaged by such event is restored within a reasonable period of time; (ix) material misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Project; (x) any material misrepresentation in any Economic Disclosure Statements and Affidavit submitted by the Developer or its Affiliates; (xi) any receipt of City Funds after the occurrence of an Event of Default, or the occurrence of an event which, if prompt notice of such event had been given, would have entitled the City to withhold, suspend, reduce or terminate the disbursement of such City Funds under this Agreement.

“Requisition Form” shall mean the document, in the form attached hereto as Exhibit H, to be delivered by the Developer to DCD pursuant to Section 4.03 of this Agreement.

“Survey” shall mean a survey of the Property prepared in accordance with Minimum Standard Detail Requirements adopted for ALTA/ACSM Land Title Surveys (2005 Revision), including such Table A requirements as the City may reasonably require, if any, dated within 45 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property resulting from the Project, if any).

“Term of the Agreement” shall mean the period of time commencing on the Closing Date and ending on the earlier to occur of: (a) the date on which the Redevelopment Area is no longer in effect, and (b) the date on which the final payment of City Funds is made under this Agreement.

“TIF-Funded Improvements” shall mean those costs of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement, as set forth on Exhibit I, as the same may be amended with DCD’s consent.

“Title Company” shall mean Chicago Title Insurance Co.

"Title Policy" shall mean a title insurance policy in the most recently revised ALTA or equivalent form, showing the Developer as the insured, noting the recording of this Agreement as an encumbrance against the Property, and a subordination agreement in favor of the City with respect to previously recorded liens against the Property related to Lender Financing, if any, issued by the Title Company.

"WARN Act" shall mean the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101 et seq.).

"WBE(s)" shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise.

### **SECTION 3. THE PROJECT**

3.01 The Project. The Developer will complete the first Phase of the Project no later than September 30, 2007, or such later date as to which DCD may consent.

3.02 Project Budget. The Developer has furnished to DCD, and DCD has approved, the Project Budget. The Developer hereby certifies to the City that (a) it has Equity and/or Lender Financing sufficient in an amount sufficient to pay for all Project costs, and (b) the Project Budget is true, correct and complete in all material respects. The Developer may not make any material change to the Project Budget without DCD's prior written consent. For purposes of this Section 3.02, the term "material change" shall mean an increase of five percent (5%) or more of any line item in the Project Budget. Any consent by DCD shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer.

3.03 DCD Approval. Any approval granted by DCD under this Agreement is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DCD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project or otherwise lessen the Developer's obligations under Section 5.02.

3.04 Survey Update. On the Completion Date, the Developer shall provide an updated Survey if the Project added new external improvements to the Property.

### **SECTION 4. FINANCING**

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$3,520,000 which the Developer will initially fund from the following sources:

Equity	\$2,300,000
Debt	\$1,220,000
<b>ESTIMATED TOTAL</b>	<b>\$3,520,000</b>

Such sources of funds shall be used to pay all Project costs because no City Funds will be paid until the City's issuance of a Certificate, and then only as set forth in Section 4.02.

Except for the City Funds, no other City financial assistance or incentives have been or will be provided for the Project.

4.02 Reimbursement from City Funds.

(a) Uses of City Funds. City Funds may only be used to reimburse the Developer after the issuance of a Certificate for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit I sets forth the maximum amount of costs that may be reimbursed from City Funds for each line item therein (subject to Section 4.02(b)), contingent upon receipt by the City of documentation satisfactory to DCD, which line items may be adjusted to reflect actual costs, but not to exceed the aggregate amount set forth on Exhibit I.

(b) Payment of City Funds.

(i) Subject to the terms and conditions of this Agreement, the City hereby agrees to provide funds solely from Available Incremental Taxes to reimburse the Developer for the cost of TIF-Funded Improvements up to the maximum amounts determined under Section 4.02(b)(iii) (the "City Funds").

(ii) City Funds shall not be paid to the Developer hereunder prior to the issuance of a Certificate pursuant to Section 7.01.

(iii) Subject to the terms and conditions of this Agreement, at the issuance of the initial Certificate and annually thereafter, payments shall be made in installments (each an "Installment") to the Developer on the anniversary of the Initial Completion Date next following the (except for the initial and next two (2) Installments, which shall be due thirty (30) days after) Developer's submission of a Requisition Form in accordance with Section 4.03 and an Employment Report in accordance with Section 8.05. Each Installment shall be in an annual amount (with no more than one Installment paid to the Developer per calendar year other than the first installment which shall include amounts for the Initial Completion Date and years 1 and 2) which is the lesser of (x) the amount set forth in Section 4.02(c) or (y) the result of subtracting (I) the aggregate amount of all Installments previously paid to Developer, from (II) the product of (i) \$11,000 multiplied by (ii) the Average Minimum FTEs employed by Developer at the Property for the year; provided, however, that the City may elect to prepay the City Funds at the Commissioner's sole discretion; and provided, in no event shall the City reimburse the Developer in excess of the lesser of (a) \$880,000 or (b) twenty-five percent (25%) of the actual total Project costs (exclusive of Developer fees) from time to time expended on the Project. Furthermore, in no instance shall the total City Funds paid under this Agreement, together with any other City or County financial assistance provided to the Developer with respect to the Project (including, without limitation, the value of any tax assessment incentives, abatements or reductions), exceed twenty-five percent (25%) of the Project costs, as set out in the final Project Budget.

(iv) City Funds derived from Available Incremental Taxes shall be available to pay such costs and allocated for such purposes only so long as:

- (1) The amount of the Available Incremental Taxes is sufficient to pay for such costs;
- (2) The City has been paid the City Fee described in Section 4.05 below;

(3) No Event of Default or condition for which the giving of notice or the passage of time, or both, would constitute an Event of Default exists under this Agreement; and

(4) No Occupancy Default exists under this Agreement.

The Developer acknowledges and agrees that the City's obligation to pay any City Funds is contingent upon the fulfillment of the conditions set forth in parts (1), (2), (3) and (4) above, as well as the prior issuance of the Certificate and the Developer's satisfaction of all other applicable terms and conditions of this Agreement, including, without limitation, compliance with the covenants in Section 8.05.

(c) Payment Amount. The Installments to be paid by the City shall be as follows (subject to Sections 8.05 and 12.04):

<u>Period</u>	<u>Installment</u>	<u>Minimum</u> <u>FTEs</u>	<u>Payment</u>
Initial Completion Date		25	\$88,000
Year 1		25	88,000
Year 2		32	88,000
Year 3		32	88,000
Year 4		48	88,000
Year 5		48	88,000
Year 6		64	88,000
Year 7		64	88,000
Year 8		80	88,000
Year 9		80	88,000

4.03 Requisition Form. On or prior to the latter of sixty (60) days after the date hereof or Initial Completion Date and on each March 31st (or such other date as the parties may agree to) thereafter and continuing throughout the Term of the Agreement, the Developer shall provide DCD with a Requisition Form, along with the documentation described therein. Requisition for reimbursement of TIF-Funded Improvements shall be made not more than one time per year (or as otherwise permitted by DCD). Upon DCD's request, the Developer shall meet with DCD to discuss any Requisition Form(s). The first Requisition Form shall cover the payments for the Completion Date and Years 1 and 2.

4.04 Prior Expenditures. Exhibit G hereto sets forth the prior expenditures approved by DCD as of the date hereof.

4.05 City Fee. Annually, the City may allocate an amount not to exceed ten percent (10%) of the Incremental Taxes for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project. Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, and the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

4.06 Cost Overruns. The Developer shall be solely responsible for any Project costs in excess of those set forth in the Project Budget and shall hold the City harmless from any and all such costs.

4.07 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. Furthermore, after the issuance of the Certificate pursuant to Section 7.01, it shall be in DCD's sole discretion to make any payment pursuant to this Agreement upon and after the occurrence of any action described in Section 8.01(i) for which the Developer did not receive the prior written consent of the City. The payment of City Funds is subject to being terminated and/or reimbursed as provided in Section 12.

## SECTION 5. CONDITIONS PRECEDENT

The Developer must satisfy the following conditions before the City will execute and deliver this Agreement, unless such conditions are waived in writing by the City:

5.01 Project Budget. DCD must have approved the Project Budget.

5.02 Other Governmental Approvals. The Developer must have secured all necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DCD. Such approvals shall include, without limitation, all building permits necessary for the Project; provided, however, that if the City agrees to close before construction commences, such building permits shall be secured prior to commencement of any such construction work.

5.03 Financing. The Developer must have furnished proof reasonably acceptable to the City that it has Equity and Lender Financing, if any, to complete the Project.

5.04 Lease. The Developer must have furnished the City with a copy of the Lease showing the Developer as the lessee of the Property at least until December 31, 2012.

5.05 No Liens. The Developer, at its own expense, must have provided the City with searches under its name as follows:

Secretary of State	UCC search
Secretary of State	Federal tax search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax search
Cook County Recorder	State tax search
Cook County Recorder	Memoranda of judgments search
U.S. District Court	Pending suits and judgments
Clerk of Circuit Court, Cook County	Pending suits and judgments

showing no liens against the Developer, the Property, or any fixtures now or hereafter affixed thereto, except for the Permitted Liens.

5.06 Surveys. The Developer must have furnished the City with three (3) copies of the Survey, if any.

5.07 Insurance. The Developer, at its own expense, must have insured the Property in accordance with Exhibit L hereto, and delivered to DCD actual policies or Accord Form 27 certificates evidencing the required coverages.

5.08 Opinion of the Developer's Counsel. On the Closing Date, the Developer must have furnished the City with an opinion of counsel, substantially in the form attached hereto as Exhibit K, with such changes as may be acceptable to Corporation Counsel.

5.09 Evidence of Prior Expenditures. The Developer must have provided evidence satisfactory to DCD in its sole discretion of the Prior Expenditures.

5.10 Financial Statements. The Developer must have provided DCD with such financial statements as DCD may reasonably require.

5.11 Documentation. The Developer must have provided documentation to DCD, satisfactory in form and substance to DCD, with respect to the current number of employees per Section 8.05.

5.12 Environmental. The Developer must have provided DCD with copies of any existing phase I environmental audits completed by or for Developer with respect to the Property and any phase II environmental audit with respect to the Property required by the City. The Developer has provided a letter from the environmental engineer(s) who completed such audit(s), if any, authorizing the City to rely on such audits.

5.13 Corporate Documents; Economic Disclosure Statement. The Developer must have provided a copy of its articles of organization containing the original certification of the Secretary of State of its state of organization; certificates of good standing or existence from the Secretary of State of its state of organization and the State of Illinois; a secretary's certificate in such form and substance as the Corporation Counsel may require; by-laws and such other corporate documentation as the City has requested. The Developer must also have provided the City with an Economic Disclosure Statement dated as of the Closing Date.

5.14 Litigation. The Developer must have provided to Corporation Counsel and DCD a description of all pending or threatened litigation or administrative proceedings involving the Developer and the Property.

5.15 Owner's Consent. The Developer must have provided the City with consent, in writing, from the fee owner of the Property to record this Agreement against the Property.

5.16 Payment for Local Hiring Noncompliance. The Developer shall deliver payment to the City in the amount of Four Thousand One Hundred Seventy-Six and 92/100 Dollars (\$4176.92) as liquidated damages for Developer's non-compliance with the City Resident Construction Worker Employment Requirement requirements set forth in Section F of Exhibit D attached to this Agreement.

## **SECTION 6. AGREEMENTS WITH CONTRACTORS AND CONSTRUCTION REQUIREMENTS**

In connection with the Project, the Developer shall comply with, and shall cause the general contractor and all subcontractors to comply with, the construction requirements set forth in Exhibit D that are applicable to such parties. Such requirements are specific City requirements that must be satisfied and include, without limitation, wage, MBE/WBE utilization and City resident hiring requirements.

## SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion of Construction or Rehabilitation. Upon completion of each Phase of the Project in accordance with the terms of this Agreement and upon the Developer's written request, DCD shall either issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project (exclusive of the covenant contained in Section 8.05 herein) in accordance with the terms of this Agreement or a written statement detailing the measures which must be taken in order to obtain the Certificate. DCD may require a single inspection by an inspecting architect hired at the Developer's expense to confirm the completion of the Project. The Developer may resubmit a written request for a Certificate upon completion of such measures. The Certificate will not be issued until the following conditions have been met:

- (a) the parties have closed on this Agreement;
- (b) a minimum of 25 FTEs are employed at the Property;
- (c) the Developer has notified the City in writing that the applicable Phase of the Project has been completed as it is defined in this Agreement;
- (d) verification in writing by the City's Monitoring and Compliance Unit that the developer is in full and complete compliance with the MBE/WBE, City Residency and Prevailing Wage requirements set forth in this Agreement; and
- (e) the Developer has submitted adequate documentation of Project costs to DCD.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates only to the performance of the work associated with the Project improvements. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein unrelated to such work will remain in effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at Sections 8.02, 8.05 and 8.14 as covenants that run with the land will bind any transferee of the Property (including an assignee as described in the following sentence but excluding the fee owner of the Property) throughout the Term of the Agreement or such shorter period as may be explicitly provided for therein. The other executory terms of this Agreement shall be binding only upon the Developer or a permitted assignee under Section 15.15 of this Agreement.

The parties recognize that Developer's plans are intended to proceed in Phases, the first Phase being the construction and occupancy of the Project as set forth in Exhibit B hereto. Developer shall have the right to expand the Project by leasing and occupying additional space at 600 West Chicago Avenue for a term expiring not earlier than December 31, 2012. The Project Budget attached hereto as Exhibit E-1 includes the estimated costs of all Phases. The completion of a subsequent Phase and the issuance of the further Certificate (of completion) for such further phases shall be a condition to the qualification of the costs thereof to be qualified as Project costs.



7.03 Failure to Complete. If the Developer fails to complete the first Phase of the Project in accordance with the terms of this Agreement, no Certificate will ever be issued, and the City will have the right to terminate this Agreement. If this occurs, no City Funds will ever be paid to the Developer. In addition, if the Project's TIF-Funded Improvements include any public improvements, the City will have the right (but not the obligation) to complete such public improvements and the Developer must immediately reimburse the City for all reasonable costs and expenses incurred in completing such public improvements.

7.04 Notice of Expiration of Term of Agreement. Upon the expiration of the Term of the Agreement, DCD shall provide the Developer, at the Developer's written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

## **SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER**

8.01 General. The Developer represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

(a) the Developer is a Delaware limited liability company duly organized, validly existing, qualified to do business in Delaware and in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

(b) the Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary action, and does not and will not violate its articles of incorporation, as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

(d) during the term of this Agreement, the Developer and any and all assignees thereof will continue to hold a leasehold interest in the Property free and clear of all liens except for the Permitted Liens and such other matters as DCD may consent to in writing;

(e) the Developer is now and for the Term of the Agreement shall remain solvent and able to pay its debts as they mature;

(f) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Developer which would impair its ability to perform under this Agreement;

(g) the Developer has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary, as and when required, to conduct its business and to construct, complete and operate the Project;

(h) the Developer is not in default with respect to any agreement or instrument related to the borrowing of money to which the Developer is bound or for which the Property serves as collateral;

(i) any financial statements provided to the City are and will be, at the time of submittal, true, complete and correct in all material respects;

(j) prior to the issuance of the Certificate pursuant to Section 7.01, the Developer shall not directly or indirectly do any of the following without the prior written consent of DCD, which consent shall be in DCD's sole discretion: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any interest in the Lease; (3) enter into any transaction outside the ordinary course of Developer's business; or (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligation of any other person or entity if such action would materially adversely affect the ability of the Developer to fulfill its obligations under this Agreement;

(k) after the issuance of the Certificate pursuant to Section 7.01, the Developer shall provide written notice upon the occurrence of any event described in clause (j) above;

(l) the Developer has not entered into any transaction that would cause a material and detrimental change to its financial condition;

(m) the Developer has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into the Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City;

(n) the Property shall not be used for any Prohibited Use;

(o) neither the Developer nor any affiliate of the Developer is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (o) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through shared ownership, a trust, a contract or otherwise; and

(p) Developer agrees that Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Developer's contractors (i.e., any person or entity in direct contractual privity with Developer regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Developer and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this Agreement by Developer, (ii) while this Agreement or any Other Contract (as

defined below) is executory, (iii) during the term of this Agreement or any Other Contract between Developer and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Developer represents and warrants that from the later of (i) February 10, 2005, or (ii) the date the City approached the Developer or the date the Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Developer agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Developer intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Developer is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and

- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:
  - 1. The partners have been residing together for at least 12 months.
  - 2. The partners have common or joint ownership of a residence.
  - 3. The partners have at least two of the following arrangements:
    - a. joint ownership of a motor vehicle;
    - b. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.
  - 4. Each partner identifies the other partner as a primary beneficiary in a will.

“Political fundraising committee” means a “political fundraising committee” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

8.02 Covenant to Redevelop. The Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the Redevelopment Plan, the TIF Ordinances, the Phase 1 portion of the Project Budget and all amendments thereto, and all applicable federal, state and local laws, ordinances, rules, regulations, executive orders and codes. The covenants set forth in this Section shall run with the land but shall be deemed satisfied and shall terminate when the City issues its Certificate for recording in the Recorder’s Office of Cook County.

8.03 Use of City Funds. City Funds shall be used by the Developer solely to reimburse the Developer for its payment for the TIF-Funded Improvements.

8.04 Bonds. The Developer shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Redevelopment Area; provided, however, that any such amendments shall not have a material adverse effect on the Developer or the Project. The Developer shall, at the Developer’s expense, cooperate and provide reasonable assistance in connection with the marketing of any such bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto. If any such bonds are issued, the City may use the proceeds thereof to reimburse the Developer for any amounts remaining due under this Agreement.

8.05 Employment; Occupancy; Permitted Uses. Developer shall maintain an average minimum number of FTEs (the “Average Minimum FTEs”) of not less than (a) 25 FTEs on the Initial Completion Date and (b) 25 FTEs for the period ending March 1, 2008, (c) 32 FTEs for the periods ending March 1, 2009 and March 1, 2010, (d) 48 FTEs for the periods ending March 1, 2011 and March 1, 2012, (e) 64 FTEs for the periods ending March 1, 2013 and March 1, 2014 and (e) 80 FTEs for every successive 12-month period thereafter until all City Funds have been paid hereunder (each a “Compliance Period”). Developer shall deliver a progress report detailing compliance with the Average Minimum FTEs, including the number of employees and total work hours (the “Employment Report”) on March 31 for each Compliance Period. The Average Minimum FTEs reported in any Employment Report refers to calculations of average employment at the Property over the twelve month period from March 1 (or for the

date of the initial Certificate for the first Compliance Period or from the Initial Completion Date to March 1, 2008 for the second Compliance Period – clause (b) above) to last day of February prior to delivery of the Occupancy Report. Developer shall cause the Property to be used as in accordance with Exhibit B and the Redevelopment Plan. Further, Developer covenants and agrees that it, or an approved successor, will operate the Facility at least until March 1, 2017. The covenants contained in this Section 8.05 shall run with the land and be binding upon any transferee for the Term of the Agreement. Failure to meet the foregoing FTE levels shall not be an Event of Default hereunder, but shall be a precondition to the full payment to Developer of all City Funds for the applicable period. Failure to meet the foregoing FTE level for one period shall not preclude Developer from meeting the applicable FTE level in a subsequent year and being entitled to the corresponding payment of City Funds. If Developer fails to meet the foregoing FTE level, but otherwise qualifies for receipt of the applicable payment of City Funds, Developer shall be entitled to a portion of such City Funds equal to the product of multiplying the full payment of City Funds at such time as scheduled in Section 4.02(c) above times a fraction the numerator of which is the actual Average Minimum FTEs for Developer for such period and the denominator of which is the number of FTEs for such period as scheduled for such period as aforesaid. If any Installment of City Funds or portion thereof is withheld or reduced pursuant to this Section 8.5, the amount so withheld or reduced shall be deemed added to the next Installment as set forth in Section 4.02(c), subject to the limitation on payments set forth in Section 4.02(b)(iii).

8.06 Arms-Length Transactions. Except as provided for in Section 12.01, Unless DCD has given its prior written consent with respect thereto, no Affiliate of the Developer may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement, excluding repayment of inter-corporate loans of money. The Developer shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer and reimbursement to the Developer for such costs using City Funds, or otherwise), upon DCD's request, prior to any such disbursement.

8.07 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or the Developer with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer's business, the Property or any other property in the Redevelopment Area.

8.08 Disclosure of Interest. The Developer's counsel has no direct or indirect financial ownership interest in the Developer, the Property or any other aspect of the Project.

8.09 Financial Statements. The Developer shall provide DCD with audited financial statements for each fiscal year within 90 days of the close of such fiscal year and, at DCD's request, shall provide such interim unaudited financial statements as DCD may require.

8.10 Insurance. The Developer shall provide and maintain during the Term of the Agreement, and cause other applicable parties to provide and maintain, the insurance coverages specified in Exhibit L.

8.11 Non-Governmental Charges. Except for the Permitted Liens, and subject to the next sentence, the Developer agrees to pay or cause to be paid when due any Non-Governmental Charges. The Developer has the right, before any delinquency occurs, to contest any Non-Governmental Charge by appropriate legal proceedings properly and diligently prosecuted, so long as such proceedings serve to prevent any sale or forfeiture of the Property.

8.12 Compliance with Laws. The Property and the Project are and shall be owned and operated in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes.

8.13 Recording and Filing. The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property in the Recorder's Office of Cook County. The Developer must request and receive consent, in writing, from the fee owner(s) of the Property to have this Agreement recorded against the Property before the Closing Date. If the Permitted Liens include any existing mortgages, such mortgagee must execute a subordination agreement in the form of Exhibit J.

8.14 Real Estate Provisions; Governmental Charges. Subject to the next paragraph, the Developer will pay when due all Governmental Charges (as defined below) which are assessed or imposed upon the Developer, the Property or the Project. "Governmental Charge" shall mean all federal, State, county, City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to the Developer, the Property or the Project, including, but not limited to, general real estate taxes.

The Developer has the right, before any delinquency occurs, to contest any Governmental Charge by appropriate legal proceedings properly and diligently prosecuted, so long as such proceedings serve to prevent any sale or forfeiture of the Property.

8.15 Public Benefits/Workforce Development Program. During the two-year period following the Initial Completion Date, the Developer will execute programs with the City Colleges of Chicago affiliated French Pastry School ("CCC/FPS") to include co-operative training activities, in-kind contributions and financial support of CCC/FPS' culinary activities. Thereafter, the Developer shall continue its \$20,000 annual cash grant to one or more CCC/FPS culinary programs (for a total of \$100,000 since the Initial Completion Date) in addition to any in-kind contributions and training activities. The Developer shall work with the Department of Community Development's business development services division to identify and implement additional civic activities in the community consistent with Developer's areas of expertise, which may include partnership with one or more community based organizations and youth oriented occupational education programs. In addition, during the term of the Agreement the Developer shall notify the business development services division of the Department of Community Development when new job openings with Developer at the Project materialize in an effort to give Chicago residents primary consideration for employment.

8.16 Survival of Covenants. All warranties, representations, covenants and agreements of the Developer contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in Section 7 hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

8.17 Annual Compliance Report. Beginning with the issuance of the Certificate and continuing throughout the Term of the Agreement, the Developer shall submit to DCD the Annual Compliance Report within 30 days after the end of the calendar year to which the Annual Compliance Report relates.

## **SECTION 9. ENVIRONMENTAL MATTERS**

The Developer hereby represents and warrants to the City that it has reviewed environmental studies conducted by the fee owner of the Property sufficient to conclude that the Project may be constructed, completed and operated in accordance with the requirements of all Environmental Laws and this Agreement. The Developer agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City and relating to the Project or the Property.

## **SECTION 10. INDEMNIFICATION**

The Developer agrees to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee," and collectively the "Indemnitees") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (and including without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitees shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees in any manner directly or indirectly relating or arising out of this Agreement or the Project; provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this Section 10 shall survive the termination of this Agreement.

## **SECTION 11. MAINTAINING RECORDS/RIGHT TO INSPECT**

The Developer shall (a) comply with the requirements of Paragraph H of Exhibit D during the Term of the Agreement and cause the other applicable parties to comply with such requirements, and (b) upon three (3) business days' notice, permit any authorized representative of the City to have access to all portions of the Project and the Property during normal business hours to confirm the Developer's compliance with its obligations under this Agreement.

## **SECTION 12. DEFAULT AND REMEDIES**

12.01 Events of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 12.03, shall constitute an "Event of Default" by the Developer hereunder:

(a) the failure of the Developer to comply with any covenant or obligation, or the breach by the Developer of any representation or warranty, under this Agreement or any related agreement;

(b) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any person or entity if such failure may have a material adverse effect on the Developer's business, property, assets, operations or condition, financial or otherwise;

(c) the making or furnishing by the Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any bankruptcy, insolvency, liquidation or reorganization proceedings under any applicable state or federal law, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for the Developer, for any substantial part of the Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;

(g) the entry of any judgment or order against the Developer or the Property which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

(h) the dissolution of the Developer or the death of any natural person who owns a 50% or more ownership interest in the Developer, unless, in the case of a death, the Developer establishes to the DCD's satisfaction that such death shall not impair the Developer's ability to perform its executory obligations under this Agreement;

(i) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns 5% or more ownership interest in the Developer, which is not dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns such a material interest in the Developer, for any crime (other than a misdemeanor);

(j) prior to the issuance of the Certificate, the sale or transfer of all or a portion of the ownership interests of the Developer without the prior written consent of the City; or



(k) after the issuance of the Certificate, the sale or transfer of all or a portion of the ownership interests of the Developer (except for transfers from the Developer to a company not less than 80% owned and controlled, directly or indirectly, by Barry Callebaut AG, a Swiss corporation) without the prior written notice to the City; or

(l) the occurrence of any Reimbursement Event.

12.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, and may suspend disbursement of City Funds. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy. However, the City shall not be entitled to recover any City Funds previously paid to the Developer unless the Event of Default involves a Reimbursement Event.

12.03 Curative Period. In the event the Developer fails to perform any covenant or obligation or breaches any representation or warranty which the Developer is required to perform under this Agreement, an Event of Default shall not be deemed to have occurred unless the Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured. No such cure period, however, shall apply to Events of Default described in Section 12(e), (f), (g), (h) or (i), which defaults shall have the cure periods described therein, if any. In addition, no cure period shall apply to any Reimbursement Event or to any default arising from a breach of the jobs and operations covenants in Section 8.05 and such breach shall be an immediate Event of Default.

#### 12.04 Employment and Occupancy Default.

(a) While subject to the employment requirements of Section 8.05, if the Developer shall fail to (1) submit an Employment Report for any Compliance Period, or (2) maintain the Average Minimum FTEs for a Compliance Period (each an "Employment Default"), then Developer shall receive no Installment for such Compliance Period, except for such partial payment as is provided for in Section 8.05.

(b) If the Developer submits an Employment Report which describes an Employment Default, Developer shall (1) provide the DCD with evidence, satisfactory to DCD, that it will achieve the Average Minimum FTEs for the following Compliance Period, and (2) continue to deliver Employment Reports and maintain the Average Minimum FTEs until the completion of the Term of the Agreement. Two or more successive Employment Defaults would allow the City to terminate this Agreement.

If the Developer ceases to continue operation of the Facility prior to March 1, 2017, then the sole remedy shall be that Developer shall repay a portion of City Funds paid to it equal to the percentage of the unelapsed ten (10) years. For example, if the Facility closes on the 8th anniversary, 20% of disbursements of City Funds received would be refunded. If, instead, there is a reduction in force on that anniversary below a previously achieved disbursement threshold, but not closure, then the 20% would be further apportioned on relative headcount.

### SECTION 13. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on Exhibit F hereto. No mortgagee shall have the right to succeed to the Developer's rights under this Agreement unless it complies with the first sentence of Section 15.15 hereof.

### SECTION 14. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier, or (c) registered or certified mail, return receipt requested.

If to the City:	City of Chicago Department of Community Development 121 North LaSalle Street, Room 1000 Chicago, IL 60602 Attention: Commissioner
With Copies To:	City of Chicago Department of Law Finance and Economic Development Division 121 North LaSalle Street, Room 600 Chicago, IL 60602
If to the Developer:	After the Completion Date  Barry Callebaut USA, LLC 600 West Chicago Avenue, 8 <sup>th</sup> Floor Chicago, Illinois 60610 Attention: Jerry Hagedorn  Before the Completion Date:  Barry Callebaut USA, LLC 30 S. Wacker Drive Suite 2200 Chicago, Illinois 60606 Attention: Jerry Hagedorn
With Copies To:	Jeffrey Jahns Seyfarth Shaw LLP 131 S. Dearborn Street, Suite 2400 Chicago, Illinois 60603

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to clause (a) hereof shall be deemed received upon such personal service. Any notice, demand or request sent pursuant to clause (b) shall be deemed received on the day immediately following deposit with the overnight

courier and any notices, demands or requests sent pursuant to subsection (c) shall be deemed received two (2) business days following deposit in the mail.

## SECTION 15. MISCELLANEOUS

15.01 Amendment. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement Exhibit A hereto without the consent of any party hereto, and DCD may grant consents as explicitly provided for under certain sections of this Agreement. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this Section 15.01 shall be defined as any deviation from the terms of the Agreement which operates to materially reduce the scope of the Project, to reduce the job-retention obligations in Section 8.05 by more than five percent (5%), to materially change the Project or business operations of the Developer at the Property, or increases the City Funds payable to the Developer.

15.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

15.03 Limitation of Liability. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer from the City or any successor in interest or on any obligation under the terms of this Agreement.

15.04 Further Assurances. The Developer agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

15.05 Waiver. Waiver by the City or the Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

15.06 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

15.07 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

15.08 Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

15.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

15.10 Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

15.11 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, and any bond ordinances relating to the Redevelopment Area, if any, such ordinance(s) shall prevail and control.

15.12 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

15.13 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.

15.14 Approval. Wherever this Agreement provides for the approval or consent of the City, DCD or the Commissioner, or any matter is to be to the City's, DCD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, DCD or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or DCD in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

15.15 Assignment.

(a) Prior to the issuance of the Certificate, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City, which consent shall be in the City's sole discretion and which, if granted, may be conditioned upon, among other things, the assignee's assumption of all of the Developer's obligations under this Agreement.

(b) After the issuance of the Certificate, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without providing written notice thereof to the City, whereupon any payments made by the City shall be in its sole discretion and may be conditioned upon, among other things, the assignee's assumption of all of the Developer's obligations under this Agreement.

The foregoing limitations set forth in (a) and (b) above shall not prevent the Developer from collaterally assigning to a lender that is also providing financing for the Project the Developer's right to receive the payment of City Funds as security for such lender financing.

The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

15.16 Binding Effect. This Agreement shall be binding upon the Developer, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

15.17 Force Majeure. Neither the City nor the Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

15.18 Exhibits. All of the exhibits attached hereto are incorporated herein by reference.

15.19 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer is required to provide notice under the WARN Act relative to the Facility, the Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where the Developer has locations in the State. Failure by the Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

15.20 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party may hereto 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.

15.21 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Developer also will pay any court costs, in addition to all other sums provided by law.

15.22 Business Relationships. The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer has read such

provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

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IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed on or as of the day and year first above written.

**BARRY CALLEBAUT USA, LLC**

By: James J. Hayden  
Its: CFO

**CITY OF CHICAGO**, acting by and through its  
Department of Community Development

By: \_\_\_\_\_  
Christine Raguso  
Acting Commissioner

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed on or as of the day and year first above written.

**BARRY CALLEBAUT USA, LLC**

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

Its: \_\_\_\_\_

**CITY OF CHICAGO**, acting by and through its  
Department of Community Development

By: *Christine Ragusa*  
Christine Ragusa  
Acting Commissioner



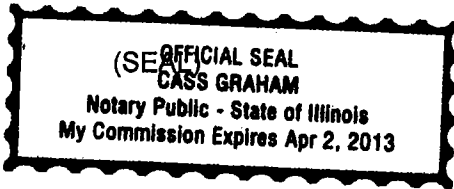
STATE OF ILLINOIS        )  
  ) ss  
COUNTY OF COOK        )

I, Cass Graham, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that James G. Hagedorn, personally known to me to be the CEO of Barry Callebaut USA, LLC, a Delaware limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument, pursuant to the authority given to him/her by the Board of the Developer, as his/her free and voluntary act and as the free and voluntary act of the Developer, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 17<sup>th</sup> day of November, 2010.

Cass Graham  
Notary Public

My Commission Expires April 2, 2013



STATE OF ILLINOIS

)  
) ss

COUNTY OF COOK

I, PATRICIA Sulewski, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Christine Raguso, personally known to me to be the Acting Commissioner of the Department of Community Development of the City of Chicago (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 she signed, sealed, and delivered said instrument pursuant to the authority given to her by the City, as her free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 10th day of November, 2010.

Patricia Sulewski  
Notary Public

My Commission Expires 5/7/14



**EXHIBIT A**

**Legal Description of the Redevelopment Area**

ALL THAT PART OF SECTION 4 AND 9 IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF N. LARRABEE STREET WITH THE NORTH LINE OF W. CHICAGO AVENUE;

THENCE EAST ALONG SAID NORTH LINE OF W. CHICAGO AVENUE TO THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 4 IN BLOCK 1 IN, HIGGINS, LAW & COMPANY'S ADDITION IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID WEST LINE BEING ALSO THE EAST LINE OF N. SEDGWICK STREET;

THENCE SOUTH ALONG SAID NORTHERLY EXTENSION AND ALONG THE EAST LINE OF N. SEDGWICK STREET TO THE SOUTH LINE OF W. SUPERIOR STREET;

THENCE WEST ALONG SAID SOUTH LINE OF W. SUPERIOR STREET TO THE EAST LINE OF N. HUDSON AVENUE;

THENCE SOUTH ALONG SAID EAST LINE OF N. HUDSON AVENUE TO THE SOUTH LINE OF LOT 14 IN BLOCK 7 IN SAID HIGGINS, LAW & COMPANY'S ADDITION, SAID SOUTH LINE OF LOT 14 BEING ALSO THE NORTH LINE OF THE ALLEY SOUTH OF W. SUPERIOR STREET;

THENCE EAST ALONG SAID NORTH LINE OF THE ALLEY SOUTH OF W. SUPERIOR STREET TO THE NORTHERLY EXTENSION OF THE EAST LINE OF LOT 22 IN SAID BLOCK 7 IN HIGGINS, LAW & COMPANY'S ADDITION;

THENCE SOUTH ALONG SAID NORTHERLY EXTENSION AND THE EAST LINE OF LOT 22 IN BLOCK 7 IN HIGGINS, LAW & COMPANY'S ADDITION TO THE NORTH LINE OF W. HURON STREET;

THENCE EAST ALONG SAID NORTH LINE OF W. HURON STREET TO THE EAST LINE OF N. ORLEANS STREET;

THENCE SOUTH ALONG SAID EAST LINE OF N. ORLEANS STREET TO THE SOUTH LINE OF W. ERIE STREET;

THENCE WEST ALONG SAID SOUTH LINE OF W. ERIE STREET TO THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 28 IN BLOCK 10 IN AFORESAID HIGGINS, LAW & COMPANY'S ADDITION, SAID EAST LINE OF LOT 28 BEING ALSO THE WEST LINE OF N. SEDGWICK STREET;

THENCE NORTH ALONG SAID SOUTHERLY EXTENSION AND THE WEST LINE OF N. SEDGWICK STREET TO THE NORTH LINE OF LOT 28 IN BLOCK 10 IN HIGGINS, LAW & COMPANY'S ADDITION, SAID NORTH LINE OF LOT 28 BEING ALSO THE SOUTH LINE OF THE ALLEY NORTH OF W. ERIE STREET;

THENCE WEST ALONG SAID SOUTH LINE OF THE ALLEY NORTH OF W. ERIE STREET TO THE EAST LINE OF LOT 22 IN SAID BLOCK 10 IN HIGGINS, LAW & COMPANY'S ADDITION;

THENCE SOUTH ALONG SAID EAST LINE OF LOT 22 IN BLOCK 10 IN HIGGINS, LAW & COMPANY'S ADDITION TO THE NORTH LINE OF W. ERIE STREET;

THENCE WEST ALONG SAID NORTH LINE OF W. ERIE STREET TO THE EAST LINE OF LOT 18 IN SAID BLOCK 10 IN HIGGINS, LAW & COMPANY'S ADDITION;

THENCE NORTH ALONG SAID EAST LINE OF LOT 18 IN BLOCK 10 IN HIGGINS, LAW & COMPANY'S ADDITION, TO THE NORTH LINE THEREOF, SAID NORTH LINE OF LOT 18 BEING ALSO THE SOUTH LINE OF THE ALLEY NORTH OF W. ERIE STREET;

THENCE WEST ALONG SAID SOUTH LINE OF THE ALLEY NORTH OF W. ERIE STREET AND ALONG THE WESTERLY EXTENSION THEREOF TO THE WEST LINE OF N. HUDSON STREET;

THENCE NORTH ALONG SAID WEST LINE OF N. HUDSON STREET TO THE SOUTH LINE OF W. HURON STREET;

THENCE WEST ALONG SAID SOUTH LINE OF W. HURON STREET TO THE WEST LINE OF N. KINGSBURY STREET;

THENCE NORTH ALONG SAID WEST LINE OF N. KINGSBURY STREET TO THE SOUTH LINE OF W. SUPERIOR STREET;

THENCE WEST ALONG SAID SOUTH LINE OF W. SUPERIOR STREET TO THE EAST LINE OF N. LARRABEE STREET;

THENCE SOUTH ALONG SAID EAST LINE OF N. LARRABEE STREET TO THE NORTH LINE OF W. ERIE STREET;

THENCE EAST ALONG SAID NORTH LINE OF W. ERIE STREET TO THE NORTHERLY EXTENSION OF A LINE PARALLEL WITH THE EAST LINE OF LOT 4 IN BLOCK 1 IN THE ASSESSOR'S DIVISION OF THAT PART, SOUTH OF ERIE STREET, AND EAST OF THE CHICAGO RIVER, OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND 140.50 EAST OF THE EAST LINE N. KINGSBURY STREET, SAID LINE BEING THE EAST LINE OF THE PARCEL OF PROPERTY BEARING PIN 17-09-127-001;

THENCE SOUTH ALONG SAID NORTHERLY EXTENSION AND THE EAST LINE OF THE PARCEL OF PROPERTY BEARING PIN 17-09-127-001 TO THE SOUTH LINE OF SAID LOT 4;

THENCE EAST ALONG SAID SOUTH LINE OF LOT 4 TO THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 29 IN YOUNG'S SUBDIVISION OF PART OF THE "KINGSBURY TRACT" IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF THE CHICAGO RIVER;

THENCE SOUTH ALONG SAID NORTHERLY EXTENSION OF THE WEST LINE OF LOT 29 IN YOUNG'S SUBDIVISION TO THE NORTH LINE OF SAID LOT 29;

THENCE EAST ALONG SAID NORTH LINE OF LOT 29 AND ALONG THE NORTH LINE OF LOT 28 IN SAID YOUNG'S SUBDIVISION TO THE EAST LINE OF SAID LOT 28;

THENCE SOUTH ALONG SAID EAST LINE OF LOT 28 IN YOUNG'S SUBDIVISION OF PART OF THE "KINGSBURY TRACT" AND ALONG THE SOUTHERLY EXTENSION THEREOF TO THE SOUTH LINE OF W. ONTARIO STREET;

THENCE WEST ALONG SAID SOUTH LINE OF W. ONTARIO STREET TO THE NORTHEASTERLY LINE OF N. KINGSBURY STREET;

THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF N. KINGSBURY STREET TO THE NORTH LINE OF W. OHIO STREET;

THENCE WESTERLY ALONG A STRAIGHT LINE TO THE NORTHEAST CORNER OF THAT PART OF BLOCK 3 IN THE ASSESSOR'S DIVISION OF THAT PART, SOUTH OF ERIE STREET, AND EAST OF THE CHICAGO RIVER, OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BEARING PIN 17-09-126-012;

THENCE WEST ALONG THE NORTH LINE OF SAID PART OF BLOCK 3 IN THE ASSESSOR'S DIVISION BEARING PIN 17-09-126-012 TO THE EASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER;

THENCE NORTHERLY ALONG SAID EASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER TO THE SOUTH LINE OF W. CHICAGO AVENUE;

THENCE WEST ALONG SAID SOUTH LINE OF W. CHICAGO AVENUE TO THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 5 IN BLOCK 99 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN;

THENCE NORTH ALONG SAID SOUTHERLY EXTENSION AND THE EAST LINE OF LOT 5 IN BLOCK 99 IN ELSTON'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN AND ALONG THE NORTHERLY EXTENSION THEREOF TO THE SOUTHERLY LINE OF LOT 10 IN BLOCK 98 IN SAID ELSTON'S ADDITION TO CHICAGO, SAID SOUTHERLY LINE OF LOT 10 BEING ALSO THE NORTHERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER;

THENCE EASTERLY ALONG SAID NORTHERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER TO THE WESTERLY DOCK LINE OF THE NORTH BRANCH CANAL;

THENCE NORTHERLY ALONG SAID WESTERLY DOCK LINE OF THE NORTH BRANCH CANAL TO THE SOUTHWESTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF LOT 10 IN BLOCK 96 IN AFORESAID ELSTON'S ADDITION TO CHICAGO;

THENCE NORTHEASTERLY ALONG SAID SOUTHWESTERLY EXTENSION AND THE SOUTHEASTERLY LINE OF LOT 10 IN BLOCK 96 IN SAID ELSTON'S ADDITION TO CHICAGO TO THE SOUTHWESTERLY LINE OF N. KINGSBURY STREET;

THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF N. KINGSBURY STREET TO THE WEST LINE OF N. LARRABEE STREET;

THENCE SOUTH ALONG SAID WEST LINE OF N. LARRABEE STREET TO THE POINT OF BEGINNING AT THE NORTH LINE OF CHICAGO AVENUE;

ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

## EXHIBIT B

### Description of the Project

The Project shall be completed in accordance with the plans and specifications and the signage requirements described below, copies of which have been provided to DCD and which are a part of the Construction Contract.

The Project consists of the construction or build-out of office space on the 8<sup>th</sup> floor of a building located at 600 West Chicago Avenue, Chicago, Illinois 60610 and legally described on Exhibit C hereto (the "Property"). The Developer shall commence and complete construction of an approximately 11,207 square foot office (the "Facility") thereon within the time frames set forth in the Agreement. The Facility will function as a North American headquarters and sales center (the first Phase) and, upon the completion of all Phases would include a chocolate research and development facility as well as a product education center for employees and customers.

The Developer has negotiated a lease with the fee owner of the Property for approximately 11,207 square feet of space plus options for expansion space (as amended from time to time, the "Lease"). The total cost of the Developer's improvements, all Phases, is approximately \$3,520,000.

EXHIBIT C

Legal Description of Property

Developer's leasehold interest as tenant under the Lease for Suite 860 (as may be expanded pursuant to the Lease) in the building located on the following described real estate in the City of Chicago:

NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE NORTHEASTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO RIVER, LYING ABOVE AN ELEVATION OF 52.00 FEET AND LYING BELOW AN ELEVATION OF 77.00 FEET, CITY OF CHICAGO DATUM, AND BOUND AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 504.17 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE CENTER LINE OF THE VACATED NORTH BRANCH STREET; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, 312.67 FEET TO THE EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY FACE OF 5 CONCRETE COLUMNS; THENCE SOUTHWESTERLY AT AN ANGLE OF 89 DEGREES, 49 MINUTES, 14 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID NORTHWESTERLY FACE, 108.08 FEET TO THE NORTHERLY EXTENSION OF THE WEST FACE OF A BRICK WALL; THENCE SOUTHEASTERLY, ALONG THE WESTERLY FACE OF SAID BRICK WALL, AT AN ANGLE OF 90 DEGREES, 18 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A DISTANCE OF 1.67 FEET TO THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, ALONG THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 145.64 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 97 DEGREES, 43 MINUTES, 19 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 105.62 FEET; THENCE TO THE CENTER LINE OF SAID VACATED NORTH BRANCH STREET; THENCE SOUTHEASTERLY AT AN ANGLE OF 120 DEGREES, 04 MINUTES, 05 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 332.74 FEET TO THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, AND THE POINT OF BEGINNING. AND

PARCEL B: (Northern Catalog Building)

THAT PART OF LOT 23 TOGETHER WITH LOTS 24, 25, 26 IN BLOCK 26, IN ELSTON'S ADDITION CHICAGO, LYING EAST OF DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, A DIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 29 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE NORTHEASTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO RIVER, LYING ABOVE AN ELEVATION OF 77.00 FEET AND LYING BELOW AN ELEVATION OF 52.00 FEET, CITY OF CHICAGO DATUM, AND BOUND AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 504.17 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE CENTER LINE OF THE VACATED NORTH BRANCH STREET; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, 312.67 FEET TO THE EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY FACE OF 5 CONCRETE COLUMNS; THENCE SOUTHWESTERLY AT AN ANGLE OF 89 DEGREES, 49 MINUTES, 14 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID NORTHWESTERLY FACE, 108.08 FEET TO THE NORTHERLY EXTENSION OF THE WEST FACE OF A BRICK WALL; THENCE SOUTHEASTERLY, ALONG THE WESTERLY FACE OF SAID BRICK WALL, AT AN ANGLE OF 90 DEGREES, 18 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A DISTANCE OF 1.67 FEET TO THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, ALONG THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 145.64 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 97 DEGREES, 43 MINUTES, 19 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK

FROM PART RECORD LIT (MFD) NOV 9 2006 11:27/ST.11:26/NO.6328861118 P

FROM PART RECORD LIT



OF LAND AND THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY 58.50 FEET OF SAID TRACT OF LAND AT AN ELEVATION OF 12.00 FEET; THENCE SOUTHWESTERLY, ALONG THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY 58.50 FEET OF SAID TRACT OF LAND, A SLOPE DISTANCE OF 200.88 FEET TO A POINT HAVING AN ELEVATION OF 25.33 FEET; THENCE SOUTHEASTERLY AT AN ANGLE OF 100 DEGREES, 00 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A SLOPE DISTANCE OF 38.88 FEET TO A POINT HAVING AN ELEVATION OF 22.92 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 100 DEGREES, 07 MINUTES, 04 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 8.07 FEET TO A POINT HAVING AN ELEVATION OF 22.92 FEET; THENCE SOUTHEASTERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 24.82 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT OF LAND AT AN ELEVATION OF 22.92 FEET; THENCE NORTHWESTERLY, ALONG SAID SOUTHEASTERLY LINE, A SLOPE DISTANCE OF 117.55 FEET TO A BEAD POINT IN SAID SOUTHEASTERLY LINE AT AN ELEVATION OF 16.68 FEET; THENCE NORTHWESTERLY, ALONG THE WESTERLY FACE AND ITS EXTENSION OF A BRICK WALL, 1.53 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID TRACT OF LAND, AT AN ELEVATION OF 16.68 FEET; THENCE NORTHEASTERLY, ALONG SAID SOUTHERLY LINE, A SLOPE DISTANCE OF 97.43 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID TRACT OF LAND AT AN ELEVATION OF 11.50 FEET; THENCE NORTHWESTERLY, A SLOPE DISTANCE OF 58.49 FEET TO THE POINT OF BEGINNING, ALSO EXCEPTING THAT PART OF SAID TRACT OF LAND BOUNDED AND DESCRIBED AS FOLLOWS AND LYING BELOW THE ELEVATIONS, CITY OF CHICAGO DATUM, HEREIN DESCRIBED, COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY LINE OF SAID TRACT OF LAND AND THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY 58.50 FEET OF SAID TRACT OF LAND; THENCE SOUTHWESTERLY, ALONG THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY 58.50 FEET, A DISTANCE OF 140.51 FEET TO A POINT HAVING AN ELEVATION OF 31.40 FEET AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTHWESTERLY, ALONG THE LAST DESCRIBED LINE, A SLOPE DISTANCE OF 60.40 FEET TO A POINT HAVING AN ELEVATION OF 35.33 FEET; THENCE SOUTHEASTERLY AT AN ANGLE OF 100 DEGREES, 00 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A SLOPE DISTANCE OF 19.95 FEET TO A POINT HAVING AN ELEVATION OF 34.01 FEET; THENCE NORTHEASTERLY, AT AN ANGLE OF 80 DEGREES, 00 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A SLOPE DISTANCE OF 60.33 FEET TO A POINT HAVING AN ELEVATION OF 21.21 FEET; THENCE NORTHEASTERLY A SLOPE DISTANCE OF 19.80 FEET TO THE POINT OF BEGINNING; ALSO EXCEPTING FROM SAID TRACT OF LAND THAT PART LYING ABOVE AN ELEVATION OF 102.17 FEET OF THE NORTHEASTERLY 49.83 FEET, THAT PART LYING ABOVE AN ELEVATION OF 105.33 FEET OF THE SOUTHWESTERLY 56.00 FEET OF THE NORTHEASTERLY 115.83 FEET AND THAT PART LYING ABOVE AN ELEVATION OF 103.17 FEET EXCEPTING THE NORTHEASTERLY 115.83 FEET OF SAID TRACT OF LAND.

PARCEL 2: (Garage Adjoining Land Parcel)

TRACT 3: THE EASTERLY 7.88 FEET OF THE FOLLOWING TRACT OF LAND: THAT PART OF LOTS 21, 22 AND 23, IN BLOCK 96 IN ELSTON'S ADDITION TO CHICAGO, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, LYING BETWEEN THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO RIVER, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 816.68 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, SAID POINT BEING ALSO THE EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY FACE OF FIVE (5) CONCRETE COLUMNS; THENCE SOUTHWESTERLY, AT AN ANGLE OF 89 DEGREES, 42 MINUTES, 14 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID NORTHWESTERLY FACE, 104.87 FEET TO THE NORTHERLY EXTENSION OF THE WEST FACE OF A BRICK WALL; THENCE

SOUTHEASTERLY, ALONG THE WESTERLY FACE OF SAID BRICK WALL, AT AN ANGLE OF 90 DEGREES, 18 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A DISTANCE OF 1.53 FEET TO THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, ALONG SAID NORTHWESTERLY FACE, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 117.38 FEET; THENCE NORTHWESTERLY AT AN ANGLE OF 90 DEGREES, 14 MINUTES, 41 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE 24.82 FEET; THENCE NORTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 8.07 FEET; THENCE NORTHWESTERLY AT AN ANGLE OF 100 DEGREES, 07 MINUTES, 04 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 98.18 FEET; THENCE NORTHEASTERLY AT AN ANGLE OF 100 DEGREES, 00 MINUTES, 00 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 197.61 FEET, TO THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET; THENCE SOUTHEASTERLY, ALONG SAID SOUTHWESTERLY LINE, 116.98 FEET TO THE POINT OF BEGINNING.

PARCEL 3: (Northern Catalog Building)

THAT PART OF LOT 23 TOGETHER WITH LOTS 24, 25, 26 IN BLOCK 96, IN ELSTON'S ADDITION TO CHICAGO, LYING EAST OF DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE NORTHEASTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO RIVER, LYING BELOW AN ELEVATION OF 52.00 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 304.17 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE CENTER LINE OF THE VACATED NORTH BRANCH STREET; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, 312.57 FEET TO THE EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY FACE OF 8 CONCRETE COLUMNS; THENCE SOUTHWESTERLY AT AN ANGLE OF 88 DEGREES, 48 MINUTES, 14 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID NORTHWESTERLY FACE, 108.08 FEET TO THE NORTHERLY EXTENSION OF THE WEST FACE OF A BRICK WALL; THENCE SOUTHEASTERLY, ALONG THE WESTERLY FACE OF SAID BRICK WALL, AT AN ANGLE OF 90 DEGREES, 18 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A DISTANCE OF 1.67 FEET TO THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, ALONG THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 148.64 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 87 DEGREES, 42 MINUTES, 19 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 105.62 FEET; THENCE TO THE CENTER LINE OF SAID VACATED NORTH BRANCH STREET; THENCE SOUTHEASTERLY AT AN ANGLE OF 120 DEGREES, 04 MINUTES, 05 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 335.74 FEET TO THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, AND THE POINT OF BEGINNING.

AND

PARCEL 4: (Northern Catalog Building)

THAT PART OF LOT 23 TOGETHER WITH LOTS 24, 25, 26 IN BLOCK 96, IN ELSTON'S ADDITION TO CHICAGO, LYING EAST OF DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 39

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FROM WART RIVDAN LTD

NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,  
 TOGETHER WITH THE NORTHEASTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN  
 THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO  
 RIVER, LYING ABOVE AN ELEVATION OF 52.00 FEET AND LYING BELOW AN ELEVATION OF 77.00  
 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE  
 SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 504.17 FEET NORTHWESTERLY OF  
 THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST  
 LINE OF NORTH LARRABEE STREET, BEING ALSO THE CENTER LINE OF THE VACATED NORTH BRANCH  
 STREET; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY  
 STREET, 312.67 FEET TO THE EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY FACE OF 5  
 CONCRETE COLUMNS; THENCE SOUTHWESTERLY AT AN ANGLE OF 83 DEGREES, 49 MINUTES, 14  
 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID NORTHWESTERLY FACE,  
 105.08 FEET TO THE NORTHERLY EXTENSION OF THE WEST FACE OF A BRICK WALL; THENCE  
 SOUTHEASTERLY, ALONG THE WESTERLY FACE OF SAID BRICK WALL, AT AN ANGLE OF 90 DEGREES,  
 18 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A DISTANCE OF 1.67  
 FEET TO THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, ALONG  
 THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL, PERPENDICULAR TO THE LAST DESCRIBED  
 LINE, A DISTANCE OF 145.64 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH  
 OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 97 DEGREES, 42 MINUTES, 19  
 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK  
 LINE, 105.62 FEET; THENCE TO THE CENTER LINE OF SAID VACATED NORTH BRANCH STREET;  
 THENCE SOUTHEASTERLY AT AN ANGLE OF 120 DEGREES, 04 MINUTES, 03 SECONDS TO THE RIGHT  
 WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 335.74 FEET TO THE  
 SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, AND THE POINT OF BEGINNING. AND

PARCEL B: (Northern Catalog Building)

THAT PART OF LOT 23 TOGETHER WITH LOTS 24, 25, 26 IN BLOCK 26, IN ELSTON'S ADDITION  
 CHICAGO, LYING EAST OF DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, A  
 DIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 29  
 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,  
 TOGETHER WITH THE NORTHEASTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN  
 THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO  
 RIVER, LYING ABOVE AN ELEVATION OF 77.00 FEET AND LYING BELOW AN ELEVATION OF 89.50  
 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE  
 SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 504.17 FEET NORTHWESTERLY OF  
 THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST  
 LINE OF NORTH LARRABEE STREET, BEING ALSO THE CENTER LINE OF THE VACATED NORTH BRANCH  
 STREET; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY  
 STREET, 312.67 FEET TO THE EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY FACE OF 5  
 CONCRETE COLUMNS; THENCE SOUTHWESTERLY AT AN ANGLE OF 89 DEGREES, 43 MINUTES, 14  
 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID NORTHWESTERLY FACE,  
 105.08 FEET TO THE NORTHERLY EXTENSION OF THE WEST FACE OF A BRICK WALL; THENCE  
 SOUTHEASTERLY, ALONG THE WESTERLY FACE OF SAID BRICK WALL, AT AN ANGLE OF 90 DEGREES,  
 18 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A DISTANCE OF 1.67  
 FEET TO THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, ALONG  
 THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL, PERPENDICULAR TO THE LAST DESCRIBED  
 LINE, A DISTANCE OF 145.64 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH  
 OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 97 DEGREES, 42 MINUTES, 19  
 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK

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FROM WHART KIRWAN LTD

LINE, 105.63 FEET; THENCE TO THE CENTER LINE OF SAID VACATED NORTH BRANCH STREET, THENCE SOUTHEASTERLY AT AN ANGLE OF 120 DEGREES, 04 MINUTES, 08 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 335.74 FEET TO THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, AND THE POINT OF BEGINNING. AND

**PARCEL 6: (Northern Catalog Building)**

THAT PART OF LOTS 1, 2, 3, AND 4 IN ELSTON'S ADDITION TO CHICAGO, LYING EAST OF DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE SOUTHWESTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO RIVER, LYING BELOW AN ELEVATION OF 52.00 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 415.68 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE EXTENSION NORTHEASTERLY OF THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, 88.49 FEET TO THE CENTER LINE OF SAID VACATED NORTH BRANCH STREET; THENCE NORTHWESTERLY AT AN ANGLE OF 127 DEGREES, 53 MINUTES, 38 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 335.74 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 59 DEGREES, 55 MINUTES, 55 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 93.98 FEET; THENCE CONTINUING ALONG SAID NORTHEASTERLY DOCK LINE, AT AN ANGLE OF 173 DEGREES, 36 MINUTES, 30 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 252.69 FEET; THENCE CONTINUING ALONG SAID NORTHEASTERLY DOCK LINE, AT AN ANGLE OF 176 DEGREES, 02 MINUTES, 23 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 2.15 FEET; THENCE SOUTHEASTERLY AT AN ANGLE OF 122 DEGREES, 21 MINUTES, 41 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 9.55 FEET TO THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE NORTHEASTERLY AT AN ANGLE OF 149 DEGREES, 54 MINUTES, 48 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 267.99 FEET TO THE SOUTHWESTERLY LINE OF NORTH KINGSBURY AND POINT OF BEGINNING. AND

**PARCEL 7: (Northern Catalog Building)**

THAT PART OF LOTS 1, 2, 3, AND 4 IN ELSTON'S ADDITION TO CHICAGO, LYING EAST OF DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE SOUTHWESTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO RIVER, LYING ABOVE AN ELEVATION OF 52.00 FEET AND LYING BELOW AN ELEVATION OF 77.00 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 415.68 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE EXTENSION NORTHEASTERLY OF THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, 88.49 FEET TO THE CENTER LINE OF SAID VACATED NORTH BRANCH STREET; THENCE NORTHWESTERLY AT AN ANGLE OF 127 DEGREES, 53 MINUTES, 38 SECONDS TO THE RIGHT WITH

THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 338.74 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 59 DEGREES, 55 MINUTES, 55 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 35.99 FEET; THENCE CONTINUING ALONG SAID NORTHEASTERLY DOCK LINE, AT AN ANGLE OF 173 DEGREES, 36 MINUTES, 50 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 252.69 FEET; THENCE CONTINUING ALONG SAID NORTHEASTERLY DOCK LINE, AT AN ANGLE OF 176 DEGREES, 02 MINUTES, 23 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 2.15 FEET; SOUTHEASTERLY AT AN ANGLE OF 122 DEGREES, 31 MINUTES, 41 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 9.55 FEET TO THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE NORTHEASTERLY AT AN ANGLE OF 149 DEGREES, 54 MINUTES, 45 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 267.98 FEET TO THE SOUTHWESTERLY LINE OF NORTH KINGSBURY AND POINT OF BEGINNING.

AND

PARCEL 8: (Northern Catalog Building)

THAT PART OF LOTS 1, 2, 3, AND 4 IN ELSTON'S ADDITION TO CHICAGO, LYING EAST OF DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TOGETHER WITH THE SOUTHWESTERLY HALF OF THE VACATED NORTH BRANCH STREET LYING BETWEEN THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE NORTH BRANCH OF THE CHICAGO RIVER, LYING ABOVE AN ELEVATION OF 77.00 FEET AND LYING BELOW AN ELEVATION OF 89.50 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 415.68 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, HENCE ALSO THE EXTENSION NORTHEASTERLY OF THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET, 88.49 FEET TO THE CENTER LINE OF SAID VACATED NORTH BRANCH STREET; THENCE NORTHWESTERLY AT AN ANGLE OF 127 DEGREES, 53 MINUTES, 38 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 338.74 FEET, TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY, AT AN ANGLE OF 59 DEGREES, 55 MINUTES, 55 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 35.99 FEET; THENCE CONTINUING ALONG SAID NORTHEASTERLY DOCK LINE, AT AN ANGLE OF 173 DEGREES, 36 MINUTES, 50 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 252.69 FEET; THENCE CONTINUING ALONG SAID NORTHEASTERLY DOCK LINE, AT AN ANGLE OF 176 DEGREES, 02 MINUTES, 23 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 2.15 FEET; SOUTHEASTERLY AT AN ANGLE OF 122 DEGREES, 31 MINUTES, 41 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 9.55 FEET TO THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE NORTHEASTERLY AT AN ANGLE OF 149 DEGREES, 54 MINUTES, 45 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 267.98 FEET TO THE SOUTHWESTERLY LINE OF NORTH KINGSBURY AND POINT OF BEGINNING.

AND

PARCEL 9: (Northern Catalog Building)

THAT PART OF LOT 4, LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER IN ASSESSORS PLAT OF LOTS 4 AND 5 IN BLOCK 95 OF ELSTON'S ADDITION TO CHICAGO, SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND LYING BELOW AN ELEVATION OF 52.00 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 415.68 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE EXTENSION NORTHEASTERLY OF THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, AT AN ANGLE OF 89 DEGREES, 55 MINUTES, 12 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE ALONG SAID CENTER LINE OF SAID 1.00 FOOT BRICK WALL, A DISTANCE OF 267.99 FEET TO THE POINT OF BEGINNING; THENCE NORTHWESTERLY AT AN ANGLE OF 149 DEGREES, 54 MINUTES, 45 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 9.88 FEET TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY ALONG SAID DOCK LINE, AT AN ANGLE OF 57 DEGREES, 28 MINUTES, 19 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 4.79 FEET TO THE EXTENSION SOUTHWESTERLY OF THE CENTER LINE OF SAID 1.00 FOOT BRICK WALL; THENCE NORTHEASTERLY AT AN ANGLE OF 92 DEGREES, 26 MINUTES, 26 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 8.06 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 10: (Northern Catalog Building)

THAT PART OF LOT 5, LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER IN ASSESSORS PLAT OF LOTS 5 AND 6 IN BLOCK 95 OF ELSTON'S ADDITION TO CHICAGO, SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND LYING ABOVE AN ELEVATION OF 53.00 FEET, AND BELOW AN ELEVATION OF 77.00 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 415.68 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE EXTENSION NORTHEASTERLY OF THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, AT AN ANGLE OF 89 DEGREES, 55 MINUTES, 12 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE ALONG SAID CENTER LINE OF SAID 1.00 FOOT BRICK WALL, A DISTANCE OF 267.99 FEET TO THE POINT OF BEGINNING; THENCE NORTHWESTERLY AT AN ANGLE OF 149 DEGREES, 54 MINUTES, 45 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 9.88 FEET TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY ALONG SAID DOCK LINE, AT AN ANGLE OF 57 DEGREES, 28 MINUTES, 19 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 4.79 FEET TO THE EXTENSION SOUTHWESTERLY OF THE CENTER LINE OF SAID 1.00 FOOT BRICK WALL; THENCE NORTHEASTERLY AT AN ANGLE OF 92 DEGREES, 26 MINUTES, 26 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 8.06 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 11: (Northern Catalog Building)

THAT PART OF LOT 5, LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER IN ASSESSORS PLAT OF LOTS 5 AND 6 IN BLOCK 95 OF ELSTON'S ADDITION TO CHICAGO, SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND LYING ABOVE AN ELEVATION OF 53.00 FEET, AND BELOW AN ELEVATION OF 77.00 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 415.68 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE EXTENSION NORTHEASTERLY OF THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, AT AN ANGLE OF 89 DEGREES, 55 MINUTES, 12 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE ALONG SAID CENTER LINE OF SAID 1.00 FOOT BRICK WALL, A DISTANCE OF 267.99 FEET TO THE POINT OF BEGINNING; THENCE NORTHWESTERLY AT AN ANGLE OF 149 DEGREES, 54 MINUTES, 45 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 9.88 FEET TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY ALONG SAID DOCK LINE, AT AN ANGLE OF 57 DEGREES, 28 MINUTES, 19 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 4.79 FEET TO THE EXTENSION SOUTHWESTERLY OF THE CENTER LINE OF SAID 1.00 FOOT BRICK WALL; THENCE NORTHEASTERLY AT AN ANGLE OF 92 DEGREES, 26 MINUTES, 26 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 8.06 FEET TO THE POINT OF BEGINNING.

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RIVER IN ASSESSOR'S PLAT OF LOTS 5 AND 6 IN BLOCK 95 OF ELSTON'S ADDITION TO CHICAGO, SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND LYING ABOVE AN ELEVATION OF 77.00 FEET, AND BELOW AN ELEVATION OF 19.50 FEET, CITY OF CHICAGO DATUM, AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 415.54 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, BEING ALSO THE EXTENSION NORTHEASTERLY OF THE CENTER LINE OF A 1.00 FOOT BRICK WALL; THENCE SOUTHWESTERLY, AT AN ANGLE OF 89 DEGREES, 55 MINUTES, 12 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE ALONG SAID CENTER LINE OF SAID 1.00 FOOT BRICK WALL, A DISTANCE OF 267.99 FEET TO THE POINT OF BEGINNING; THENCE NORTHWESTERLY AT AN ANGLE OF 149 DEGREES, 54 MINUTES, 45 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 9.55 FEET TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHEASTERLY ALONG SAID DOCK LINE, AT AN ANGLE OF 57 DEGREES, 28 MINUTES, 19 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE AND ALONG SAID NORTHEASTERLY DOCK LINE, 4.78 FEET TO THE EXTENSION SOUTHWESTERLY OF THE CENTER LINE OF SAID 1.00 FOOT BRICK WALL; THENCE NORTHEASTERLY AT AN ANGLE OF 89 DEGREES, 26 MINUTES, 26 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, AND ALONG SAID CENTER LINE, 8.06 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 12: (Southern Catalog Building)

THAT PART OF LOTS 2, 3 AND 4 LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER IN BLOCK 95 OF ELSTON'S ADDITION TO CHICAGO, IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF SAID LOTS 4, 3 AND 2, A DISTANCE OF 14 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT 2; THENCE SOUTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 89 DEGREES 55 MINUTES 12 SECONDS FROM SOUTHWEST TO SOUTHWEST WITH THE LAST DESCRIBED SOUTHWESTERLY LINE, SAID LINE ALSO BEING THE CENTER LINE OF A 12 INCH THICK BRICK WALL AND THE EXTENSION THEREOF, A DISTANCE OF 267.99 FEET TO THE SOUTH LINE OF LOT 4; THENCE EAST ALONG THE SOUTH LINE OF LOT 4, A DISTANCE OF 309.47 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 13: (Southern Catalog Building)

THAT PART OF LOTS 5 AND 6, LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER IN BLOCK 95 OF ELSTON'S ADDITION TO CHICAGO, IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 6; THENCE NORTH ALONG THE EAST LINE OF SAID LOTS 6 AND 5, BEING ALSO THE WEST LINE OF LARRABEE STREET, A DISTANCE OF 330.60 FEET TO THE INTERSECTION WITH THE SOUTHWESTERLY LINE OF N. KINGSBURY STREET; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE, BEING ALSO THE NORTHEASTERLY LINE OF SAID LOT 6, A DISTANCE OF 260.55 FEET TO A POINT ON THE NORTHEAST CORNER OF LOT 5; THENCE WESTERLY ALONG THE NORTH LINE OF LOT 5, A DISTANCE OF 309.47 FEET; THENCE SOUTHWESTERLY ON AN ANGLE TO THE LEFT OF 30 DEGREES

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25 MINUTES 18 SECONDS, A DISTANCE OF 8.06 FEET TO SAID DOCK LINE; THENCE SOUTHEASTERLY ALONG SAID DOCK LINE, A DISTANCE OF 174.59 FEET TO A BEED; THENCE SOUTHEASTERLY ALONG SAID DOCK LINE, A DISTANCE OF 207.60 FEET TO A BEED; THENCE SOUTHEASTERLY ALONG SAID DOCK LINE, A DISTANCE OF 231.32 FEET TO THE SOUTH LINE OF SAID LOT 5, BEING ALSO THE NORTH LINE OF W. CHICAGO AVENUE; THENCE EAST ALONG SAID LINE, A DISTANCE OF 203.28 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THE EAST 22 FEET OF LOT 8 AND THE EAST 50 FEET OF LOT 6.

AND

PARCEL 14: (Southern Catalog Building)

THAT PART OF LOT 5 IN BLOCK 95 IN ELSTON'S ADDITION TO CHICAGO, SITUATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 33 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTH LINE OF LOT 5 AT A POINT 33.0 FEET WEST OF THE SOUTHEAST CORNER THEREOF AND RUNNING; THENCE NORTH PARALLEL WITH AND 32.0 FEET WEST OF THE EAST LINE OF SAID LOT, A DISTANCE OF 158.12 FEET TO THE SOUTHWESTERLY LINE OF HAWTHORNE AVENUE; THENCE SOUTHEASTERLY ALONG THE SOUTHWEST LINE OF HAWTHORNE AVENUE, A DISTANCE OF 54.0 FEET TO THE EAST LINE OF SAID LOT 5; THENCE SOUTH ALONG SAID EAST LINE OF SAID LOT 5, A DISTANCE OF 102.70 FEET TO THE SOUTHEAST CORNER THEREOF; AND THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 5, A DISTANCE OF 32.0 FEET TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS.

AND

PARCEL 15: (Southern Catalog Building)

THAT EAST 50 FEET OF LOT 6 IN BLOCK 95 IN ELSTON'S ADDITION TO CHICAGO, BEING A PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 33 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

BUT EXCEPTING FROM THE AFORESAID PARCELS 3, 6 AND 9, THE PROPERTY BOUNDED AND DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 1, 2, 3, 4 AND 5 IN BLOCK 95 LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER TOGETHER WITH LOTS 24, 25, 26 AND A PART OF LOT 23, IN BLOCK 96, LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER TOGETHER WITH VACATED BRANCH STREET LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER IN ELSTON'S ADDITION TO CHICAGO, IN SECTION 4, TOWNSHIP 33 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING ABOVE AN ELEVATION OF 4.00 FEET (BEING THE FINISHED SURFACE OF THE RIVER WALK) AND BELOW AN ELEVATION OF 17.28 FEET, CITY OF CHICAGO DATES, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING ON THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT 816.84 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AND THE WEST LINE OF NORTH LARRABEE STREET, THAT POINT BEING ALSO THE EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY FACE OF FIVE CONCRETE COLUMNS; THENCE SOUTHWESTERLY WITH AN ANGLE OF 89 DEGREES, 49 MINUTES, 14 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE; AND ALONG SAID NORTHWESTERLY FACE, 104.87 FEET TO THE NORTHERLY EXTENSION OF THE WEST FACE OF A BRICK WALL; THENCE SOUTHEASTERLY, ALONG THE WESTERLY FACE OF SAID BRICK



WALL, AT AN ANGLE OF 90 DEGREES, 18 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, A DISTANCE OF 1.83 FEET TO THE NORTHWESTERLY FACE OF A 1.00 FOOT BRICK WALL, THENCE SOUTHWESTERLY, ALONG SAID NORTHWESTERLY FACE, PERPENDICULAR TO THE LAST DESCRIBED LINE 124.71 FEET TO THE WEST FACE OF A WALL, AND THE POINT OF BEGINNING; THENCE SOUTHEASTERLY ALONG SAID WEST FACE BEING ON A LINE FORMING AN ANGLE OF 89 DEGREES, 52 MINUTES, 22 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 123.29 FEET TO A POINT TO BE REFERRED TO AS POINT "A"; THENCE FOLLOWING THE FACE OF THE WALL, NORTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 1.38 FEET TO A BEND POINT IN SAID WALL; THENCE SOUTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 50.58 FEET; THENCE SOUTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 13.37 FEET; THENCE SOUTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 228.89 FEET TO THE CENTER LINE OF A 1.00 FOOT BRICK WALL (SAID POINT BEING 241.58 FEET WEST, ALONG THE CENTER LINE OF SAID WALL, OF THE WEST LINE OF NORTH KINGSBURY STREET); THENCE SOUTHWESTERLY, ALONG SAID CENTER LINE AND ITS EXTENSION, BEING A LINE FORMING AN ANGLE TO THE LEFT WITH THE LAST DESCRIBED LINE OF 90 DEGREES, 04 MINUTES, 48 SECONDS, 34.00 FEET TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER TO A POINT TO BE REFERRED TO AS POINT "B"; THENCE NORTHWESTERLY, ALONG SAID DOCK LINE, BEING A LINE FORMING AN ANGLE OF 92 DEGREES, 05 MINUTES, 27 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 8.08 FEET TO A BEND POINT, SAID BEND POINT TO BE REFERRED TO AS POINT "C"; THENCE NORTHEASTERLY, ALONG A LINE FORMING AN ANGLE OF 176 DEGREES, 11 MINUTES, 31 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 252.49 FEET TO A BEND POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 173 DEGREES, 39 MINUTES, 01 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 140.78 FEET TO THE NORTH FACE AND ITS EXTENSION OF A BRICK WALL; THENCE NORTHEASTERLY 19.53 FEET TO THE POINT OF BEGINNING.

ALSO

THAT PART OF SAID LOTS LYING ABOVE AN ELEVATION OF 17.25 FEET AND BELOW AN ELEVATION OF 33.00 FEET, CITY OF CHICAGO DISTRICT, DESCRIBED AS FOLLOWS; COMMENCING AT THE AFORESAID POINT OF BEGINNING; THENCE SOUTHEASTERLY, ALONG A LINE 123.29 FEET TO THE AFORESAID POINT "A" AND POINT OF BEGINNING; THENCE NORTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 1.38 FEET TO A BEND POINT IN SAID WALL; THENCE SOUTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 50.58 FEET; THENCE SOUTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 17.20 FEET; THENCE SOUTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 89.05 FEET; THENCE SOUTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 5.33 FEET; THENCE SOUTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 15.50 FEET; THENCE NORTHEASTERLY PERPENDICULAR TO THE LAST DESCRIBED LINE, 31.91 FEET TO THE AFORESAID NORTHEASTERLY DOCK LINE; THENCE NORTHWESTERLY, ALONG SAID NORTHEASTERLY DOCK LINE, BEING A LINE FORMING AN ANGLE OF 88 DEGREES, 21 MINUTES, 46 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 139.14 FEET TO A BEND POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 173 DEGREES, 39 MINUTES, 01 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 60.50 FEET; THENCE NORTHEASTERLY, ALONG A LINE FORMING AN ANGLE OF 97 DEGREES, 59 MINUTES, 14 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 15.26 FEET; THENCE SOUTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 41.87 FEET; THENCE NORTHEASTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 15.42 FEET TO THE AFORESAID POINT "A" AND POINT OF BEGINNING.

ALSO

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FROM WHAT MICHUAN LTD

THAT PART OF SAID LOTS LYING ABOVE AN ELEVATION OF 17.25 FEET AND BELOW AN ELEVATION OF 35.00 FEET, CITY OF CHICAGO DATCH, DESCRIBED AS FOLLOWS; BEGINNING AT THE AFORESAID POINT "B"; THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, 8.08 FEET TO THE AFORESAID POINT "C"; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 176 DEGREES, 11 MINUTES, 31 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE; AND ALONG THE AFORESAID NORTHEASTERLY DOCK LINE, 80.45 FEET; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 91 DEGREES, 38 MINUTES, 14 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 29.04 FEET; THENCE SOUTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 58.46 FEET TO THE CENTER LINE AND ITS EXTENSION OF THE AFORESAID BRICK WALL; THENCE SOUTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 90 DEGREES, 04 MINUTES, 48 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 30.17 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

BUT EXCEPTING FROM THE AFORESAID PARCELS 12 AND 13, THE PROPERTY BOUNDED AND DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 4, 5 AND 6 IN BLOCK 55 IN ELSTON'S ADDITION TO CHICAGO, IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER, LYING ABOVE AN ELEVATION OF 4.00 FEET (BEING THE FINISHED SURFACE OF THE RIVER WALK) AND BELOW AN ELEVATION OF 17.25 FEET, CITY OF CHICAGO DATCH, BOUNDED AND DESCRIBED AS FOLLOWS; BEGINNING A POINT ON THE NORTH RIGHT OF WAY LINE OF CHICAGO AVENUE, BEING DISTANT ALONG SAID RIGHT OF WAY LINE 172.37 FEET WEST OF THE WEST LINE OF NORTH LARRABEE STREET; THENCE NORTHERLY, ON A LINE FORMING AN ANGLE OF 90 DEGREES, 38 MINUTES, 47 SECONDS TO THE LEFT WITH SAID NORTH RIGHT OF WAY LINE, 58.46 FEET TO A BEND POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 24.75 FEET TO A BEND POINT; THENCE NORTHERLY, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 87.15 FEET TO A BEND POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 24.75 FEET TO A BEND POINT; THENCE NORTHERLY, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 37.11 FEET TO A BEND POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 149 DEGREES, 19 MINUTES, 58 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 58.09 FEET TO A BEND POINT; THENCE SOUTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 8.88 FEET TO A BEND POINT; THENCE NORTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 122.50 FEET TO A BEND POINT, SAID POINT TO BE REFERRED TO AS POINT "A"; THENCE SOUTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 9.08 FEET TO A BEND POINT, SAID POINT TO BE REFERRED TO AS POINT "B"; THENCE NORTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 211.72 FEET TO THE CENTER LINE OF A 1.00 FOOT BRICK WALL (SAID POINT BEING 248.00 FEET WEST OF THE WEST LINE OF NORTH KINGSBURY STREET AS MEASURED ALONG SAID CENTER LINE BEING A LINE FORMING AN ANGLE OF 49 DEGREES, 55 MINUTES, 12 SECONDS FROM SOUTHEAST TO SOUTHWEST WITH THE SOUTHWESTERLY LINE OF NORTH KINGSBURY STREET AT A POINT ON SAID SOUTHWESTERLY LINE 415.69 FEET, AS MEASURED ALONG SAID SOUTHWESTERLY LINE, NORTHWESTERLY FROM ITS INTERSECTION WITH THE WEST LINE OF NORTH LARRABEE STREET); THENCE SOUTHWESTERLY, ALONG SAID CENTER LINE AND ITS EXTENSION, BEING A LINE FORMING AN ANGLE OF 90 DEGREES, 08 MINUTES, 23 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 30.58 FEET TO THE NORTHEASTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO

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RIVER; THENCE SOUTHEASTERLY, ALONG SAID DOCK LINE, AT AN ANGLE OF 87 DEGREES, 54 MINUTES, 34 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 181.53 FEET; THENCE CONTINUING SOUTHEASTERLY, ALONG SAID NORTHEASTERLY DOCK LINE AT AN ANGLE OF 178 DEGREES, 19 MINUTES, 52 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 200.21 FEET; THENCE CONTINUING, SOUTHEASTERLY, ALONG SAID NORTHEASTERLY DOCK LINE AT AN ANGLE OF 184 DEGREES, 49 MINUTES, 20 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 221.02 FEET TO THE NORTH LINE OF CHICAGO AVENUE; THENCE EASTERLY, ALONG SAID NORTH LINE, 22.28 FEET TO THE POINT OF BEGINNING.

ALSO

THAT PART OF SAID LOTS 4, 5 AND 6, LYING ABOVE AN ELEVATION OF 17.25 FEET AND BELOW AN ELEVATION OF 35.00 FEET, CITY OF CHICAGO DATUM, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY DOCK LINE OF THE CHICAGO RIVER AND THE NORTH LINE OF CHICAGO AVENUE (SAID POINT BEING 204.65 FEET WEST OF THE WEST LINE OF LARRABEE STREET); THENCE NORTHWESTERLY, ALONG SAID DOCK LINE, 17.54 FEET TO THE NORTH FACE AND ITS EXTENSION OF A WALL AND THE POINT OF BEGINNING; THENCE EASTERLY, ALONG SAID NORTH FACE, BEING ON A LINE FORMING AN ANGLE OF 81 DEGREES, 22 MINUTES, 38 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 25.91 FEET TO THE WEST FACE OF A WALL; THENCE NORTHERLY, ALONG SAID WEST FACE, PERPENDICULAR TO THE LAST DESCRIBED LINE, 46.76 FEET TO A BEAD POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 12.02 FEET TO A BEAD POINT; THENCE NORTHERLY, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 57.15 FEET TO A BEAD POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 24.75 FEET TO A BEAD POINT; THENCE NORTH, ALONG A LINE FORMING AN ANGLE OF 135 DEGREES, 00 MINUTES, 00 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 57.11 FEET TO A BEAD POINT; THENCE NORTHWESTERLY, ALONG A LINE FORMING AN ANGLE OF 149 DEGREES, 10 MINUTES, 58 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 58.09 FEET TO A BEAD POINT; THENCE SOUTHWESTERLY, ALONG THE FACE OF A WALL AND ITS EXTENSION, PERPENDICULAR TO THE LAST DESCRIBED LINE, 33.23 FEET TO THE AFORESAID NORTHEASTERLY DOCK LINE; THENCE SOUTHEASTERLY, ALONG SAID DOCK LINE AT AN ANGLE OF 86 DEGREES, 42 MINUTES, 00 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 47.09 FEET TO A BEAD POINT; THENCE SOUTHEASTERLY, ALONG A LINE FORMING AN ANGLE OF 154 DEGREES, 49 MINUTES, 20 SECONDS TO THE LEFT WITH THE LAST DESCRIBED LINE, 213.48 FEET TO THE POINT OF BEGINNING.

ALSO

THAT PART OF SAID LOTS 4, 5 AND 6, LYING ABOVE AN ELEVATION OF 17.25 FEET AND BELOW AN ELEVATION OF 35.00 FEET, CITY OF CHICAGO DATUM, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE AFORESAID POINT "A"; THENCE SOUTHWESTERLY 9.08 FEET TO THE AFORESAID POINT "B" AND THE POINT OF BEGINNING; THENCE NORTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 105.00 FEET; THENCE SOUTHWESTERLY, PERPENDICULAR TO THE LAST DESCRIBED LINE, 26.92 FEET TO THE AFORESAID NORTHEASTERLY DOCK LINE; THENCE SOUTHEASTERLY, ALONG A LINE FORMING AN ANGLE OF 88 DEGREES, 02 MINUTES, 57 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 74.66 FEET; THENCE SOUTHEASTERLY, ALONG A LINE FORMING AN ANGLE OF 178 DEGREES, 39 MINUTES, 01 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED LINE, 30.42 FEET; THENCE NORTHEASTERLY, ALONG A LINE FORMING AN ANGLE

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FROM MART RIQUAN LIO

## EXHIBIT D

### Construction Requirements

A. Construction Contract. Upon DCD's request, the Developer must provide DCD with a certified copy of the construction contract, together with any modifications, amendments or supplements thereto, and upon DCD's request, a copy of any subcontracts.

B. Performance and Payment Bonds. Prior to the commencement of any portion of the Project which includes work on the public way, the Developer must require the General Contractor to be bonded for its payment by sureties having an AA rating or better using a bond in a form acceptable to the City. The City shall be named as obligee or co-obligee on any such bonds.

C. Employment Profile. Upon DCD's request, the Developer, the General Contractor and all subcontractors must submit to DCD statements of their respective employment profiles.

D. Prevailing Wage. The Developer, the General Contractor and all subcontractors must pay the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department"), to all persons working on the Project. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this Paragraph D.

E. Employment Opportunity. The Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer operating on the Property (collectively, with the Developer, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

(1) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or

ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(2) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Redevelopment Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

(3) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(4) Each Employer, in order to demonstrate compliance with the terms of this Paragraph, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(5) Each Employer shall include the foregoing provisions of subparagraphs (1) through (4) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(6) Failure to comply with the employment obligations described in this Paragraph E shall be a basis for the City to pursue its remedies under the Redevelopment Agreement.

F. City Resident Construction Worker Employment Requirement. The Developer agrees for itself and its successors and assigns, and shall contractually obligate its General Contractor and shall cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Project they shall use good faith efforts to comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the Developer, its General Contractor and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

The Developer may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

"Actual residents of the City" shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The Developer, the General Contractor and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents

are employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DCD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

The Developer, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DCD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The Developer, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

At the direction of DCD, affidavits and other supporting documentation will be required of the Developer, the General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the Developer, the General Contractor and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Paragraph concerning the worker hours performed by actual Chicago residents.

When work at the Project is completed, in the event that the City has determined that the Developer has failed to ensure the fulfillment of the requirement of this Paragraph concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Paragraph. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to the Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the Developer must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

The Developer shall cause or require the provisions of this Paragraph F to be included in all construction contracts and subcontracts related to the Project.

G. The Developer's MBE/WBE Commitment. The Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the General Contractor to agree that, during the Project:

(1) Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE" Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Paragraph G, during the course of the Project, at least the following percentages of the MBE/WBE Budget attached hereto as Exhibit E-2 (as these budgeted amounts may be reduced to reflect decreased actual costs) shall be expended for contract participation by MBEs or WBEs:

- i. At least 24 percent by MBEs.
- ii. At least 4 percent by WBEs.

(2) For purposes of this Paragraph G only, the Developer (and any party to whom a contract is let by the Developer in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by the Developer in connection with the Project) shall be deemed a "contract" as such terms are defined in Section 2-92-420, Municipal Code of Chicago.

(3) Consistent with Section 2-92-440, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing a MBE or a WBE as a General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this Paragraph G. The Developer or the General Contractor may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in its activities and operations other than the Project.

(4) Prior to the City's issuance of a Certificate, the Developer shall provide to DCD a final report describing its efforts to achieve compliance with this MBE/WBE commitment. Such report shall include inter alia the name and business address of each MBE and WBE solicited by the Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist DCD in determining the Developer's compliance with this MBE/WBE commitment. DCD has access to the Developer's books and records, including, without limitation, payroll records, books of account and tax returns, and records and books of account in accordance with the Redevelopment Agreement, on five (5) business days' notice, to allow the City to review the

Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(5) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer shall be obligated to discharge or cause to be discharged the disqualified General Contractor or subcontractor and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this Subsection (e), the disqualification procedures are further described in Section 2-92-540, Municipal Code of Chicago.

(6) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this Paragraph G shall be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

(7) Prior to the commencement of the Project, the Developer, the General Contractor and all major subcontractors shall be required to meet with the monitoring staff of DCD with regard to the Developer's compliance with its obligations under this Paragraph G. During this meeting, the Developer shall demonstrate to DCD its plan to achieve its obligations under this Paragraph G, the sufficiency of which shall be approved by DCD. During the Project, the Developer shall, upon the request of the monitoring staff of DCD, such interim reports as the monitoring staff may require. Failure to submit such documentation on a timely basis, or a determination by DCD, upon analysis of the documentation, that the Developer is not complying with its obligations hereunder shall, upon the delivery of written notice to the Developer, be deemed an Event of Default hereunder.

H. Books and Records. The Developer, the general contractor and each subcontractor shall keep and maintain books and records that fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto and as otherwise necessary to evidence the Developer's compliance with its obligations under this Agreement, including, but not limited to, payroll records, general contractor's and subcontractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices and the like. Such books and records shall be available at the applicable party's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer's expense.

I. Incorporation in Other Contracts. The general contract and each subcontract shall include a rider incorporating Paragraphs C, D, E(5) and H of this Exhibit D and the insurance requirements in Exhibit L. The general contract shall also incorporate in such rider Paragraphs F and G of this Exhibit D.



**EXHIBIT D-1**

**Lease of 600 West Chicago Avenue, 8<sup>th</sup> Floor, Chicago, Illinois 60610**

[See Attached]

**AGREEMENT OF LEASE**

EPORT 600 PROPERTY OWNER, L.L.C., a Delaware limited liability company

LANDLORD

AND

BARRY CALLEBAUT U.S.A. LLC, a Delaware limited liability company

TENANT

**PREMISES:** Portion of the Eighth (8<sup>th</sup>) Floor  
600 West Chicago Avenue  
Chicago, IL 60610

**DATED:** As of December 22, 2006

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Exhibit B:	Rules and Regulations
Exhibit C:	Form of Guaranty
Exhibit D:	Fixed Rent Schedule
Exhibit E:	Cleaning Specifications
Exhibit F:	Landlord's Alterations
Exhibit G:	Subordination Non-Disturbance and Attornment Agreement
Exhibit H:	Expansion Space
Exhibit I:	ROFR Space

**EXECUTION COPY**

**AGREEMENT OF LEASE** ("Lease"), dated as of December 22, 2006 ("Effective Date"), between EPORT 600 PROPERTY OWNER, L.L.C., a Delaware limited liability company, with an address c/o Angelo, Gordon & Co., L.P., 245 Park Avenue, 26th Floor, New York, New York 10167, Attn: Andrew C. Jacobs ("Landlord"), and BARRY CALLEBAUT U.S.A. LLC, a Delaware limited liability company, with an address at 400 Industrial Park Road, St. Albans, VT 05478-1875 ("Tenant").

**WITNESSETH:**

The parties hereto, for themselves, their legal representatives, successors and assigns, covenant and agree as follows.

**ARTICLE 1. BASIC LEASE PROVISIONS; ADDITIONAL DEFINITIONS.**

**Section 1.1 Basic Lease Provisions.** The provisions of this Section 1.1 are intended to be definitional in nature and in outline form and may be addressed in detail in other Articles of this Lease.

- Actual Delivery Date: The date Landlord delivers the Premises to Tenant with Landlord's Alterations except Electrical Improvements Substantially Completed.
- Base Operating Expenses: Operating Expenses for the Real Property in calendar year 2007.
- Base Taxes: The amount of Taxes due and payable for the Real Property in calendar year 2007.
- Broker(s): Jones Lang LaSalle Americas (Illinois), L.P. and CB Richard Ellis and/or any other person or entity designated at any time and from time to time by Landlord as Broker and their successors and assigns.
- Building: All the buildings, equipment and other improvements and appurtenances now located or hereafter erected, constructed or placed upon the real property and any and all alterations, renewals, replacements, additions and substitutions thereto presently known by the address of 600 West Chicago Avenue, Chicago, Illinois. For purposes of clarification, the term "Building" does not include any residential buildings, structures or units or parking facilities.
- Commencement Date: The earlier of: (i) July 1, 2007, or (ii) the date Tenant's Alterations are Substantially Completed.
- Expiration Date: The last day of the month in which the day before the one hundred twenty ninth (129<sup>th</sup>) month anniversary of the Commencement Date occurs.
- Fixed Rent: As set forth on Exhibit D attached hereto and incorporated herein.
- Landlord's Agent: Collectively, Jones Lang LaSalle Americas (Illinois), L.P., and/or any other person or entity designated at any time and from time to time by Landlord as Landlord's Agent and their successors and assigns.
- Guarantor: Barry Callebaut U.S.A. Holding Inc., a Delaware corporation, which shall execute and deliver a guaranty in favor of Landlord in the form attached hereto and incorporated herein as Exhibit C ("Guaranty").
- Permitted Use: The Premises shall be used by Tenant solely, in compliance with all Legal

Requirements for the use of the Premises by Tenant (i) for executive and general offices; (ii) for a research and development lab of the following products: cocoa, chocolate and confectionary products; and (iii) a training and demonstration facility for employees, customers and commercial users of such products (but not the general public) which shall include cooking purposes (collectively, the "Kitchen Facilities"), and for no other purpose. The use set forth in subsection (ii) above is for the exclusive benefit of Barry Callebaut U.S.A. LLC, a Delaware limited liability company and no assignee or subtenant of Barry Callebaut U.S.A. LLC, a Delaware limited liability company (except pursuant to a Permitted Transfer) shall be entitled to such use.

Premises: The Premises shall consist of a portion of the eighth (8<sup>th</sup>) floor of the Building, as shown on the floor plan attached to this Lease as Exhibit A.

Premises Area: The Rentable Square Foot area of the Premises, consisting of a total of approximately 11,207 Rentable Square Feet, as set forth on the floor plan attached as Exhibit A hereto, as the Premises Area may be increased or decreased from time to time pursuant to this Lease, provided, Tenant may use up to seventy five hundred (7,500) Rentable Square Feet of Premises Area for purposes of the Kitchen Facilities ("Kitchen Facilities Area").

Tenant's  
Proportionate  
Share: [1.0573%] 11,207/1,059,990

Term: The term of this Lease, which shall commence on the Commencement Date and shall expire on the Expiration Date, unless sooner terminated or extended pursuant to the terms of this Lease.

## **Section 1.2 Additional Definitions.**

Additional Rent: All sums other than Fixed Rent payable by Tenant to Landlord under this Lease, including, without limitation, Tenant's Tax Payment, Tenant's Operating Payment, overtime or excess service charges, any fees and amounts due under Article 10 hereof, and interest and other costs related to Tenant's failure to perform any of its obligations under this Lease.

Affiliate: With respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

Alterations: Alterations, installations, improvements, additions or other physical changes (other than decorations consisting of painting, wall coverings and carpeting in the Premises which are not visible from outside the Premises) in or about the Premises or elsewhere in the Building, including, without limitation, Tenant's Initial Alterations and Tenant's Subsequent Alterations.

Base Rate: The annual rate of interest publicly announced from time to time by Citibank, N.A., New York, New York (or any successor thereto) as its "base rate", or such other term as may be used by Citibank, N.A. from time to time for the rate presently referred to as its base rate.

Building Systems: The mechanical, electrical, heating, ventilating, air conditioning, elevator, plumbing, sanitary, life-safety, utility and other service systems of the Building, but not including the portions of such systems installed in the Premises or

elsewhere in the Building by Tenant for Tenant's exclusive use or by another tenant or occupant for such other tenant's or occupant's use.

- Business Days: All days, excluding Saturdays, Sundays, and all days observed by the City of Chicago, the State of Illinois, or the United States of America or any unions serving the Building as legal holidays.
- Control: As to any Person: (a) the ownership, directly or indirectly, of more than fifty per cent (50%) of (i) the outstanding voting stock of a corporation, or (ii) the beneficial ownership interests, however characterized, of any other entity, and/or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interests, by statute, or by contract.
- Default Rate: A rate per annum equal to the lesser of four (4) percentage points above the Base Rate or the highest rate permitted by applicable law.
- Environmental Laws: All Legal Requirements now or hereafter in effect relating to the environment, Hazardous Materials, and health and safety issues related to the environment or Hazardous Materials.
- Expected Delivery Date: January 3, 2007.
- Governmental Authority: Any of the United States of America, the State of Illinois, the City of Chicago, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Real Property or any portion thereof or the vaults, curbs, sidewalks, streets and areas adjacent thereto.
- Hazardous Materials: Any substances, materials or wastes regulated by any Governmental Authority or deemed or defined as a "hazardous substance", "hazardous material", "toxic substance", "toxic pollutant", "contaminant", "pollutant", "solid waste", "hazardous waste" or words of similar import under applicable Legal Requirements, including oil and petroleum products, natural or synthetic gas, polychlorinated biphenyls, asbestos in any form, urea formaldehyde, radon gas, or the emission of non-ionizing radiation, microwave radiation or electromagnetic fields at levels in excess of those (if any) specified by any Governmental Authority or which may cause a health hazard or danger to property, or the emission of any form of ionizing radiation.
- Landlord Party: Any Landlord, any Affiliate of Landlord, any assignee of Landlord, the management company managing the Building, or any of their respective direct or indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, contractors, licensees, invitees, servants, agents or representatives.
- Legal Requirements: All present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, executive orders, rules of common law, and any judicial interpretations thereof, extraordinary as well as ordinary, of all Governmental Authorities, including the Americans with Disabilities Act (42 U.S.C. §12,101 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 *et seq.*), the Chicago Building Code (Title 17 Municipal Code of Chicago) and any law of like import, Chapter 2-120-580 through 920 of the Municipal Code of Chicago regarding landmark

restrictions and conditions affecting the Real Property, and all rules, regulations and government orders with respect thereto, and of any applicable fire rating bureau, or other body exercising similar functions, affecting the Real Property or the maintenance, use or occupation thereof, or any street or sidewalk comprising a part of or in front thereof or any vault in or under the Building.

Mortgage: Any mortgage or trust indenture which may now or hereafter affect the Real Property, the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

Mortgagee: Any mortgagee, trustee or other holder of a Mortgage.

Person: Any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, estate, trust, unincorporated association, business trust, tenancy-in-common or other entity, or any Governmental Authority.



Prohibited Use:

Any use, occupancy or purpose which is not a Permitted Use and that in Landlord's reasonable judgment would: (a) cause damage to the Building, the Premises or any equipment, facilities or other systems therein; (b) impair the appearance of the Premises or the Building; (c) interfere with the efficient and economical maintenance, operation and repair of the Premises or the Building or the equipment, facilities or systems thereof; (d) have a material adverse affect on any service provided to, and/or the use and occupancy by, any Building tenant or occupants; (e) violate the certificate of occupancy issued for the Premises or the Building or (f) adversely affect the first class image of the Building; Prohibited Use also includes the use of any part of the Premises for: (i) a restaurant or bar; (ii) except in connection with the Kitchen Facilities and the vending machines and/or a pantry (which may include a microwave oven) installed solely and exclusively for the use of Tenant's employees, the preparation, consumption, storage, test production or sale of food or beverages, liquor, tobacco or drugs provided, however, (a) that the foregoing restriction on liquor shall not apply to Tenant's cocoa, chocolate and confectionary products that contain liquor and (b) Tenant may offer or gift liquor in connection with social events held in the Premises in accordance with the terms and provisions of Article 36 hereof; (iii) the business of photocopying, multilith or offset printing (except photocopying in connection with Tenant's own business); (iv) a typing or stenography business; (v) a school or classroom, provided that Tenant may offer training to its employees, customers, and commercial users (but not the general public) on Tenant's products and processes; (vi) lodging or sleeping; (vii) the operation of retail facilities (meaning a business whose primary patronage arises from the generalized solicitation of the general public to visit Tenant's offices in person without a prior appointment) or a savings and loan association or retail facilities or any financial, lending, securities brokerage or investment activity; (viii) a payroll office; (ix) a barber, beauty or manicure shop; (x) an employment agency, executive search firm or similar enterprise; (xi) offices of the City of Chicago or the State of Illinois or of any other Governmental Authority, any foreign government, the United Nations, or any agency or department of any of the foregoing; (xii) the manufacture, retail sale, storage of merchandise or auction of merchandise, goods or property of any kind to the general public which could reasonably be expected to create a volume of pedestrian traffic substantially in excess of that normally encountered in any other premises in the Building; (xiii) the rendering of medical, dental or other therapeutic or diagnostic services; (xiv) any pornographic, indecent or immoral use or purpose; or (xv) any illegal purposes or any activity constituting a legal nuisance.

Real Property:

Collectively, the Building, the land on which the Building is located, and any other buildings, improvements and structures located on such land. For purposes of clarification, the term "Real Property" does not include any residential buildings, structures or units or parking facilities.

Rent:

Fixed Rent and Additional Rent, collectively.

Rentable Square Feet (Foot or Footage):

The deemed rentable area of the Building or any portion thereof, computed on the basis set forth below; provided, however, that in no event shall such deemed Rentable Square Footage constitute or imply any representation or warranty by Landlord as to the actual size of any floor or other portion of the Building, including the Premises. Determination of Rentable Square Footage of the Premises shall mean the product of (a) the number of square feet of "Usable Area" and any "Floor Common Area" located in the Premises as defined and calculated in accordance with the American National Standards Institute, Inc. Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-1996, published by the Building Owners and Managers Association

International ("BOMA"), times (b) 1.1765.

- Rules and Regulations: The rules and regulations attached to this Lease as Exhibit B, and such additional rules and regulations as Landlord may adopt and deliver to Tenant from time to time in a reasonable, non-discriminatory manner and which do not materially and adversely interfere with Tenant's use of the Premises as permitted hereunder or reduce Tenant's rights under this Lease.
- Substantial Completion: As to any construction performed by any party in, for, or about the Premises, including the Tenant's Initial Alterations (as hereinafter defined), and any other Alterations including Landlord's Alterations, that such work has been completed substantially in accordance with (i) the provisions of this Lease applicable thereto, and (ii) the plans and specifications for such work, except for minor details of construction, decoration and mechanical adjustments, if any, the noncompletion of which does not materially interfere with Tenant's use of the Premises, in Tenant's reasonable judgment, and which are capable of being corrected, in Landlord's reasonable judgment, within thirty (30) days by Landlord or Tenant (as applicable) (collectively the "Punchlist Items"), or which, in accordance with good construction practice, should be completed after the completion of other work to be performed in the Premises.
- Superior Lease: Any ground or underlying lease of the Real Property or any part thereof heretofore or hereafter made by Landlord, as lessee, and all renewals, extensions, supplements, amendments and modifications thereof.
- Superior Lessor: A lessor under a Superior Lease.
- Tenant's Alterations: All Alterations, including Tenant's Initial Alterations as defined in Section 4.2(a), in and to the Premises and elsewhere in the Building which may be made by or on behalf of Tenant prior to and during the Term, or any renewal thereof.
- Tenant Party: Any Tenant, any Affiliate of Tenant, any assignee of Tenant, any subtenant or any other occupant of the Premises, or any of their respective direct or indirect partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, contractors, licensees, invitees, servants, agents or representatives.
- Tenant's Property: Tenant's movable fixtures and movable partitions, telephone and other communications equipment, computer systems, furniture, trade fixtures, furnishings, and other items of personal property which are removable without material damage to the Premises or Building.

## ARTICLE 2. DEMISE, PREMISES, TERM, RENT, LEASE CONTINGENCY

**Section 2.1 Lease of Premises.** Subject to the terms of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. In addition, Landlord grants to Tenant the right to use, on a non-exclusive basis and in common with other tenants, the lobby areas and other Building common areas.

**Section 2.2 Payment of Rent.** Tenant shall pay to Landlord, without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, except as may be expressly set forth in this Lease, in lawful money of the United States by check drawn upon a bank which is located in the Continental United States or by wire transfer of immediately available funds, (i) Fixed Rent in equal monthly installments, in advance, on the first (1st) day of each calendar month during the Term, commencing on the Commencement Date, and (ii) Additional Rent, at the times and in the manner

set forth in this Lease. Except as otherwise expressly set forth in this Lease, Tenant's obligations to pay Rent are independent of each and every covenant contained in this Lease. Rent and other amounts due hereunder shall be paid to Landlord at the property manager's office of the Building, or at such other place as Landlord may hereafter designate in writing from time to time.

**Section 2.3 First Month's Rent.** If the Commencement Date shall occur on a date other than the first day of any calendar month, Tenant shall pay to Landlord, on the Commencement Date, a sum equal to the Fixed Rent for such month multiplied by a fraction, the numerator of which shall be the number of calendar days in the period from the Commencement Date to the last day of the month in which the Commencement Date shall occur, both dates inclusive, and the denominator of which shall be the number of calendar days in such month.

**Section 2.4 Rent Credit.** Notwithstanding anything to the contrary set forth in Section 2.2 or Section 2.3, so long as Tenant is not in default beyond any applicable notice or grace and cure periods under any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed, Tenant shall have no obligation to pay Fixed Rent on account of the period commencing on the Commencement Date and ending on the date which is one day prior to the date which is twelve (12) months following the Commencement Date (any such twelve (12) month period in which no Fixed Rent shall be due being a "Free Rent Period"). Nothing contained herein shall affect Tenant's obligation to make any other payment under this Lease during the aforementioned period.

**Section 2.5 Lease Contingency.** Landlord and Tenant acknowledge that Tenant is currently pursuing funding through tax increment financing from the City of Chicago or an affiliate thereof and certain incentives from the State of Illinois or an affiliate thereof (the "Incentives") and that this Lease is contingent upon Tenant's obtaining Incentives in an amount and of a type acceptable to Tenant in Tenant's sole discretion on or before December 20, 2006. If Tenant is unable to obtain such Incentives on or before December 20, 2006, notwithstanding anything to the contrary herein, Tenant shall have the right to terminate this Lease upon written notice to Landlord on or before December 20, 2006. Landlord agrees to cooperate with Tenant (at no cost to Landlord) in obtaining the Incentives, including executing consents that do not incur liability for Landlord. Landlord acknowledges and agrees that the Incentives are for the exclusive benefit of Tenant provided, in no event shall any such Incentive impose any liability or duty on Landlord.

### **ARTICLE 3. USE AND OCCUPANCY**

**Section 3.1 Permitted Use: Licenses and Permits.** Tenant shall use and occupy the Premises for the Permitted Use and for no other purpose. Tenant acknowledges that Tenant's use of the Premises solely for the specific use set forth in the "Permitted Use" paragraph of Section 1.1 above is a primary inducement for Landlord's execution and delivery of this Lease, and the performance of Landlord's obligations hereunder, in order that Landlord may ensure that there be maintained within the Building an appropriate tenant mix for the continued operation of a multi-use retail, office and telecommunications mixed use development. Tenant shall not use or occupy or permit the use or occupancy of any part of the Premises in a manner constituting a Prohibited Use, which violates any Legal Requirement, which causes the Building to be in violation of any Legal Requirement, or which exceeds the floor loads for the Premises. Without limiting the Permitted Use, and notwithstanding anything to the contrary herein, Landlord hereby consents to the use of the Kitchen Facilities for cooking purposes. Tenant, at its expense, shall procure and at all times maintain and comply with the terms and conditions of all licenses and permits required for the lawful conduct of the Permitted Use in the Premises. Landlord makes no representation to Tenant that Tenant will be able to obtain all required licenses or permits for Tenant's Permitted Use. Landlord shall obtain all permits and licenses necessary for Landlord to construct Landlord's Alterations and such Landlord Alterations shall be constructed in accordance with all Legal Requirements.

**Section 3.2 Delivery of Premises.** Landlord shall use reasonable efforts to Substantially Complete Landlord's Alterations on Exhibit F by the Expected Delivery Date, except that Landlord shall use reasonable efforts to Substantially Complete the electrical improvements set forth on

Exhibit F ("Electrical Improvements) by the date (the "Electrical Improvements Date") that is 60 days after the Expected Delivery Date. Except as set forth in this Section 3.2, Landlord shall not be liable for failure to complete Landlord's Alterations by the Expected Delivery Date or the Electrical Improvements by the Electrical Improvements Date by reason of events beyond Landlord's reasonable control and such failure shall not impair the validity of the Lease or extend the Term. In the event that the Landlord Alterations are not Substantially Completed on or before the Expected Delivery Date or the Electrical Improvements are not Substantially Completed on or before the Electrical Improvements Date then provided all of the following conditions have been satisfied: (i) such failure was not due to any delay caused by Tenant or its agents, employees, invitees or contractors (collectively "Tenant Delays"); (ii) there is no Event of Default by Tenant; and (iii) such failure materially and adversely affects Tenant's ability to perform Tenant's Initial Alterations or occupy the Premises, Tenant shall be entitled to one (1) day of Fixed Rent abatement for each day that either (i) the Landlord Alterations (excepting the Electrical Improvements) are not Substantially Completed from the Expected Delivery Date through the Actual Delivery Date or (ii) the Electrical Improvements are not Substantially Completed from the Electrical Improvements Date through the date the Electrical Improvements are Substantially Completed. Any rent abatement to which Tenant might be entitled to under this Section 3.2 shall be in addition to the rent abatement period described in Section 2.4. During the period from the Effective Date to the Actual Delivery Date, Tenant and its architects, agents and contractors shall be permitted entry into the Building and Premises upon reasonable prior notice to Landlord for the purpose of taking measurements and inspecting the Premises..

#### **ARTICLE 4. ALTERATIONS**

##### **Section 4.1 Landlord's Consent.**

(a) Tenant's Initial Alterations. Tenant shall not make any of Tenant's Initial Alterations (as defined in Section 4.2(a) hereof) without Landlord's prior written consent. Landlord's consent to Tenant's Initial Alterations shall be granted or denied in Landlord's reasonable discretion; provided, however, that Landlord shall not unreasonably withhold, condition, or delay its consent to Tenant's Initial Alterations to adapt the Premises for the Permitted Use provided that such Initial Alterations (a) are non-structural and do not affect the Building Systems or services, (b) are performed only by contractors or mechanics approved in writing by Landlord, (c) affect only the Premises and are not visible from outside of the Premises, (d) do not have a material adverse affect on any service furnished by Landlord to Tenant or to any other tenant of the Building, (e) do not reduce the value or utility of the Building, (f) do not violate any Legal Requirements or the Building Rules and Regulations, or cause the Premises or the Building to be non-compliant with any Legal Requirements, (g) do not adversely affect any Common Areas or other tenant of the Building or the premises of any such other tenant, (h) do not conflict with or violate any rules and regulations of Landlord's insurance carrier, (i) with respect to Tenant's Initial Alterations, such Alterations are to be performed with respect to all or substantially all (as opposed to a portion or portions only) of the space within the Premises, and (j) are constructed by Tenant using commercially reasonable design and engineering standards taking into consideration the unique characteristics of the Building, including any landmark restrictions applicable thereto (collectively, the "Alterations Criteria"). Landlord hereby approves Clune Construction. Notwithstanding anything to the contrary herein, subject to Article 4, in connection with Tenant's Initial Alterations with respect to the Kitchen Facilities, Tenant shall be permitted to install black iron pipe for the delivery of natural gas service to the Kitchen Facilities, provided such Kitchen Facilities (including, without limitation, the black iron pipe) shall constitute an "Alteration" for purposes of this Lease and shall be performed in accordance with Article 4 hereof.

Tenant shall, at its sole cost and expense, prior to opening the Kitchen Facilities in the Premises and at all times thereafter during the Term, provide the necessary exhaust fans and systems, ductwork and venting to ensure that all smoke, odors, vapors and steam are exhausted from the Premises. The systems shall include, without limitation, control devices and a Roto Clone at all points of cooking and control procedures so as to eliminate such odors and insuring that only clean air enter the exhaust system. Such systems shall be installed so as to prevent the discharge of smoke, odors, vapors and steam into the common areas of the Building or into spaces leased to others and to avoid the likelihood that such smoke, odors, vapors and steam will be directed to or carried to the common areas of

the Building or into spaces leased by others. No vents, flues, pipes or other outlets shall be installed through the walls, floor or ceiling of the Premises or through any portion of the Building (including but not limited to the exterior walls or the roof of the Building) without the written consent of Landlord as to the location, construction and appearance thereof, which consent, as to a roof penetration, shall not be unreasonably withheld, delayed or conditioned. Landlord shall not, by its approval of the location, construction or appearance of any of Tenant's exhaust system or facilities in the Premises, be deemed to have represented that such systems are adequate or that the same comply with any Legal Requirements, nor shall such approval be deemed a waiver by Landlord of the right to require that Tenant modify such systems or facilities or add other or additional such systems or facilities in order to prevent the discharge of smoke, odors, vapors and steam into the common areas of the Building or into spaces leased to others or to avoid such smoke, odors, vapors and steam being directed to or carried to the common areas of the Building or into spaces leased to others. Tenant's exhaust or venting systems shall include fire prevention and/or extinguishment facilities or systems as may be reasonably required from time to time in view of Tenant's methods and volume of cooking and other food and beverage preparation. This shall be in addition to any sprinkler or other fire protection facilities installed in the Premises. Tenant shall maintain in good working order and condition and in accordance with the rules and regulations of all appropriate insurers, all fire extinguishing systems in the Premises. Tenant shall regularly and adequately clean or provide for the cleaning of all exhaust and venting systems serving the Premises. This cleaning shall include degreasing of all hoods, fans, vents, pipes, flues, grease traps and other areas of such systems subject to grease buildup. Tenant shall provide to Landlord, upon demand, reasonable proof that Tenant is doing such cleaning and degreasing or causing to be done. In the event that Tenant shall refuse or fail to clean and degrease such systems or to arrange for the cleaning and degreasing of such systems, then, after five (5) Business Days' advance notice from Landlord and Tenant's failure to perform such obligation, Landlord may arrange for the cleaning and degreasing thereof, and Tenant shall pay the entire cost thereof plus an administrative charge equal to fifteen percent (15%) of the cost thereof. Landlord shall not be liable to Tenant for any loss or damage that may accrue to Tenant's stock in trade or business by reason thereof, including but not limited to any loss of revenues resulting from any required limitation or cessation of Tenant's business while such cleaning is performed or as a result thereof. All contractors used by Tenant for such cleaning must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord's performance of such cleaning and degreasing work shall not release Tenant of Tenant's obligations hereunder nor shall the same be deemed to be a waiver by Landlord of Tenant's default for the failure to perform such cleaning.

Tenant shall keep the Premises free from insects, rodents and all vermin. Without limiting the generality of the foregoing, Tenant shall, at its sole cost and expense, engage professional reputable exterminators to service the Premises, including but not limited to all food preparation and food storage areas, on a monthly basis (or at such greater frequency as Landlord may reasonably require) and to the extent necessary to safely keep the Premises free of insects, rodents, vermin and other pests and to prevent insects, rodents, vermin and other pests from the Premises infesting spaces leased to others or the common areas of the Building. Tenant shall provide to Landlord, upon demand, reasonable proof that Tenant is causing such exterminating to be regularly performed. In the event that Tenant shall refuse or fail to have such exterminating regularly performed, then after five (5) Business Days' advance notice from Landlord and Tenant's failure to perform such obligation, Landlord may arrange for such work to be done, and Tenant shall pay the entire cost thereof plus an administrative charge equal to fifteen percent (15%) of the cost thereof. Landlord shall not be liable to Tenant for any loss or damage that may accrue to Tenant's stock in trade or business by reason thereof, including but not limited to any loss of revenues resulting from any required limitation or cessation of Tenant's business while such extermination is performed or as a result thereof. Landlord's arranging for such extermination shall not release Tenant from Tenant's obligations hereunder nor shall the same be deemed to be a waiver by Landlord of Tenant's default for the failure to have such extermination performed.

All equipment installed or used by Tenant in the Premises shall be properly installed and, where necessary, with adequate electrical wiring in conformity with the recommendations of the manufacturers thereof and with all applicable codes and ordinances. All electrical equipment shall have been tested and approved by the Underwriter's Laboratory or similar safety testing organization. No equipment shall be used by Tenant in the Premises unless and until such equipment and the installation

thereof has been inspected and approved by the departments or bureaus of the City of Chicago and other Governmental Authorities having jurisdiction (if required) and unless, until and only for so long as all necessary permits and authorizations (if required) for the use and/or operation thereof have been obtained by Tenant from such authorities at Tenant's sole cost and expense.

Because of the unique nature of Tenant's business, Tenant further agrees that Tenant shall store all trash and other waste generated by the Kitchen Facilities in odor and vermin proof containers, such containers to be kept in temperature controlled areas of the Premises not visible to members of the public. Tenant shall, at Tenant's expense, attend to the frequent disposal of such materials, as provided below. Tenant understands and agrees that since trash removal must be done using the corridors and other areas of the Building which are open to the public, trash removal must be done by Tenant using containers approved by Landlord at such times and in such manner as Landlord may direct and subject to such rules and regulations in respect thereto as Landlord may, from time to time, adopt. Tenant further understands and agrees that such rules and regulations may be different than those which apply to trash removal by other (non-restaurant) tenants in the Building. Tenant shall be responsible for daily removal from the Premises (and Landlord from the Building) of all garbage and refuse generated by operation of Tenant's business (the Landlord's cost of which shall constitute an operating expense of the Building), which removal shall be conducted in a clean and sanitary manner. In no event at any time shall Tenant leave or store any such refuse in the corridors of the Building or outside the Building or Premises, except in the designated areas provided by Landlord. If, in Landlord's reasonable judgment, Tenant is not adequately complying with this subsection, then, after five (5) Business Days' advance notice from Landlord, Landlord shall have the right, but not the obligation, to remove such garbage and charge Tenant for any and all expenses incurred in so doing, plus an administrative charge equal to fifteen percent (15%) of the cost of the charge thereof for so doing. All contractors hired by Tenant to remove such garbage must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

Landlord shall notify Tenant within ten (10) Business Days after Tenant's delivery of Tenant's Plans (as defined in Section 4.2(a) hereof) whether Landlord consents or withholds its consent to Tenant's Initial Alterations. If Landlord fails to notify Tenant of its consent or withholding of consent within such ten (10) Business Day period, and (x) Landlord further fails to notify Tenant of its consent or withholding of consent within ten (10) Business Days after delivery (or attempted delivery) of a second written request by Tenant to Landlord, (y) Tenant has evidence that Landlord received or refused delivery of such second notice (in the form of a return receipt or proof of refusal of delivery), and (z) such second notice stated on its face that refusal to timely respond constitutes a "deemed consent", then Landlord shall be deemed to have consented to Tenant's Initial Alterations. If Landlord's approval of a contractor is required, Landlord shall notify Tenant within ten (10) Business Days after Tenant's written request whether Landlord consents or withholds its consent to any contractor proposed by Tenant to perform Tenant's Initial Alterations. If Landlord fails to notify Tenant of its consent or withholding of consent within such ten (10) Business Day period, and (x) Landlord further fails to notify Tenant of its consent or withholding of consent within ten (10) Business Days after delivery (or attempted delivery) of a second written request by Tenant to Landlord, (y) Tenant has evidence that Landlord received or refused delivery of such second notice (in the form of a return receipt or proof of refusal of delivery), and (z) such second notice stated on its face that refusal to timely respond constitutes a "deemed consent", then Landlord shall be deemed to have consented to the contractor proposed by Tenant to perform such Tenant's Initial Alteration. Notwithstanding anything to the contrary contained herein, in no event shall Tenant unreasonably interfere with Landlord's performance of Landlord's Alterations (as hereinafter defined) in performing any Alterations hereunder.

(b) Tenant's Subsequent Alterations. Excluding Tenant's Initial Alterations (which are addressed in Section 4.2(a) above), Tenant shall not make any subsequent Alterations without Landlord's prior written consent in each instance (any Alteration which is not a Tenant Initial Alteration shall hereinafter be referred to as "Tenant's Subsequent Alterations"); provided, however, that Tenant may make the following Alterations to the Premises without Landlord's prior written consent (collectively "Permitted Alterations"): (x) decorations consisting of furniture, painting, wall coverings and floor coverings in the Premises subject to the terms and provisions of this Lease ("Decorative Alterations"), and

(y) other Alterations which satisfy the Alterations Criteria, and which (together with any other Alterations performed by Tenant during the calendar year in which such other Alterations were performed) cost, in the aggregate, less than \$50,000.00; provided, further, that Tenant shall provide Landlord with at least ten (10) Business Days' prior written notice prior to making any Permitted Alterations, which notice shall include (except in the case of Decorative Alterations) a set of plans and specifications for such Permitted Alterations, as described in Section 4.2(a) below. Landlord's consent to Tenant's Subsequent Alterations shall be granted or denied in Landlord's reasonable discretion; provided, however, that Landlord shall not unreasonably withhold, condition, or delay its consent to Tenant's Subsequent Alterations to adapt the Premises for the Permitted Use provided that such Subsequent Alterations comply with the Alterations Criteria and the other terms and provisions of this Lease. Landlord shall notify Tenant within ten (10) Business Days after Tenant's delivery of Tenant's Plans whether Landlord consents or withholds its consent to Tenant's Subsequent Alterations. If Landlord fails to notify Tenant of its consent or withholding of consent within such ten (10) Business Day period, and (x) Landlord further fails to notify Tenant of its consent or withholding of consent within five (5) Business Days after delivery (or attempted delivery) of a second written request by Tenant to Landlord, (y) Tenant has evidence that Landlord received or refused delivery of such second notice (in the form of a return receipt or proof of refusal of delivery), and (z) such second notice stated on its face that refusal to timely respond constitutes a "deemed consent", then Landlord shall be deemed to have consented to Tenant's Subsequent Alterations. If Landlord's approval of a contractor is required, Landlord shall notify Tenant within ten (10) Business Days after Tenant's written request whether Landlord consents or withholds its consent to any contractor proposed by Tenant to perform Tenant's Subsequent Alterations. If Landlord fails to notify Tenant of its consent or withholding of consent within such ten (10) Business Day period, and (x) Landlord further fails to notify Tenant of its consent or withholding of consent within five (5) Business Days after delivery (or attempted delivery) of a second written request by Tenant to Landlord, (y) Tenant has evidence that Landlord received or refused delivery of such second notice (in the form of a return receipt or proof of refusal of delivery), and (z) such second notice stated on its face that refusal to timely respond constitutes a "deemed consent", then Landlord shall be deemed to have consented to the contractor proposed by Tenant to perform such Tenant's Subsequent Alteration.

(c) Tenant's Acknowledgement. Tenant acknowledges and confirms that neither Landlord's review and/or approval of any plans and specifications for any Alterations, nor Landlord's consent to or approval of any Alterations, shall constitute a representation or warranty by Landlord that such Alterations comply with (or have been designed or engineered in a manner which would comply with) the Alterations Criteria. Tenant further acknowledges and confirms that Tenant's obligation and responsibility to cause all Alterations performed by or on behalf of Tenant to comply with the Alterations Criteria shall remain in full force and effect notwithstanding that Landlord may have reviewed or approved plans and specifications for such Alterations (or otherwise consented or approved such Alterations) which do not comply with any such Alterations Criteria, and that no such review, consent or approval by Landlord shall in any way release or excuse Tenant from Tenant's obligation to cause all Alterations performed by or on behalf of Tenant to comply with the Alterations Criteria. In the event that Tenant performs any Alterations which (i) breach or violate the Alterations Criteria and (ii) subject to the last sentence of this Section 4.1(c), were not approved or consented to by Landlord (or deemed approved or consented to pursuant to the terms hereof), Tenant shall, upon Landlord's demand, immediately cure or commence to cure and diligently proceed to cure such breach or violation in a manner reasonably acceptable to Landlord at Tenant's sole cost and expense, and if Tenant fails to so cure such breach or violation within the cure periods set forth in Section 16.1(c) hereof, Landlord shall have the right, (but not the obligation) to cure such breach or violation at Tenant's sole cost and expense (in addition to all other rights) and remedies to which Landlord is entitled under this Lease, at law and in equity), which right shall only arise after the expiration of all applicable notice and cure periods. Tenant shall indemnify, defend (with counsel acceptable to Landlord) and hold Landlord harmless from and against any and all claims, demands, suits, causes of action, losses, costs, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) brought against, sustained or incurred by Landlord which result from or arise out of any failure by Tenant (or any other Tenant Party) to comply with the Alterations Criteria. Notwithstanding the foregoing, Landlord agrees that to the extent Tenant performs an Alteration in accordance with plans and specifications approved or deemed approved by Landlord pursuant to the terms and provisions of this Lease, Landlord shall not claim such Alteration violates any Alterations

Criteria which Landlord has knowledge, after due inquiry, unless (i) a change in a Legal Requirement occurs after the completion of such Alteration or (ii) Tenant's subsequent use of such any Alteration violates, or is inconsistent with, any Alterations Criteria, and Tenant shall cease such use within ten (10) Business Days after receipt of written notice from Landlord thereof.

#### **Section 4.2 Plans and Specifications.**

(a) **Conditions.** Prior to making any Alterations (other than Decorative Alterations), including, without limitation, Tenant's installation and construction of the Premises (including, without limitation, the Kitchen Facilities), the Expansion Premises or the ROFR Space to prepare such space for Tenant's occupancy (including floor covering, wall covering, fixtures, cabling and telephone and computer installations) ("Tenant's Initial Alterations"), Tenant, at its expense, shall submit to Landlord for its written approval or, in the case of Permitted Alterations, for Landlord's review, detailed plans and specifications (including layout, architectural, mechanical, electrical, plumbing, sprinkler and structural drawings) of each proposed Alteration, (individually and collectively, "Tenant's Plans"), including any Alterations affecting any Building System. Additionally, if any Building System will be affected by any Alteration proposed by Tenant, Tenant shall submit proof that the Alteration has been designed by, or reviewed and approved by, Landlord's designated engineer for such affected Building System. With respect to all Alterations performed by or on behalf of Tenant (including, without limitation, Permitted Alterations), Tenant shall obtain all permits, approvals and certificates required by any Governmental Authorities, and shall furnish to Landlord copies of policies or certificates of worker's compensation (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such Alteration) and commercial general liability (including property damage coverage) insurance and Builder's Risk coverage (issued on a completed value basis) all in such form, with such companies, for such periods and in such amounts as Landlord may reasonably require, naming Landlord, Landlord's Agent, Landlord's asset manager and their respective employees and agents, any Superior Lessor and any Mortgagee as additional insureds. Landlord shall notify Tenant whether Landlord consents or withholds its consent to any proposed Tenant's Plans in the manner and time periods set forth in Section 4.1(a) and Section 4.1(b), as applicable. In the event Landlord shall withhold approval of any proposed Tenant's Plans, Landlord, within ten (10) Business Days after Landlord's receipt of a complete set of such Tenant's Plans (together with any additional documents or information Landlord may reasonably request), shall notify Tenant in writing of its objections thereto and Landlord and Tenant shall cooperatively and in good faith work to reach a mutually acceptable agreement with respect to such plans. Tenant shall promptly reimburse Landlord, as Additional Rent within ten (10) Business Days after delivery of an invoice therefor, for all overtime services provided to Tenant by Landlord in connection with Tenant's performance of any Alterations, together with all reasonable costs and expenses incurred by Landlord from any third-party consultants retained by Landlord in connection with Tenant's performance of any Alteration, provided such consultants are necessary (in Landlord's reasonable judgment) to review and/or supervise the performance of such Alterations and Landlord specifies in Landlord's approval of Tenant's Plans whether Landlord will retain consultants in connection with such Alterations.

(b) **Manner and Quality of Alteration.** All Alterations shall be performed in a good and workmanlike manner and free from liens and defects, in accordance with Tenant's Plans and by contractors reasonably approved by Landlord (to the extent required above), under the supervision of a licensed architect reasonably satisfactory to Landlord (Solomon, Cordwell Buenz is approved by Landlord), and in compliance with all Legal Requirements, the terms of this Lease, all procedures and regulations then uniformly and nondiscriminatorily prescribed by Landlord for coordinating all work performed in the Building and the Rules and Regulations. All materials and equipment to be used in the Premises shall be new, or first quality and at least equal to the reasonable standards for the Building then established by Landlord, and no such materials or equipment (other than Tenant's Property) shall be subject to any lien or other encumbrance.

(c) **Governmental Approvals.** Upon completion of any Alterations, Tenant, at its expense, shall promptly obtain certificates of final approval of such Alterations as may be required by any Governmental Authority, and shall furnish Landlord with copies thereof, together with "as-built" plans and specifications for any such Tenant Alterations prepared on an Autocad Computer Assisted Drafting and



Design System (or such other system or medium as Landlord may accept) using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming convention as Landlord may accept) and magnetic computer media of such record drawings and specifications, translated into DXF format or another format acceptable to Landlord.

(d) **Removal of Tenant's Alterations.** All Tenant's Alterations, excluding Tenant's Property and the Kitchen Facilities, shall remain in the Premises and become the property of Landlord upon the expiration or sooner termination of this Lease. Provided, however, at the time that Tenant requests Landlord's approval for the performance of any Alterations under this Lease (or notifies Landlord of Tenant's performance of any such Alterations, in the case of Alterations which do not require Landlord's consent hereunder), Landlord shall notify Tenant within ten (10) days after Tenant's written request of those Alterations which Landlord will require Tenant to remove upon the expiration or termination of the Term of this Lease, and, in the event that Landlord identifies any such Alterations which shall be removed from the Premises, Tenant shall remove such Alterations from the Premises upon the expiration or sooner termination of the Term of this Lease. Notwithstanding anything to the contrary in this Lease, upon the expiration or termination of this Lease, the following items must be removed: any raised flooring installed in the Premises, antennas and all components related thereto and the Kitchen Facilities, and Landlord shall not require Tenant to remove any additional permanent leasehold improvements to the Premises which are included as part of Tenant's Initial Alterations or Landlord's Alterations.

(e) **Removal of Tenant's Property.** Upon the Expiration Date (or earlier termination of the Lease or any renewal thereof), Tenant shall remove all of Tenant's Property from the Premises at Tenant's sole cost and expense.

(f) **General.** Tenant shall repair and restore in a good and workmanlike manner (reasonable wear and tear excepted) any damage to the Premises and the Building caused by such removal of Tenant's Property and/or Tenant's Alterations. Any of Tenant's Alterations or Tenant's Property not so removed by Tenant shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or be removed from the Premises and disposed of by Landlord (and any damage caused thereby repaired) at Tenant's cost and without accountability to Tenant, provided that before taking any action with regards to Tenant's Alterations or Tenant's Property, Landlord shall provide Tenant with five (5) days prior written notice. The provisions of this Section 4.2(f) shall survive the expiration or earlier termination of this Lease.

#### **Section 4.3 Mechanic's Liens.**

(a) If, because of any act or omission of Tenant or any Tenant Party, any mechanic's lien, U.C.C. financing statement or other lien, charge or order for the payment of money shall be filed against Landlord, or against all or any portion of the Premises, the Building or the Real Property, then Tenant shall indemnify, defend and save Landlord harmless against and from all costs, expenses, liabilities, suits, penalties, claims and demands (including reasonable attorneys' fees and disbursements) resulting therefrom, and Tenant shall cause such mechanic's lien, financing statement or other lien, charge or order to be released and discharged of record, by bonding or otherwise, within thirty (30) days after the filing thereof (at Tenant's sole cost and expense).

(b) Notwithstanding the foregoing, Tenant shall have the right to grant a lien to a lender or other financial institution in connection with Tenant's Property (excluding any furniture or other property acquired through application of Landlord's Contribution), provided, in no event shall such lien (or security therefor) be recorded and/or placed against Landlord, the Real Property, the Building or the Premises. If any such lien or security interest is recorded and/or placed against Landlord, the Real Property, the Building or the Premises, the indemnity provisions of this Section 4.3 and the provisions contained in subparagraph (a) above shall apply.

**Section 4.4 Labor Relations.** Tenant and any Tenant Party shall not, at any time prior to or during the Term, directly or indirectly, employ, or permit the employment of, any contractor, mechanic or laborer in the Premises, or permit any materials to be delivered to or used in the Building,

whether in connection with any alteration or otherwise, if, in Landlord's reasonable judgment, such employment, delivery or use will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others, or the use and enjoyment of the Building by other tenants or occupants of the Building. In the event of such interference or conflict, upon Landlord's request, Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building as soon as possible.

**ARTICLE 5. CONDITION OF THE PREMISES; LANDLORD'S ALTERATIONS; LANDLORD'S CONTRIBUTION**

**Section 5.1 Condition.** Tenant has examined the Premises and, subject to the terms of this Article 5, agrees to accept possession of the Premises in their "as is" condition on the Effective Date, and further agrees that except for Landlord's Alterations specified in Section 5.2, and the making of Landlord's Contribution as expressly set forth in Section 5.3 and any Legal Requirements applicable to Landlord, Landlord shall have no obligation to perform any work, supply any materials, incur any expenses or make any installations in order to prepare the Premises for Tenant's occupancy. The taking of possession of the Premises by Tenant shall be conclusive evidence as against Tenant that, except for Landlord's Alterations, latent defects, Legal Requirements applicable to Landlord, and any notice of defects in Landlord's Alterations from Tenant to Landlord given within thirty (30) days of possession, at the time such possession was so taken, the Premises were in good and satisfactory condition. Notwithstanding anything contained in this Lease to the contrary, Landlord, as of the date hereof and as of the Commencement Date (unless otherwise noted in this Section 5.1), represents and warrants to Tenant that:

- (a) Landlord is the lawful owner of the fee interest of the Building and the Real Property;
- (b) Landlord possesses the authority to enter into this Lease and be bound by the terms and provisions hereof;
- (c) There are no pending, and to the best of Landlord's knowledge and belief, threatened lawsuits, proceedings or legal actions which would prevent Landlord from entering into this Lease or from performing any of its obligations or duties hereunder;
- (d) The Permitted Use does not violate any requirements of Landlord's insurance carrier;
- (e) The Building and the Premises shall be in material compliance with all Legal Requirements;
- (f) Landlord's Alterations shall be free of defects for a period of one (1) year after the Commencement Date;
- (g) There are no Hazardous Materials located in the Premises or the common areas of the Building (which have not been abated);
- (h) There is presently available in the Building natural gas service;
- (i) To Landlord's actual knowledge, Landlord has no knowledge of any Legal Requirement which would prohibit Tenant for using the Premises for the Permitted Use at the Premises, provided that the Permitted Use is conducted by Tenant at the Premises in accordance with applicable Legal Requirements; and
- (j) The common areas of the Building are fully sprinklered.

**Section 5.2 Landlord's Alterations.** Landlord's sole obligation for the performance of Alterations in order to prepare the Premises for Tenant's occupancy (collectively, "Landlord's

Alterations”), shall consist of the completion of the work set forth on Exhibit F hereof. Commencing December 21, 2006, Landlord shall diligently prosecute Landlord’s Alterations towards Substantial Completion. By the Actual Delivery Date, Landlord shall Substantially Complete the Landlord’s Alterations (except the Electrical Improvements). Thereafter, Landlord and Tenant and their respective contractors shall cooperate to simultaneously perform their respective Alterations. Within five (5) Business Days after the date that all of Landlord’s Alterations are Substantially Completed, Landlord and Tenant, or their representatives, shall inspect the Premises. If, as a result of such inspection of the Premises, Tenant or Tenant’s contractor discovers any Punch List Items or disputes Landlord’s determination that Landlord’s Alterations are Substantially Complete, Tenant may deliver within five (5) Business Days after such inspection a list of such items and/or the basis for Tenant’s dispute that Landlord’s Alterations are not Substantially Complete (a “Punch List”). Landlord shall use reasonable efforts to correct or cure all Punch List Items within thirty (30) days after Landlord receives the Punch List. If Landlord disputes Tenant’s claim that Landlord’s Alterations have not been Substantially Completed, such matter shall be resolved by Landlord’s architect and Tenant’s architect. If such parties cannot resolve such dispute within ten (10) days, Landlord’s architect and Tenant’s architect shall use good faith efforts to select, within such ten (10) day period, a third party who possesses at least fifteen (15) years experience in commercial real estate construction (“Third Party Arbitrator”) the cost of which shall be equally borne by Landlord and Tenant. The decision of the Third Party Arbitrator shall be binding on the parties. Landlord shall have the right to enter the Premises at any reasonable time to correct or cure such Punch List Items, provided, Landlord shall not materially interfere with Tenant’s performance of Tenant’s Initial Alterations.

### **Section 5.3 Landlord’s Contribution To Tenant’s Initial Alterations.**

(a) **Landlord’s Contribution.** Landlord shall contribute as hereinafter provided toward Tenant’s actual cost of Tenant’s Initial Alterations to be performed by or on behalf of Tenant and “soft costs” incurred in connection with such alterations, including, but not limited to, costs associated with furniture, moving expenses, and architectural, engineering, and permitting fees, an amount (“Landlord’s Contribution”) equal to \$65.00 per Rentable Square Feet of Premises Area; provided, however, that no more than twenty percent (20%) of Landlord’s Contribution shall be applied to the reimbursement of “space planning and design costs, costs associated with furniture and moving expenses, third party construction management fees and other soft costs”; and further provided that Tenant’s Plans for Tenant’s Initial Alterations comply with Article 4, this Lease shall be in full force and effect and no Event of Default shall have occurred and be continuing hereunder. Landlord and Tenant acknowledge that, in addition to Landlord’s Contribution, Landlord shall pay Tenant or its architect for the preliminary layout of Tenant’s Initial Alterations and for a revision thereto pursuant to a separate agreement between Landlord and Tenant’s architect. Tenant’s costs shall not be treated as reduced or not expended by reason of the Incentives.

(b) **Parameters.** Any cost of the Tenant’s Initial Alterations in excess of Landlord’s Contribution shall be paid by Tenant. Tenant shall not be entitled to receive any portion of Landlord’s Contribution not actually expended by Tenant in the performance of Tenant’s Initial Alterations, nor shall Tenant have any right to apply any unexpended portion of Landlord’s Contribution as a credit against Fixed Rent, Additional Rent or any other obligation of Tenant hereunder. No part of Landlord’s Contribution may be assigned by Tenant prior to actual payment thereof by Landlord to Tenant.

(c) **Payment.** Landlord shall make progress payments to Tenant on a monthly basis, for the portion of work constituting Tenant’s Alterations that was performed during the previous month, less a retainage of 10% of each progress payment (the “Retainage”). Each of Landlord’s progress payments will be limited to an amount equal to (a) the aggregate amounts (reduced by the Retainage) theretofore paid by Tenant (as certified by an authorized officer of Tenant and by Tenant’s independent, licensed architect) to Tenant’s contractors, subcontractors and material suppliers (excluding any payments for which Tenant has previously been reimbursed out of previous disbursements from Landlord’s Contribution), **multiplied by** (b) a fraction, the numerator of which is the amount of Landlord’s Contribution, and the denominator of which is the total contract price (or, if there is no specified or fixed contract price for Tenant’s Initial Alterations, then Landlord’s reasonable estimate thereof) for the

performance of all of Tenant's Initial Alterations shown on all plans and specifications approved by Landlord. Landlord shall make progress payments to Tenant within thirty (30) days following delivery to Landlord of requisitions that include the following items/materials: (i) a signature by a financial officer of Tenant; (ii) the names of each contractor and subcontractor to whom payment is due, and the amount thereof; (iii) with the exception of the first requisition, copies of partial waivers of lien from all contractors, subcontractors and material suppliers covering all work and materials which were the subject of previous progress payments by Landlord and Tenant; (iv) a written certification from Tenant's architect that the work for which the requisition is being made has been completed substantially in accordance with the plans and specifications approved by Landlord; and (v) such other documents and information as Landlord may reasonably request. Any requisitions which are true, correct and complete in Landlord's reasonable judgment made prior to the first (1st) day of any month shall be paid no later than the last day of the month following the month in which such requisitions are made. All requisitions shall be submitted on AIA Form G702 and G703. All requisitions must be submitted within one (1) year of the Commencement Date. Landlord shall disburse the Retainage upon submission by Tenant to Landlord of a requisition therefor, accompanied by all documentation required under this Section 5.3, together with (A) proof of the satisfactory completion of all required inspections and issuance of any required approvals, permits and sign-offs for Tenant's Initial Alterations by all Governmental Authorities having jurisdiction thereover, (B) final "as-built" plans and specifications for Tenant's Initial Alterations as required pursuant to Section 4.2, and (C) the issuance of final lien waivers by all contractors, subcontractors and material suppliers covering all of Tenant's Initial Alterations. Notwithstanding anything to the contrary set forth in this Lease, in no event shall Landlord be required to pay to Tenant any undisbursed portion of the Landlord's Contribution including, without limitation, the Retainage, requisitioned after the first (1<sup>st</sup>) anniversary of the Commencement Date. Notwithstanding anything to the contrary set forth in this Section 5.3, if Tenant fails to pay when due any sums due and payable to any of Tenant's contractors or material suppliers, Landlord shall have the right, but not the obligation, after ten (10) days prior written notice to Tenant to promptly pay to such contractor or supplier all sums so due from Tenant, and sums so paid by Landlord shall be deemed Additional Rent and shall be paid by Tenant within ten (10) days after Landlord delivers to Tenant an invoice therefor.

## **ARTICLE 6. REPAIRS; FLOOR LOAD**

**Section 6.1 Repair and Maintenance Obligations.** Landlord shall maintain, replace and repair the Building Systems and the common areas of the Building, both exterior and interior, and the structural elements thereof, including the roof, foundation and curtain wall (including windows) in good condition and repair and in compliance with all Legal Requirements and consistent with a first-class, mixed use retail and commercial center. Except for those matters within Landlord's obligation under the previous sentence, Tenant, at Tenant's expense, shall take good care of the Premises and the fixtures, systems, equipment and appurtenances therein, and make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, except for reasonable wear and tear, obsolescence and damage for which Tenant is not responsible pursuant to the provisions of Articles 11 and 12. Notwithstanding the foregoing, all damage or injury to the Premises or to any other part of the Building, Building Systems, or to its fixtures, equipment and appurtenances of the Building, except that caused by casualty, caused by or resulting from negligence or improper conduct of or Alterations made by Tenant or any Tenant Party shall be repaired at Tenant's expense, (a) by Tenant to the satisfaction of Landlord (if the required repairs are non-structural and do not affect any Building System), or (b) by Landlord (if the required repairs are structural or affect any Building System). Tenant also shall repair all damage to the Building and the Premises caused by the making of any Alterations by Tenant or by the moving of Tenant's Property, provided that the mere installation or construction of any Alteration performed in accordance with Article 4 hereof and approved or deemed approved by Landlord that is performed without negligence shall not constitute damage. All of such repairs shall be of quality or class equal to the original work or construction. If, after fifteen (15) days notice, Tenant fails to proceed with due diligence to make such repairs, Landlord may make such repairs at the expense of Tenant, and Tenant shall pay the costs and expenses thereof incurred by Landlord, with interest at the Default Rate, as Additional Rent within ten (10) days after delivery of an invoice therefor together with appropriate evidence of such costs and expenses.

**Section 6.2 Floor Load.** Tenant shall not place a load upon any floor of the Premises exceeding the lesser of (i) the floor load per square foot which such floor was designed to carry (which floor load is, in Landlord's reasonable estimation, one hundred fifty (150) pounds per square foot) or (ii) the floor load which is allowed by law. Tenant shall not move any safe, heavy equipment, business machines, freight, bulky matter or fixtures into or out of the Building without Landlord's prior consent, which consent shall not be unreasonably withheld or delayed.

**Section 6.3 Interruptions Due To Repairs.** Landlord reserves the right to make (or cause to made) all changes, alterations, additions, improvements, repairs or replacements to the Building, including the Building Systems which provide services to Tenant, as Landlord deems necessary or desirable, provided that such right is exercised consistent with Landlord's obligations and representations and warranties in this Lease and Landlord does not materially affect Tenant's access to the Building or to the Premises (other than on a temporary basis) and does not materially affect Tenant's light and views. Landlord shall use reasonable efforts to provide Tenant with prior written notice (excepting in the event of an emergency) of, and to minimize interference with Tenant's use and occupancy of the Premises during the making of such repairs, alterations, additions, improvements, or replacements provided that Landlord shall have no obligation to employ (or cause such other parties to employ) contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever. Except as provided in Section 10.6(b) hereof, there shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others making, or failing to make, any repairs, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances or equipment thereof.

## **ARTICLE 7. INCREASES IN TAXES AND OPERATING EXPENSES.**

**Section 7.1 Definitions.** For the purposes of this Article 7 , the following terms shall have the meanings set forth below:

(a) **"Comparison Year"** shall mean any calendar year ending after the Commencement Date all or any part of which falls within the Term.

(b) **"Excluded Expenses"** shall mean the following which shall not be included in Operating Expenses:

- (1) leasing commissions and costs of advertising the Building;
- (2) costs for space in the Building occupied by Landlord or its Affiliates, except that costs for space occupied by the property manager of the Building and used exclusively for the management of the Building shall not be excluded from Operating Expenses,
- (3) costs of restoration including the cost of restoring the Building resulting from a casualty or partial condemnation to the extent of Landlord's collection of condemnation or insurance proceeds;
- (4) the cost of any items for which Landlord is actually reimbursed by insurance;
- (5) that portion of any cost of any work or service performed for, or a facility furnished to, any tenant or occupant of the Building that is greater than the work, service or facility which is performed or furnished generally for tenants and occupants of the Building to the extent Tenant does not benefit from such work, service or facility;

- (6) interest or other financing charges incurred in connection with indebtedness secured by a mortgage lien on the Real Property, and rent under any ground or underlying lease;
- (7) cash allowances to any tenant or occupant of the Building for leasehold improvements and decorating in connection with the initial leasing of demised premises in the Building;
- (8) the portion of any costs that are allocable to any other properties of Landlord or any of its affiliates, such as the portion of the personnel benefits, expenses and salaries of the type set forth in these exclusions of employees allocable to time spent by such employees in connection with properties other than the Real Property, or the portion of the premiums for any insurance carried under "blanket" or similar policies to the extent allocable to any property other than the Real Property;
- (9) Taxes and any "gains" or ownership or control tax, mortgage recording tax, transfer or transfer gains tax, inheritance or estate tax imposed upon Landlord;
- (10) costs incurred in connection with preparing and negotiation of leases, amendments and modifications thereto, consents to subleases, assignments or any form of leases and attorneys' fees and disbursements for the enforcement of tenant leases;
- (11) the portion (if any) of the management fee for the Building which exceeds the competitive market rate for management fees for similar buildings located in Chicago, Illinois;
- (12) any bad debt loss, rent loss or reserves for bad debts or rent loss;
- (13) depreciation, other "non-cash" expense items or amortization, except for amortization charges expressly provided for in this Lease;
- (14) the cost of Landlord's Alterations;
- (15) "tenant allowances", "tenant concessions", workletters, and other costs or expenses (including permit, license and inspection fees) incurred in completing, fixturing, furnishing, renovating or otherwise improving, decorating or redecorating tenant space for tenants or other occupants of the Building, including Tenant, or vacant, leasable space in the Building, including space planning/interior design fees for same;
- (16) costs of a capital nature, including, but not limited to, capital additions, capital improvements, capital alterations, capital replacements, capital equipment and capital tools, and/or capital redesign, all in accordance with generally accepted accounting principles, as consistently and reasonably applied by Landlord (except as provided for in the grammatical paragraph immediately following this list of exclusions);
- (17) costs or expenses (including fines, penalties and legal fees) incurred due to the violation by Landlord, its employees, agents and/or contractors, of any terms and conditions of this Lease or of the leases of other tenants in the Building, and/or of any valid, applicable Legal Requirements that would not have been incurred but for such violation by Landlord, its employees agents and/or contractors;

- (18) interest and penalties for late payment; costs directly resulting from the negligence or willful misconduct of Landlord, its employees, agents and/or contractors, other than normal repair and maintenance equivalent to those normally undertaken by Landlord; payments in respect of overhead and/or profit to any Landlord Party, or to any other party, as a result of a non-competitive selection process for services (excluding, however, management fees which are limited above) on or to the Building and/or the Land, or for goods, supplies or other materials, to the extent that the costs of such services, goods, supplies and/or materials exceed the costs that would have been paid had the services, goods, supplies or materials been provided by parties unaffiliated with Landlord of similar skill, competence and experience, on a competitive basis;
- (19) costs in any way related to removing, cleanup, remediation, or response of any kind in connection with the use, transportation, storage, generation or release by any person prior to the Commencement Date or by Landlord or by any tenant in the Building of any Hazardous Materials;
- (20) except for the management fee, costs of Landlord's general overhead (individual, partnership or corporate, as the case may be), which costs would not be chargeable to operating expenses of the Building in accordance with generally accepted accounting principles; costs incurred by Landlord in connection with retail activities on any floor of the Building (except to the extent that such services are provided as a tenant service for the benefit of all tenants and with no profit to Landlord and except to the extent that such services are not materially different than services provided to office tenants of the Building);
- (21) compensation paid to clerks, attendants or other persons in commercial concessions (such as a snack bar, restaurant or newsstand), if any, operated for profit by Landlord or any Affiliate of Landlord;
- (22) costs incurred in installing, operating, maintaining and owning any specialty items, services or amenities not necessary for Landlord's operation, repair, protection, management and maintenance of, and the providing of required services for, the Building and/or any associated parking facilities, including, but not limited to, an observatory, beacon(s), broadcasting facilities (other than the Building's music system, and life support and security systems), luncheon club, athletic or recreational club, helicopter pad, conference room, child care center, advertising and promotional expenses, and retail kiosks located within the Building;
- (23) costs in connection with the ownership, operation and maintenance of any off-site garage and/or parking facilities associated with the Building, and costs in connection with the operation and maintenance of any garage and/or parking facilities in the Building or on the Real Property;
- (24) costs of correcting or repairing defects in the Building and/or any associated parking facilities, and/or equipment or the replacement of defective equipment, to the extent Landlord recovers same under warranties of manufacturers, suppliers or contractors, and Landlord agrees to use commercially reasonable efforts to obtain any reimbursements or payments to which it is entitled under such warranties;
- (25) costs or expenses for the purchase of sculptures, paintings or other works of art;
- (26) cost or expenses incurred with respect to the ownership, repair and/or maintenance of sculptures, paintings and other works of art;

- (27) contributions to operating expense reserves;
- (28) contributions to charitable and political organizations, fees, dues or other contributions paid by or on behalf of the Landlord and any Landlord party to civic organizations which exceed \$25,000 per year;
- (29) costs or fees relating to the insuring or defense of Landlord's title to or interest in the Building and/or the land, or any part thereof, other than costs related to defending against lien claims by contractors providing services that are related to the management, maintenance, operation, protection and/or repair of the Building (specifically not including, however, contractors performing tenant improvement work for tenants of the Building);
- (30) any item of cost or expense which the Lease expressly provides shall be borne or paid by Landlord at its sole cost and expense;
- (31) costs incurred in removing the property of former tenants of the Building;
- (32) rental for Landlord's leasing office, but this exclusion shall not apply to the Building management office;
- (33) compensation in the form of wages, salaries and such other compensation and benefits, as well as any adjustments thereto, for all employees and personnel of Landlord above the level of the manager of the Building;
- (34) an equitable allocation of the wages, salaries and other compensation and benefits of Landlord's employees and personnel who work on other projects, including, without limitation, those being periodically developed, managed and/or operated by Landlord, in addition to the Building and/or the Real Property, among all such projects in proportion to their time spent in performing services other than for the Building;
- (35) the costs of repairs, remediations, retrofits, alterations, improvements and installations (including fines, interest and penalties) to comply with any violation of Legal Requirements applicable to the Building which violations were in existence on or before the Commencement Date;
- (36) attorneys' or other professional fees, costs, disbursements and other expenses related to financing of the Building and not related to the maintenance, operation, cleaning, repair or protection of the Building, (including, without limitation, negotiation, enforcement, resolving disputes and fees and other charges payable under or with respect to agreements with marketing and/or leasing consultants, management agents, and/or purchasers, ground lessors, prior owners or mortgagees of the Real Property, Building or any portion thereof) except for management fees permitted above; and
- (37) cost of relocating tenants.

(c) **“Operating Expenses”** shall mean the aggregate of all costs and expenses (and taxes, if any, thereon), excluding Excluded Expenses, paid or incurred by or on behalf of Landlord (whether directly or through independent contractors) in connection with the operation, repair and maintenance of the Building and the Real Property, such as: insurance premiums, the cost of electricity, gas, oil, steam, water, air conditioning and other fuel and utilities, attorneys' fees and disbursements and auditing, management, administrative and other professional fees and expenses, and any capital improvement as described in items (1) or (2) below which shall be installed by Landlord in the Building. Such capital



improvements shall be amortized on a straight-line basis over the useful life of such capital improvements as determined in accordance with generally accepted accounting principles (with interest accruing on the unamortized portion thereof at the Base Rate in effect at the time such improvements are substantially completed per annum), and the amount included in Operating Expenses in any Comparison Year (until such improvement has been fully amortized) shall be equal to the annual amortized amount. A capital improvement shall be included in Operating Expenses only if made on or after the Commencement Date, and if it either (1) is made with the primary intent to reduce Operating Expenses (as for example, a labor-saving improvement), provided, the amount included in Operating Expenses in any Comparison Year shall not exceed an amount equal to the savings resulting from the installation and operation of such improvement, and/or (2) is made during any Comparison Year in compliance with Legal Requirements. If during all or part of any Comparison Year, Landlord shall not furnish any particular item(s) of work or service (which would otherwise constitute an Operating Expense) to any leasable portions of the Building for any reason, then, for purposes of computing Operating Expenses for such Comparison Year, as the case may be, the amount included in Operating Expenses for such period shall be increased by an amount equal to the costs and expenses that would have been reasonably incurred by Landlord during such period if Landlord had furnished such item(s) of work or service to such portion of the Building; provided, however, that any such adjustment shall apply only to Operating Expenses that are variable and therefore increase as leasing of the Building increases (including, but not limited to, Operating Expenses related to janitorial, trash removal and water services ("Variable Operating Expenses")). In determining the amount of Operating Expenses for any Comparison Year, if less than ninety-five percent (95%) of the Building rentable area shall have been occupied by tenant(s) at any time during Comparison Year, Operating Expenses shall be determined for such Comparison Year to be an amount equal to the like expenses which would normally be expected to be incurred had such occupancy been 95 percent throughout such Comparison Year; provided however, that any such adjustment shall only apply to Variable Operating Expenses.

(d) **"Statement"** shall mean a statement containing a comparison of (1) the Base Taxes and the Taxes payable for any Comparison Year; or (2) the Base Operating Expenses and the Operating Expenses payable for any Comparison Year.

(e) **"Tax Year"** shall mean the calendar year (or such other period as hereinafter may be duly adopted by the County of Cook as its fiscal year for real estate tax purposes).

(f) **"Taxes"** shall mean all real estate taxes, assessments, business improvement district charges, fees and assessments, sewer and water rents, rates and charges and other governmental levies, impositions or charges, whether general, special, ordinary, extraordinary, foreseen or unforeseen, which may be assessed, levied or imposed upon all or any part of the Real Property, (ii) all personal property taxes, assessments, rates and charges and other governmental levies, impositions or charges, whether general, special ordinary, extraordinary, foreseen or unforeseen, which may be assessed, levied or imposed upon all or any part of any personal property owned or held by Landlord and located at and used in connection with the Real Property, including, without limitation, any fixtures, machinery, equipment, apparatus, plant, transformers, duct work, cable, wires, and other facilities, equipment and systems designed to supply heat, ventilation, air conditioning, humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security or fire/life/safety systems or equipment, and any other mechanical, electrical, electronic, computer or other systems or equipment for the Real Property, all to the extent that the same do not constitute part of the Real Property (the "Personal Property"), and (iii) all expenses (including reasonable attorneys' fees and disbursements and experts' and other witnesses' fees) incurred in contesting any of the foregoing or the assessed valuation of all or any part of the Real Property or Personal Property. Taxes shall not include (x) interest or penalties incurred by Landlord as a result of Landlord's late payment of Taxes, except for interest payable in connection with the installment payment of assessments pursuant to the next sentence or (y) corporate, franchise, transfer, inheritance, gift, estate or net income taxes imposed upon Landlord. For purposes hereof, "Taxes" for any calendar year shall be deemed to be the Taxes which are due and payable during such calendar year regardless of when assessed, levied or imposed (i.e., on a cash and not an accrual basis). If any assessments are or may be payable in annual installments, then for the purposes of this Article 7, such assessments shall be deemed

to have been so divided and to be payable in the maximum number of installments permitted by law, and there shall be deemed included in Taxes for each Comparison Year the installments of such assessment becoming payable during such Comparison Year, together with interest payable during such Comparison Year on such installments and on all installments thereafter becoming due as provided by law, all as if such assessment had been so divided. The parties hereby acknowledge that general property taxes in Cook County, Illinois are not due and payable until the calendar year subsequent to the calendar year for which such taxes are assessed, levied and imposed. If at any time the methods of taxation prevailing on the date hereof shall be altered so that in lieu of or as an addition to the whole or any part of Taxes, there shall be assessed, levied or imposed (1) a tax, assessment, levy, imposition or charge based on the income or rents received from the Real Property whether or not wholly or partially as a capital levy or otherwise, (2) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon all or any part of the Real Property and imposed upon Landlord, (3) a license fee measured by the rents, or (4) any other tax, assessment, levy, imposition, charge or license fee however described or imposed, then all such taxes, assessments, levies, impositions, charges or license fees or the part thereof so measured or based shall be deemed to be Taxes, provided that any tax, assessment, levy, imposition or charge imposed on income from the Real Property shall be calculated as if the Real Property were the only asset of Landlord. Taxes for any Comparison Year shall be computed by subtracting any discount for any early payment or prepayment of Taxes and of any tax exemption or abatement relating to all or any part of the Real Property.

#### **Section 7.2 Tenant's Tax Payment.**

(a) If the Taxes for any Comparison Year exceed the Base Taxes, Tenant shall pay to Landlord the Tenant's Proportionate Share of Taxes for such excess ("Tenant's Tax Payment"). For each Comparison Year, Landlord shall furnish to Tenant a written statement setting forth Landlord's good faith reasonable estimate of Tenant's Tax Payment for such Comparison Year, based upon such year's budget for Taxes. Tenant shall pay to Landlord on the first day of each month during such Comparison Year an amount equal to one-twelfth of Landlord's estimate of Tenant's Tax Payment for such Comparison Year. If, however, Landlord shall furnish any such estimate for a Comparison Year subsequent to the commencement thereof, then until the first day of the month following the month in which such estimate is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section 7.2 during the last month of the preceding Comparison Year. Promptly after such estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Tax Payment previously made for such Comparison Year were greater or less than the installments of Tenant's Tax Payment to be made for such Comparison Year in accordance with such estimate, and if there shall be a deficiency, Tenant shall pay the amount thereof within thirty (30) days after demand therefor, or if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent due hereunder, and on the first day of the month following the month in which such estimate is furnished to Tenant, and on the first day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to one-twelfth of Tenant's Tax Payment shown on such estimate.

(b) As soon as reasonably practicable after Landlord has determined the Taxes for a Comparison Year, Landlord shall furnish to Tenant a Statement for such Comparison Year. If the Statement shall show that the sums paid by Tenant under Section 7.2(a) exceeded the actual amount of Tenant's Tax Payment for such Comparison Year, Landlord shall, at Landlord's election, either refund the amount of such excess to Tenant or credit the amount of such excess against subsequent payments of Rent due hereunder; provided, however, that at the expiration of the Term, any such amount shall be reimbursed to Tenant within thirty (30) days after expiration, subject to any amounts then due and owing to Landlord. If the Statement for such Comparison Year shall show that the sums so paid by Tenant were less than Tenant's Tax Payment for such Comparison Year, Tenant shall pay the amount of such deficiency within thirty (30) days after Tenant's receipt of the Statement. In no event shall Tenant be entitled to a refund or credit in the event that the Taxes for a Comparison Year are less than Base Taxes.

(c) If the applicable real estate Tax Fiscal Year is changed, Taxes for such Tax Year shall be apportioned on the basis of the number of days in such fiscal year included in the particular Comparison Year for the purpose of making the computations under this Section 7.2.

(d) Only Landlord shall be eligible to institute proceedings to reduce the assessed valuation of the Real Property or institute any other protest or tax refund proceedings and the filings of any such proceedings by Tenant without Landlord's prior written consent shall constitute an Event of Default. If the Base Taxes are defined as the Taxes for a particular calendar year and if such Taxes are reduced, the Base Taxes shall be correspondingly revised, the Additional Rent previously paid or payable on account of Tenant's Tax Payment hereunder for all Comparison Years shall be recomputed on the basis of such reduction, and Tenant shall pay to Landlord within thirty (30) days after being billed therefor, any deficiency between the amount of such Additional Rent previously computed and paid by Tenant to Landlord, and the amount due as a result of such recomputations. If the Base Taxes are defined as the Taxes for a particular calendar year and if such Taxes are increased then Landlord shall either pay to Tenant within thirty (30) days after being billed therefor, or at Landlord's election, credit against subsequent payments of Rent due, the amount by which such Additional Rent previously paid on account of Tenant's Tax Payment exceeds the amount actually due as a result of such recomputations. If Landlord receives a refund of Taxes in any Comparison Year, Landlord shall, at Landlord's election, either pay to Tenant within thirty (30) days after receipt of such refund, or credit against subsequent payments of Rent due hereunder, an amount equal to Tenant's Proportionate Share of the refund, net of any expenses incurred by Landlord in achieving such refund, which amount shall not exceed Tenant's Tax Payment paid for such Comparison Year. Landlord shall not be obligated to file any application or institute any proceeding seeking a reduction in Taxes or the assessed valuation of the Real Property. In no event shall Landlord's receipt of funds in connection with any tax increment financing and/or a redevelopment agreement between Landlord and the City of Chicago (including, without limitation, any "developer's note" for the benefit of Landlord), affecting all or any portion of the Real Property constitute a refund of Taxes to which Tenant is or could be entitled to a proportionate share unless such receipt of funds relates to Tenant's tax increment financing through the City of Chicago, in which event Landlord shall pass on the benefit of such funds to Tenant either in the form of a payment to Tenant or a credit against Tenant's Tax Payment and Operating Payment, at Tenant's option.

(e) Tenant shall be obligated to make Tenant's Tax Payment regardless of whether Tenant may be exempt from the payment of any taxes by reason of Tenant's not-for-profit, diplomatic or other tax exempt status.

(f) Tenant shall be responsible for any applicable occupancy or rent tax hereafter enacted and, if payable by Landlord, Tenant shall promptly pay such amounts to Landlord, upon Landlord's demand, as Additional Rent.

### **Section 7.3 Tenant's Operating Payment.**

(a) If the Operating Expenses payable for any Comparison Year exceed the Base Operating Expenses, Tenant shall pay to Landlord Tenant's Proportionate Share of Operating Expenses for such excess ("Tenant's Operating Payment"). For each Comparison Year, Landlord shall furnish to Tenant a written statement setting forth Landlord's good faith reasonable estimate of Tenant's Operating Payment for such Comparison Year, based upon such year's budget. Tenant shall pay to Landlord on the first day of each month during such Comparison Year an amount equal to one-twelfth of Landlord's estimate of Tenant's Operating Payment for such Comparison Year. If, however, Landlord shall furnish any such estimate for a Comparison Year subsequent to the commencement thereof, then until the first day of the month following the month in which such estimate is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section 7.3 during the last month of the preceding Comparison Year. Promptly after such estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Operating Payment previously made for such Comparison Year were greater or less than the installments of Tenant's Operating Payment to be made for such Comparison Year in accordance with such estimate, and if there shall be a deficiency, Tenant shall pay the amount thereof

within thirty (30) days after demand therefor, or if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent due hereunder, and on the first day of the month following the month in which such estimate is furnished to Tenant, and on the first day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to one-twelfth of Tenant's Operating Payment shown on such estimate.

(b) On or before May 1st of each Comparison Year, Landlord shall furnish to Tenant a Statement for the immediately preceding Comparison Year. Each such Statement shall be accompanied by a computation of Operating Expenses for the Building prepared by Landlord's Agent. If the Statement shall show that the sums paid by Tenant under Section 7.3(a) exceeded the actual amount of Tenant's Operating Payment for such Comparison Year, Landlord shall, at its election, either refund the amount of such excess to Tenant within thirty (30) days after Tenant's receipt of the Statement or credit the amount of such excess against subsequent payments of Rent due hereunder. If the Statement for such Comparison Year shall show that the sums so paid by Tenant were less than Tenant's Operating Payment for such Comparison Year, Tenant shall pay the amount of such deficiency within thirty (30) days after Tenant's receipt of the Statement. In no event shall Tenant be entitled to a refund or credit in the event that the Operating Expenses for a Comparison Year are less than Base Operating Expenses.

**Section 7.4 Partial Lease Years.** If the Commencement Date shall occur on a date other than January 1, any Additional Rent under Sections 7.2 for the calendar year in which such Commencement Date shall occur shall be apportioned on the basis of the number of days in the period from the Commencement Date to the following December 31 bears to the total number of days in such Comparison Year. If the Expiration Date shall occur on a date other than December 31, any Additional Rent payable by Tenant to Landlord under Sections 7.2 for the Comparison Year in which such Expiration Date occurs shall be apportioned on the basis of the number of days in the period from January 1 to the Expiration Date shall bear to the total number of days in such Comparison Year. In the event of the expiration or earlier termination of this Lease, any Additional Rent under Sections 7.2 owed by Tenant shall be paid by Tenant, and any over payments not credited against Rent payable hereunder shall be refunded by Landlord within thirty (30) days after submission of the Statement for the last Comparison Year. In no event shall Fixed Rent ever be reduced by operation of Sections 7.2 and the rights and obligations of Landlord and Tenant under the provisions of Sections 7.2 with respect to any Additional Rent shall survive the expiration or earlier termination of this Lease.

**Section 7.5 Non-Waiver; Disputes.**

(a) Landlord's failure to render any Statement on a timely basis with respect to any Comparison Year shall not prejudice Landlord's right to thereafter render a Statement with respect to such Comparison Year or any subsequent Comparison Year, nor shall the rendering of a Statement prejudice Landlord's right to thereafter render a corrected Statement for that Comparison Year.

(b) Each Statement sent to Tenant shall be conclusively binding upon Tenant unless Tenant shall within sixty (60) days after such Statement is sent, pay to Landlord the amount set forth in such Statement, without prejudice to Tenant's right to dispute such Statement, and within one hundred twenty (120) days after such Statement is sent, send a written notice to Landlord objecting to such Statement and specifying the reasons that such Statement is claimed to be incorrect. Tenant agrees that Tenant will not employ, in connection with any dispute under this Lease, any person who is to be compensated in whole or in part, on a contingency fee basis. If the parties are unable to resolve any dispute as to the correctness of such Statement within thirty (30) days following such notice of objection, either party may refer the issues to a reputable public accounting firm selected by Landlord that is independent of Tenant and Landlord and reasonably acceptable to Tenant, and the decision of such accountants shall be conclusively binding upon Landlord and Tenant. In connection therewith, Tenant and such accountants shall execute and deliver to Landlord a confidentiality agreement, in form and substance reasonably satisfactory to Landlord, whereby such parties agree not to disclose to any third party any of the information obtained in connection with such review. Tenant shall pay the fees and expenses relating to such procedure unless such accountants determine that Landlord overstated Operating Expenses by 3% or more for such Lease Year, in which case Landlord and Tenant shall evenly split such fees and

expenses; provided further; if such overstatement exceeds 5%, Landlord shall pay such fees and expenses. Within thirty (30) days of the determination of the proper amount of Tenant's Tax and/or Tenant's Operating Payment for the period under review, Tenant shall pay to Landlord such amount as is determined that Tenant underpaid, and then, so long as no Event of Default then exists, Landlord shall pay to Tenant such amount as is determined that Tenant overpaid.

## **ARTICLE 8. LEGAL REQUIREMENTS**

**Section 8.1 Compliance.** Landlord, at its expense (except to the extent such expense constitutes an Operating Expense pursuant to Article 7 hereof) shall comply with all Legal Requirements applicable to the ownership, operation and maintenance of the Real Property. Tenant, at its sole expense, shall comply (or cause to be complied) with all Legal Requirements imposed from and after the Commencement Date that are applicable to the Premises, regardless of whether imposed by their terms upon Landlord or Tenant, or the use and occupancy thereof by Tenant, and make all repairs or Alterations required thereby, provided, however, in no event shall Tenant be responsible to make or pay for any structural repairs or Alterations pursuant to Legal Requirements (except to the extent such structural repairs or Alterations are included in the definition of Operating Expenses or such structural repairs or Alterations are required due to Tenant's use or occupancy of the Premises (except for standard office use)), Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate or be in conflict with any provision of Landlord's insurance policies which Landlord has communicated to Tenant, and shall not do or permit anything to be done in or upon the Premises, or use the Premises in a manner, or bring or keep anything therein, which shall increase the rates for casualty or liability insurance applicable to the Building. If, as a result of any act or omission by Tenant or by reason of Tenant's failure to comply with the provisions of this Article 8, the insurance rates for the Building shall be increased, then Tenant shall desist from doing or permitting to be done any such act or thing and shall reimburse Landlord, as Additional Rent hereunder, for that part of all insurance premiums thereafter paid by Landlord which shall have been charged because of such act, omission or failure by Tenant, and shall make such reimbursement upon demand by Landlord.

**Section 8.2 Hazardous Materials.** Tenant, at its expense, shall comply with all Environmental Laws and with any directive of any Governmental Authority which shall impose any violation, order or duty upon Landlord or Tenant under any Environmental Laws with respect to the Premises or the use or occupation thereof. Tenant's obligations hereunder with respect to Hazardous Materials shall extend only to those matters directly or indirectly based on, or arising or resulting from (a) the actual or alleged presence of Hazardous Materials on the Premises or in the Building which is caused or permitted by Tenant, and (b) any Environmental Claim (defined below) relating in any way to Tenant's operation or use of the Premises or the Building. Tenant shall provide Landlord with copies of all communications and related materials regarding the Premises which Tenant shall receive from or send to (a) any Governmental Authority relating in any way to any Environmental Laws, or (b) any Person with respect to any claim based upon any Environmental Laws or relating in any way to Hazardous Materials (any such claim, an "Environmental Claim"). Landlord or its agents may perform an environmental inspection of the Premises at any time during the Term, upon prior written notice to Tenant, or without notice in the event of an emergency. The cost of such inspection shall be borne by Landlord unless such inspection arises out of the act or omission of Tenant or any Tenant Party. Landlord agrees to use commercially reasonable efforts to minimize any interference to Tenant's use and enjoyment of the Premises in connection with the performance of such inspection and to perform such inspection during non-business hours. Tenant's obligations under this Article 8 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 9. SUBORDINATION AND ATTORNMEN; ESTOPPEL CERTIFICATES**

**Section 9.1 Subordination.** Tenant's leasehold estate shall be subject and subordinate in all respects to all Mortgages and Superior Leases. This Section 9.1 shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument that Landlord or any Superior Lessor or Mortgagee may reasonably request to evidence such subordination no later than ten (10) Business Days

after Landlord's request therefor, provided such subordination document contains a nondisturbance provision which is generally acceptable in the industry. Landlord shall deliver to Tenant a Subordination, Non-Disturbance and Attornment Agreement from Landlord's Mortgagee or from any new Mortgagee substantially in the form attached as Exhibit G within thirty (30) days after the Effective Date, or within sixty (60) days after the date of a refinancing from any new Mortgagee.

**Section 9.2 Notices.** In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (a) until it has given written notice of such act or omission to each Mortgagee and Superior Lessor whose name and address shall previously have been furnished to Tenant in writing, and (b) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee or Superior Lessor within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee or Superior Lessor shall have become entitled under such Mortgage or Superior Lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided such Mortgagee or Superior Lessor shall with due diligence give Tenant written notice of its intention to remedy such act or omission, and such Mortgagee or Superior Lessor shall commence and thereafter continue with reasonable diligence to remedy such act or omission. If more than one Mortgagee or Superior Lessor shall become entitled to any additional cure period under this Section 9.2, such cure periods shall run concurrently, not consecutively.

**Section 9.3 Attornment.** If a Mortgagee or Superior Lessor shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights ("Successor Landlord") and upon Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize Successor Landlord as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that Successor Landlord may reasonably request to evidence such attornment. Upon such attornment this Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment except that (excluding the payment to Tenant of (i) Landlord's Contribution and other construction related payments from Landlord provided for in this Lease, and (ii) any refund due to Tenant as a result of the sum of Tenant's payment of either Taxes or Operating Expenses being greater than the actual amount of Taxes or Operating Expenses, as applicable) Successor Landlord shall not be:

(a) liable for any act or omission of Landlord (except to the extent such act or omission continues beyond the date when such Successor Landlord succeeds to Landlord's interest and Tenant gives notice of such act or omission to Successor Landlord);

(b) subject to any defense, claim, counterclaim, set-off or offsets which Tenant may have against Landlord;

(c) bound by any prepayment of more than one month's Rent to any prior landlord;

(d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time such Successor Landlord succeeded to Landlord's interest;

(e) bound by any obligation to perform any work or to make improvements to the Premises except for (x) repairs and maintenance required to be made by Landlord under this Lease, and (y) repairs to the Premises as a result of damage by fire or other casualty or a partial condemnation pursuant to the provisions of this Lease, but only to the extent that such repairs can reasonably be made from the net proceeds of any insurance or condemnation awards, respectively, actually made available to such Successor Landlord; or

(f) bound by any modification, amendment or renewal of this Lease made without Successor Landlord's consent. Landlord shall use commercially reasonable efforts to obtain the consents provided for in this clause (f) and in the corresponding or similar provision in any Subordination, Non-Disturbance and Attornment Agreement pertaining to this Lease.

Notwithstanding anything to the contrary contained in this Lease: A. In the event that either: (i) the Real Property is transferred to a Successor Landlord; or (ii) Landlord enters into a Mortgage with a new Mortgagee (except iStar Financial Inc.) in each case prior to the time that the Landlord's Contribution and any other monetary obligations of Landlord set forth on Exhibit F (collectively, "Landlord's Obligations") have been paid in full to Tenant, Landlord agrees to obtain the written agreement of the Successor Landlord and/or Mortgagee, as the case may be, to pay any remaining, undisbursed portion of the Landlord's Obligations to Tenant in accordance with the terms and provisions of this Lease. B. In the event that the Successor Landlord and/or Mortgagee, does not pay any such undisbursed portion of Landlord's Obligations in accordance with the terms and provisions of this Lease, Tenant shall have the right to send Successor Landlord and/or Mortgagee a written notice of non payment ("LO Notice"). C. If Successor Landlord and/or Mortgagee fail to pay the Landlord's Obligations within thirty (30) days after the date of the LO Notice, and (x) Successor Landlord and/or Mortgagee further fail to make such payment within five (5) Business Days after delivery (or attempted delivery) of a second written request by Tenant, (y) Tenant has evidence that Successor Landlord and/or Mortgagee received or refused delivery of such second notice (in the form of a return receipt or proof of refusal of delivery), and (z) such second notice stated on its face that refusal to timely make such payment constitutes a "right to offset Fixed Rent under this Lease", then provided no Event of Default exists and Tenant is otherwise entitled to such undisbursed amount under this Lease, Tenant shall have the right to offset such undisbursed amount against Fixed Rent next becoming due and payable under this Lease until such undisbursed portion of Landlord's Obligations is realized by Tenant.

#### **Section 9.4 Estoppel Certificates.**

(a) Tenant agrees, at any time and from time to time but not more than twice per calendar year, as requested by Landlord, upon not less than twenty (20) days' prior notice, to execute and deliver to Landlord a written statement executed and acknowledged by Tenant (a) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (b) setting forth the then annual Fixed Rent, (c) setting forth the date to which the Fixed Rent and Additional Rent have been paid, (d) stating whether or not, to the actual knowledge of the Tenant, Landlord is in default under this Lease, and if so, setting forth the specific nature of all such default, (e) stating whether there are any subleases affecting the Premises, (f) stating the address of Tenant to which all notices and communication under the Lease shall be sent, the Commencement Date and the Expiration Date, and (g) as to any other matters reasonably requested by Landlord. Tenant acknowledges that any statement delivered pursuant to this Section 9.4 may be relied upon by others with whom Landlord may be dealing, including any purchaser or owner of the Real Property or the Building, or of Landlord's interest in the Real Property or the Building or any Superior Lease, or by any Mortgagee or Superior Lessor.

(b) Landlord agrees, at any time and from time to time but not more than twice per calendar year, as requested by Tenant, upon not less than twenty (20) days' prior notice, to execute and deliver to Tenant a written statement executed and acknowledged by Landlord (a) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (b) setting forth the then annual Fixed Rent, (c) setting forth the date to which the Fixed Rent and Additional Rent have been paid, (d) stating whether or not, to the actual knowledge of the Landlord, Tenant is in default under this Lease, and if so, setting forth the specific nature of all such default, (e) stating the address of Landlord to which all notices and communication under the Lease shall be sent, the Commencement Date and the Expiration Date, and (f) as to any other matters reasonably requested by Tenant. Landlord acknowledges that any statement delivered pursuant to this Section 9.4 may be relied upon by others with whom Tenant may be dealing.

**ARTICLE 10. SERVICES.** Landlord shall provide, at Landlord's expense, except as otherwise set forth herein, the following services:

**Section 10.1 Electricity.**

(a) Tenant shall cause the Premises to be separately metered for electricity at Tenant's sole cost and expense. Electricity shall be distributed to the Premises either by the electric utility company serving the Building or, at Landlord's option, by Landlord; and Landlord shall permit Landlord's wire and conduits, to the extent available, suitable and safely capable, to be used for such distribution. If and so long as Landlord is distributing electricity to the Premises, Tenant shall obtain all of its electricity from Landlord and shall pay all of Landlord's charges, which charges shall be based on meter readings. If the electric utility company is distributing electricity to the Premises, Tenant at its cost shall make all necessary arrangements with the electric utility company for metering and paying for electric current furnished to the Premises. All electricity used during the performance of janitor service, or the making of any alterations or repairs in the Premises, or the operation of any special air conditioning systems serving the Premises, shall be paid for by Tenant.

(b) Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building. Landlord shall furnish electricity to or for the use of Tenant in the Premises for the operation of Tenant's electrical systems and equipment in the Premises at a level sufficient to accommodate the approved load calculated as prepared by Tenant's engineer and approved by Landlord, not to exceed eight (8) KVA per square foot. Tenant shall not use any electrical equipment which, in Landlord's reasonable judgment, would exceed the capacity of the electrical equipment servicing the Premises or interfere with the electrical service to other Building tenants. Except for electrical requirements in connection with Tenant's Initial Alterations which shall be approved pursuant to Article 4 hereof, if Landlord determines that Tenant's electrical requirements necessitate installation of any additional risers, feeders or other electrical distribution equipment (collectively, "Electrical Equipment"), or if Tenant provides Landlord with evidence reasonably satisfactory to Landlord of Tenant's need for excess electricity and requests that additional Electrical Equipment be installed, Landlord shall, upon five (5) Business Days prior notice and at Tenant's sole cost and expense, install such separately metered additional Electrical Equipment, provided that Landlord, in its sole judgment, considering the potential needs of present and future Building tenants and of the Building itself, determines that such installation is practicable and necessary, such additional Electrical Equipment is permissible under applicable Legal Requirements, and the installation of such Electrical Equipment will not cause permanent damage or injury to the Building or the Premises, cause or create a dangerous or hazardous condition, entail excessive or unreasonable alterations, interfere with or disturb or limit electrical usage by other tenants or occupants of the Building or exceed the limits of the switchgear or other facilities serving the Building, or require power in excess of that available from the public utility serving the Building. Any costs incurred by Landlord in connection therewith shall be paid by Tenant within thirty (30) days after the rendition of a bill therefor. Tenant shall pay the cost of such additional electrical service (whether the same is distributed by Landlord or the electrical utility company servicing the Building). Tenant shall not make or perform, or permit the making or performance of, any Alterations to wiring installations or other electrical facilities in or serving the Premises or make any additions to the office equipment or other appliances in the Premises which utilize electrical energy (other than ordinary small office equipment) without the prior consent of Landlord, in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed, and in compliance with this Lease.

**Section 10.2 Heat, Ventilation And Air-Conditioning.**

(a) Landlord shall provide heat and air-conditioning to the Premises on Business Days from 7:00 A.M. to 8:00 P.M., and Saturdays from 8:00 A.M. to 4:00 P.M., when required in Landlord's reasonable judgment for the comfortable use and occupancy of the Premises, through use of the Building standard heating, ventilating and air conditioning system (the "Building Heating HVAC System"). Landlord shall provide heating, ventilation, and air conditioning in accordance with the specifications attached hereto as Exhibit E, but Landlord shall be responsible if the normal operation of the Building



Heating HVAC System shall fail, unless due to Tenant's Alterations, to provide heat or air conditioning at reasonable temperatures uniformly to all interior portions of the Premises.

(b) Tenant at all times shall cooperate fully with Landlord and shall abide by the regulations and requirements which Landlord may prescribe for the proper functioning and protection of the Building Heating HVAC System.

(c) Landlord shall not be required to furnish heat and air-conditioning during periods other than the hours and days set forth in this Section 10.2 for the furnishing and distributing of such services ("Overtime Periods"), unless Landlord has received advance notice from Tenant requesting such service not less than twenty-four (24) hours prior to the time when such service shall be required. Accordingly, if Landlord shall furnish heat or air-conditioning to the Premises at the request of Tenant during Overtime Periods, Tenant shall pay Landlord, as Additional Rent, on a monthly basis, for such services at the standard rate then fixed by Landlord for the Building (which amount, as of the Effective Date, is \$50.00 per hour, subject to adjustment by Landlord from time to time). Failure by Landlord to furnish or distribute heat, air-conditioning or any other services during Overtime Periods shall not constitute an actual or constructive eviction, in whole or in part, or, except as provided in Section 10.6(b) hereof, entitle Tenant to any abatement or diminution of Fixed Rent or Additional Rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business or otherwise.

**Section 10.3 Elevators.** Landlord shall provide passenger elevator service to the Premises on Business Days from 7:00 A.M. to 8:00 P.M. and freight elevator facilities on a non-exclusive basis on Business Days from 8:00 A.M. to 5:00 P.M. and shall have at least one passenger elevator and one freight elevator available for use at all other times, including during the period of any necessary repairs and maintenance, which shall be completed by Landlord from time to time and in each event as soon as reasonably possible; provided, Tenant shall pay to Landlord as Additional Rent, the standard Building charges for the operation of the freight elevators beyond the days and hours prescribed above. However, during the performance of the Tenant's Initial Alterations during normal business hours, Tenant shall be entitled to use one freight elevator at no charge by Landlord, and, during the period in which Tenant is moving into the Premises, Tenant shall be entitled to use one (1) freight elevator at no charge by Landlord regardless of whether Tenant moves in during business hours. Such elevator service shall be subject to such reasonable and nondiscriminatory rules and regulations as Landlord may promulgate from time to time with respect thereto. Landlord shall have the right to change the operation or manner of operation of any of the elevators in the Building and/or to discontinue, temporarily or permanently, the use of any one or more cars in any of the passenger, freight or truck elevator banks; provided, Landlord shall (except temporarily during emergencies or other extraordinary circumstances) have at least one passenger elevator and one freight elevator available at all times serving the Premises. Subject to necessary repairs and maintenance, which shall be completed by Landlord from time to time and, in each event, as soon as reasonably possible, passenger elevators shall serve the floor of the Premises during the times specified above. Subject to reasonable allocation among users (as determined by Landlord in its sole discretion), Landlord shall make its freight elevators available for contractors performing Tenant's Initial Alterations.

**Section 10.4 Cleaning and Rubbish Removal.** Landlord shall cause the Premises (excluding any portions thereof used for the storage, preparation, service or consumption of food or beverages) to be cleaned, substantially in accordance with the standards set forth in Exhibit E, including refuse and rubbish removal services at the Premises for ordinary office refuse and rubbish pursuant to reasonable and non-discriminatory rules and regulations established by Landlord. Any areas of the Premises requiring additional cleaning such as areas like the Kitchen Facilities Area used for preparation or consumption of food, shall be cleaned, at Tenant's expense, by Landlord's employees or Landlord's contractor, at rates which shall be competitive with rates of other cleaning contractors providing services to Comparable Buildings. Landlord and its cleaning contractor and their respective employees shall have access to the Premises at all times except between 8:00 A.M. and 5:00 P.M. on Business Days. Tenant shall pay to Landlord, within thirty (30) days of receipt of an invoice therefor, Landlord's reasonable charge for refuse and rubbish removal to the extent that the refuse generated by Tenant substantially

exceeds the refuse and rubbish customarily generated by executive and general office tenants. Tenant shall not dispose of any refuse and rubbish in the public areas of the Building, and if Tenant does so, Tenant shall be liable for Landlord's reasonable charge for such removal. Tenant shall cause its employees, agents, contractors and business visitors to observe such additional reasonable and non-discriminatory rules and regulations regarding rubbish removal and/or recycling as Landlord may, from time to time, reasonably impose.

**Section 10.5 Water.** Landlord shall furnish cold water in such quantities as Tenant requests for Tenant's use in the Kitchen Facilities and for ordinary drinking and cleaning purposes to the Premises. Landlord shall furnish warm water to the bathrooms servicing the Premises in such quantities as Landlord reasonably deems sufficient for such purposes. If Tenant requires, uses or consumes water for any purpose in addition to Tenant's use in the Kitchen Facilities or for sanitation, cleaning and drinking purposes, Landlord may install a water meter and thereby measure Tenant's consumption of water for all purposes. Tenant shall (a) pay to Landlord the cost of any such meter and its installation, (b) at Tenant's sole cost and expense, keep any such meter and any such installation equipment in good working order and repair, and (c) pay to Landlord, as Additional Rent, as and when billed therefor (to the extent not included in Taxes) for water consumed, together with a charge for any required pumping or heating thereof, all sewer rents, charges or any other taxes, rents, levies or charges which now or hereafter are assessed, imposed or shall become a lien upon the Premises or the Real Property pursuant to law, order or regulation made or issued in connection with any such metered use, consumption, maintenance or supply of water, water system, or sewage or sewage connection or system, and in default in making such payment Landlord may pay such charges and collect the same from Tenant.

**Section 10.6 No Warranty of Landlord.**

(a) Landlord does not warrant that any of the services to be provided by Landlord to Tenant hereunder, or any other services which Landlord may supply (x) will be adequate for Tenant's particular purposes or as to any other particular need of Tenant or (y) will be free from interruption, and Tenant acknowledges that any one or more such services may be temporarily interrupted or suspended by reason of Unavoidable Delays. In addition, Landlord reserves the right to temporarily stop, interrupt or reduce service of the Building Systems by reason of Unavoidable Delays, or for repairs, additions, alterations, replacements, decorations or improvements which are, in the judgment of Landlord, necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. Landlord shall provide Tenant, except in the case of an emergency or other extraordinary circumstance, 24 hours advance notice (which may be verbal) of any anticipated disruption of services to the Premises. Any such interruption or discontinuance of service, or the exercise of such right by Landlord to suspend or interrupt such service shall not (i) constitute an actual or constructive eviction, or disturbance of Tenant's use and possession of the Premises, in whole or in part, (ii) entitle Tenant to any compensation or, except as provided in Section 10.6(b) below, to any abatement or diminution of Fixed Rent or Additional Rent, (iii) relieve Tenant from any of its obligations under this Lease, or (iv) impose any responsibility or liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise. Landlord shall use commercially reasonable efforts to minimize interference with Tenant's access to and use and occupancy of the Premises in making any repairs, alterations, additions, replacements, decorations or improvements; provided, however, that Landlord shall have no obligation to employ contractors or labor at "overtime" or other premium pay rates or to incur any other "overtime" costs or additional expenses whatsoever. Landlord shall not be required to furnish any services except as expressly provided in this Article 10.

(b) Notwithstanding the foregoing provisions of this Article 10, and notwithstanding anything to the contrary contained in Section 6.3, Article 15 or Article 29, if all of the following conditions are satisfied (collectively, the "Abatement Conditions"): (a) Tenant is unable to use the entire Premises, or a material portion thereof (which term "material," shall, for purposes of this Section 10.6(b), mean at least twenty percent (20%) of the Rentable Square Footage of the Premises), for the Permitted Use; (b) such inability is due solely to a failure in the services to be provided in this Article 10 resulting from the acts, omissions or negligence of Landlord or Landlord Parties (or Landlord's failure to maintain), or Landlord's performance of an improvement or Alteration to the Building pursuant to Section 6.3, Section 10.6, Article

15 or Article 29 hereof; (c) such condition continues for a period in excess of seven (7) consecutive days after Tenant furnishes written notice to Landlord (the "Abatement Notice") stating that Tenant is unable to use the Premises (or the material portion thereof) due to such condition; (d) Tenant actually does not use or occupy the Premises (or the material portion thereof) from and after the date of the Abatement Notice; and (e) such condition is not a result of Unavoidable Delays, casualty or condemnation, or the acts, omissions or negligence of (or breach or violation of this Lease by) Tenant or any Tenant Party, then, as Tenant's sole and exclusive right and remedy under this Lease, at law or in equity, Fixed Rent and Tenant's Operating Payment and Tenant's Tax Payment with respect to the Premises (or the material portion thereof, based on the Rentable Square Footage which is untenable), shall be abated on a per diem basis for the period commencing on the eighth (8<sup>th</sup>) day after Landlord receives the Abatement Notice and ending on the earlier of (i) the date Tenant reoccupies any portion of the Premises (in the event of total untenability) or any portion of the material portion of the Premises affected (in the event of a partial untenability), and (ii) the date on which such condition is remedied. The parties hereby agree that the terms of this Section 10.6(b) shall not apply in the event of a casualty or condemnation affecting the Premises or the Building, but rather that the provisions of Article 12 and Article 13 (respectively) shall apply in such event.

**Section 10.7 Storage Area.** Landlord agrees that, provided that no Event of Default shall be continuing hereunder, Landlord will confer upon Tenant, at a cost equal to \$10.00 per Rentable Square Foot per annum from the Commencement Date until the fifth (5<sup>th</sup>) anniversary of the Commencement Date, and thereafter during the remainder of the Term and any Renewal Term at \$12.00 per Rentable Square Foot per annum the right and license to use up to 1,000 Rentable Square Feet of contiguous space on the riverwalk level of the north end of the adjacent building, the location of which is to be designated by Landlord (the "Storage Area"), for purposes of Tenant's use as storage space. Tenant shall not pay Landlord for Taxes or Operating Expenses with respect to the Storage Area. The license fee for the Storage Area shall constitute Additional Rent hereunder. Landlord shall deliver possession of the Storage Area on the Commencement Date. Tenant agrees to accept the Storage Area in its "as-is, where-as" condition and Landlord shall have no obligation to perform any work with respect to the Storage Area. Tenant further acknowledges that Landlord makes no representation or warranty as to the condition of the Storage Area either before or during Tenant's use thereof, nor that such Storage Area shall be suitable for Tenant's intended use thereof. Tenant and its employees shall comply with all Legal Requirements and all of Landlord's reasonable, non-discriminatory rules, regulations and security requirements in connection with their use of the Storage Area. Tenant shall be responsible for any loss, claim, damage or injury to persons or property caused as a result of its or its employees' use of the Storage Area and shall indemnify and hold Landlord harmless from any such loss, damage or injury (including attorneys' fees and expenses). Tenant shall not be permitted to perform any Alterations with respect to the Storage Area except for the installation of cages, shelving, and other removable organizational or storage equipment which shall be installed in accordance with Article 4 hereof. The privileges granted Tenant under this Section 10.7 merely constitute a license and shall not be deemed to grant Tenant a leasehold or other real property interest in the Storage Area. The license granted to Tenant in this Section 10.7 shall automatically terminate and expire upon expiration or earlier termination of this Lease and the termination of such license shall be self-operative and no further instrument shall be required to effect such termination. The rights conferred upon Tenant pursuant to this Section 10.7 are personal to Tenant and are not assignable or transferable to any assignee or sublessee (regardless of whether any such assignment or sublease was made with or without Landlord's consent) or other party, excluding a Permitted Transfer pursuant to Section 14.9 hereof. Tenant may discontinue its right to the Storage Area at any time upon thirty (30) days prior written notice to Landlord, and Tenant shall not owe Landlord the license fee for the Storage Area from and after the date that is thirty (30) days after the date on which Tenant gives notice.

**Section 10.8 Parking.**

(a) Landlord agrees that, provided that no Event of Default shall be continuing hereunder, Landlord will confer upon Tenant, during the Term of this Lease, the right and license to use up to one (1) unreserved parking space per 1,000 Rentable Square Foot of Premises Area for a total of twelve (12) parking spaces (the "Parking Spaces") at the properties commonly known as 900 N. Kingsbury, Chicago,

Illinois and 950 N. Kingsbury, Chicago, IL, for purposes of parking the automobiles of Tenant and Tenant's employees working at the Premises. Upon Tenant's exercise of any rights to expand the Premises to include any portion of the Expansion Premises, Tenant shall also have the right and license to use up to one (1) unreserved parking space per 1,000 Rentable Square Foot of such additional space. Commencing on the Commencement Date, Tenant shall pay to Landlord monthly, in advance, a parking fee equal to the number of Parking Spaces multiplied by the current market rental rate for parking spaces in the parking facilities as offered to the general public by Landlord, as the same may be adjusted from time to time, provided that Landlord shall only adjust the parking rate for Tenant's Parking Spaces if Landlord adjusts the parking rate for substantially all other tenants in the Building. As of the Effective Date, the current monthly market rate for the parking facilities is \$120.00 per month. Any parking fees due hereunder shall constitute Additional Rent under this Lease. Tenant and its employees shall comply with all Legal Requirements and all of Landlord's reasonable, non-discriminatory rules, regulations and security requirements in connection with their use of the Parking Spaces. Tenant shall be responsible for any loss, damage or injury to persons or property caused as a result of its or its employees' use of the Parking Spaces or the parking area in which the Parking Spaces are located. Landlord shall not be responsible for any loss or damage to, or theft of, any property or automobiles located in the Parking Spaces or parking area. Tenant shall not be permitted to perform any Alterations with respect to the Parking Spaces. The privileges granted Tenant under this Section 10.8 merely constitute a license and shall not be deemed to grant Tenant a leasehold or other real property interest in the Parking Spaces, parking area or any portion thereof, provided that the license granted herein shall not be revocable by Landlord unless there shall be an Event of Default. Landlord's failure to provide the Parking Spaces to Tenant on the terms and conditions contained in this Section 10.8 shall constitute a default under this Lease. The license granted to Tenant in this Section 10.8 shall automatically terminate and expire upon the expiration or earlier termination of this Lease and the termination of such license shall be self-operative and no further instrument shall be required to effect such termination. The rights conferred upon Tenant pursuant to this Section 10.8 shall not be assignable or transferable separately from Tenant's interest in this Lease (as governed by Article 14 hereof) but shall be assigned or transferred along with any assignment or transfer of Tenant's interest in this Lease.

(b) Tenant shall have the right to terminate Tenant's right to any portion of the Parking Spaces by thirty (30) days written notice to Landlord without affecting Tenant's right to the remainder of the Parking Spaces. Notwithstanding anything to the contrary set forth in Subsection (a) above, in the event that Tenant (i) fails to pay Additional Rent for the Parking Spaces (or any portion thereof) which Tenant has the right to use under this Section 10.8 on a regular and consistent basis or (ii) fails to use the Parking Spaces (or any portion thereof) which Tenant has the right to use under this Section 10.8 on a regular and consistent basis; and such failure continues for a period of ten (10) Business Days after written notice thereof from Landlord to Tenant, then, including all other remedies of Landlord under this Lease for such failure, Tenant's right to use such Parking Space(s) (or portion thereof) shall, from and after the eleventh (11<sup>th</sup>) Business Day after such written notice from Landlord, terminate, expire and be of no further force or effect (without any reduction of Fixed Rent or any other obligation or liability of Tenant hereunder, but with a corresponding reduction in Additional Rent with respect to the reduction of Parking Spaces (or any portion thereof)) and Landlord shall be free to use (or grant or confer upon any other Person the right to use) all or any such Parking Space(s) upon such terms and conditions as Landlord shall determine, in its sole discretion.

**Section 10.9 Shuttle Service.** Landlord shall supply shuttle service for the Tenant and its employee's, officers and directors at approximately 20 minute intervals from 6:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m. on Monday through Friday between the Building and Union Station, Northwestern Station and the CTA Chicago Avenue Brown Line Station ("Shuttle Service"). There shall be no direct charge to Tenant for such services provided, Landlord may include the cost of operating the Shuttle Service in Operating Expenses. Tenant hereby acknowledges that the nature of the Shuttle Service to be provided by Landlord pursuant to this Section 10.9 shall be flexible and may vary from time to time throughout the Term depending upon the scope and intensity of the use thereof by Tenant and the other tenants and occupants of the Building, all as determined by Landlord in its reasonable discretion but in no event shall the Shuttle Service be discontinued without Tenant's prior written consent, which shall not be unreasonably withheld or delayed.

## ARTICLE 11. INSURANCE

**Section 11.1 Tenant's Insurance.** Tenant, at its expense, commencing on the date Tenant takes possession of the Premises, shall obtain and keep in full force and effect a policy of commercial general liability insurance under which Tenant is named as the insured and Landlord, Landlord's managing agent for the Building, Landlord's asset manager and any Superior Lessors and any Mortgagees (whose names shall have been furnished to Tenant) are named as additional insureds, which insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of Landlord, Landlord's managing agent or any Superior Lessors or Mortgagees named as additional insureds and Tenant shall obtain blanket broad-form contractual liability coverage to insure its indemnity obligations set forth in Article 28 hereof. Tenant's primary commercial general liability policy shall contain a provision that the policy shall be noncancellable unless twenty (20) days' written notice shall have been given to Landlord and Landlord shall similarly receive twenty (20) days' notice of any non-renewal upon expiration. In addition, Landlord shall similarly receive notice of any other event notice of which is required to be given by any Legal Requirement and any such notice shall be given within the requisite time frame. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than \$2,000,000 per location general aggregate limit (with \$10,000,000 umbrella insurance); provided, however, that Landlord shall retain the right to require Tenant to increase said coverage to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by prudent landlords of comparable buildings in the City of Chicago, and provided further that Landlord shall require similar increases of other tenants of space in the Building comparable to the Premises. Tenant shall also obtain and keep in full force and effect during the Term, (a) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of "all risk property" insurance policies, to Tenant's Property and Tenant's Alterations for the full insurable value thereof or on a replacement cost basis; (b) Workers' Compensation Insurance, as required by law; (c) Business Interruption Insurance; and (d) such other insurance in such amounts as Landlord, any Mortgagee and/or Superior Lessor may reasonably require from time to time. All insurance required to be carried by Tenant pursuant to the terms of this Lease shall be effected under valid and enforceable policies issued by reputable and independent insurers permitted to do business in the State of Illinois, and rated in Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a national reputation) as having a Best's Rating" of "A-" and a "Financial Size Category" of at least "XI" or if such ratings are not then in effect, the equivalent thereof.

**Section 11.2 Waiver of Subrogation.** (a) The parties hereto do hereby waive, any and all rights of recovery against the other, or against the officers, employees, partners, managers, members, agents and representatives of the other, for loss of or damage to the property of the waiving party to the extent such loss or damage is insured against under any insurance policy carried by Landlord or Tenant hereunder. In addition, the parties hereto shall procure an appropriate clause in, or endorsement on, any property insurance covering the Premises, the Building and personal property, fixtures and equipment located thereon or therein, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery, hereby agree not to make any claim against or seek to recover from the other for any loss or damage to its property or the property of others resulting from fire or other hazards covered by such property insurance. Tenant acknowledges that Landlord shall not carry insurance on and shall not be responsible for damage to, Tenant's Alterations (if any) or Tenant's Property, and that Landlord shall not carry insurance against, or be responsible for any loss suffered by Tenant due to, interruption of Tenant's business.

(b) **Release.** As to each party hereto, such party hereby releases the other (its servants, agents and employees, but excluding its contractors and invitees) with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damages or destruction of the type covered by such property insurance with respect to its property i.e. in the case of Landlord, as to the Building, and, in the case of Tenant, as to Tenant's Property and Tenant's Alterations (including rental value or business interruption, as the case may be) occurring during the Term of this Lease.

**Section 11.3 Certificates of Insurance.** On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate certificates of insurance required to be carried by Tenant pursuant to this Article 11, including evidence of waivers of subrogation required pursuant to Section 11.2. Evidence of each renewal or replacement of a policy shall be delivered by Tenant to Landlord at least twenty (20) days prior to the expiration of such policy.

**Section 11.4 Landlord's Insurance.** Landlord shall maintain at its sole cost and expense (the cost of which shall be included in Operating Expenses), a policy of combined single limit bodily injury and property damage insurance with an insurance company selected by Landlord in Landlord's sole discretion, in form and substance satisfactory to Landlord, which shall be in an amount not less than Three Million Dollars (\$3,000,000.00) for each occurrence with blanket broad form contractual liability coverage. In addition to the foregoing, Landlord shall maintain at its sole cost and expense (the cost of which shall be included in Operating Expenses), a special perils property insurance policy covering the Building (but not Tenant's Property or Tenant's Alterations, or the property or alterations of any other tenant or occupant of the Building) in an amount not less than the full replacement cost thereof. Tenant acknowledges that Landlord shall not carry insurance on and shall not be responsible for damage to, Tenant's Alterations or Tenant's Property, and that Landlord shall not carry insurance against, or be responsible for any loss suffered by Tenant due to, interruption of Tenant's business. Landlord may provide the foregoing policies on a "blanket" policy basis. In the event Landlord has a net worth in excess of \$100,000,000.00, Landlord shall be permitted to self-insure for the foregoing risks, provided that Landlord gives prior written notice to Tenant.

## **ARTICLE 12. DESTRUCTION OF THE PREMISES; PROPERTY LOSS OR DAMAGE**

**Section 12.1 Restoration.** If the Premises are damaged by fire or other casualty, but not any other portion of the Building, Tenant shall give prompt notice to Landlord. If the Premises are damaged by fire or other casualty or if the Building is damaged such that Tenant is deprived of reasonable access to the Premises, the damage shall be repaired by Landlord, at its expense, to substantially the same condition that the Premises (including, Landlord's Alterations) were in on the Completion Date, and, for the Building, the condition existing prior to the damage, subject to the provisions of any Mortgage or Superior Lease, but Landlord shall have no obligation to repair or restore (i) Tenant's Property or (ii) Tenant's Alterations (including Tenant's Initial Alterations). Subject to Section 12.2 below, Landlord shall give Tenant notice of its intent to repair pursuant to the previous sentence within forty-five (45) days of the casualty date (subject to delays in the adjustment of insurance and Unavoidable Delays). Landlord shall promptly commence the repair, restoration or rebuilding thereof within ninety (90) days after such damage (subject to delays in the adjustment of insurance and Unavoidable Delays) and shall diligently pursue the Substantial Completion of such restoration, repair or rebuilding (subject to delays in the adjustment of insurance and Unavoidable Delays). Landlord shall promptly and diligently seek adjustment of any insurance proceeds available after any casualty. If the fire or other casualty, or the repair, restoration or rebuilding required by Landlord shall render the Premises untenable in whole or in part, or inaccessible, then Rent shall proportionally abate from the date when the damage occurred until the date on which the Premises are again fully tenable (or accessible), which proportional abatement shall be computed on the basis that the Rentable Square Feet of the portion of the Premises rendered untenable (or inaccessible) bears to the aggregate Rentable Square Feet in the Premises..

**Section 12.2 Lease Termination Right.** Anything contained in Section 12.1 to the contrary notwithstanding, if the Premises are totally damaged or are rendered wholly untenable, and Landlord, after receipt of a registered architect's opinion, reasonably determines based upon such architect's opinion by written notice to Tenant (together with a copy of the architect's opinion, certified to Tenant) within ninety (90) days of the casualty that it will take in excess of twelve (12) months (or in excess of three (3) months, if such damage occurs any time during the last two (2) years of the Term, as extended (without giving effect to any then unexercised Extension Right of Tenant)) from the beginning of restoration to restore the Premises to substantially the same condition as existed immediately prior to such damage, then either Landlord or Tenant may terminate this Lease upon giving written notice of such election to the other within sixty (60) days after such damage. In addition, if the Building shall be so

damaged by fire or other casualty such that, in Landlord's reasonable opinion, substantial alteration, demolition, or reconstruction of the Building shall be required resulting in the same restoration periods as set forth above (i.e., in excess of 12 months or 3 months, respectively) (whether or not the Premises shall have been damaged or rendered untenable), then Landlord may, not later than sixty (60) days following the date of the damage, give Tenant a notice in writing terminating this Lease. If this Lease is so terminated pursuant to this Section 12.2, the Term shall expire upon the tenth (10th) day after such notice is given, and Tenant shall have thirty (30) days after such notice to vacate the Premises and surrender the same to Landlord. Upon the termination of this Lease under the conditions provided for in this Section 12.2, Tenant's liability for Rent shall cease as of the date of such fire or other casualty, and any prepaid portion of Rent for any period after such date shall be refunded by Landlord to Tenant. Unless this Lease is terminated by either party as provided in this Section 12.2, this Lease shall remain in full force and effect (subject to the other terms of this Lease), notwithstanding such damage or casualty.

#### **ARTICLE 13. EMINENT DOMAIN**

**Section 13.1 Total Taking.** If (a) all of the floor area of the Premises, or so much thereof as shall render the Premises wholly untenable shall be acquired or condemned for any public or quasi-public use or purpose, or (b) a portion of the Real Property, not including the Premises, shall be so acquired or condemned, but by reason of such acquisition or condemnation, Tenant no longer has reasonable means of access to the Premises, then this Lease and the Term shall end as of the date of the vesting of title with the same effect as if that date were the Expiration Date. In the event of any termination of this Lease and the Term pursuant to the provisions of this Article 13, Fixed Rent and Additional Rent shall be apportioned as of the date of sooner termination and any prepaid portion of Fixed Rent or Additional Rent for any period after such date shall be promptly refunded by Landlord to Tenant.

**Section 13.2 Awards.** In the event of any acquisition or condemnation for any public or quasi-public use or purpose of all or any part of the Real Property, Landlord shall be entitled to receive the entire award for any such acquisition or condemnation. Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term or Tenant's Alterations, and Tenant hereby expressly assigns to Landlord all of its right in and to any such award. Nothing contained in this Section 13.2 shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the then value of any Tenant's Property included in such taking and for any moving expenses ("Tenant's Claim"), provided such award shall be made by the condemning authority in addition to, and shall not result in a reduction of, the award made by it to Landlord and provided that Landlord shall not make a claim covering the same items as Tenant's Claim.

**Section 13.3 Partial Taking.** If only a part of the Real Property shall be so acquired or condemned then, subject to Section 13.1, this Lease and the Term shall continue in force and effect. If a part of the Premises shall be so acquired or condemned and this Lease and the Term shall not be terminated, Landlord, at Landlord's expense, shall restore that part of the Premises not so acquired or condemned so as to constitute tenable Premises. From and after the date of the vesting of title, Fixed Rent and Additional Rent shall be reduced in the proportion which the area of the part of the Premises so acquired or condemned bears to the total area of the Premises immediately prior to such acquisition or condemnation.

#### **ARTICLE 14. ASSIGNMENT AND SUBLETTING**

##### **Section 14.1 Landlord's Consent.**

(a) **No Assignment or Subletting.** Except as expressly set forth herein, Tenant shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, whether by operation of law or otherwise, and shall not sublet (or underlet), or permit, or suffer the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without Landlord's prior consent in each instance. Any assignment, sublease, mortgage, pledge, encumbrance or transfer in contravention of the provisions of this Article 14 shall be void.

(b) **Collection of Rent.** If, without Landlord's consent, this Lease is assigned, or any part of the Premises is sublet or occupied by anyone other than Tenant or this Lease or the Premises or any of Tenant's Property is encumbered (by operation of law or otherwise), Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved. No such collection shall be deemed a waiver of the provisions of this Article 14, an acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's covenants hereunder. Tenant shall remain fully liable for the obligations under this Lease.

(c) **Further Assignment/Subletting.** Landlord's consent to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express consent to any further assignment or subletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet any portion of its sublet space, or otherwise suffer or permit any portion of the sublet space to be used or occupied by others.

**Section 14.2 Tenant's Notice.** If Tenant desires to assign this Lease or sublet all or any portion of the Premises, Tenant shall give notice thereof to Landlord, which shall be accompanied by with respect to an assignment of this Lease, a true and correct copy of the proposed assignment and assumption agreement and a statement of the date Tenant desires the assignment to be effective, and with respect to a sublet of all or a part of the Premises, a true and correct copy of the proposed sublease agreement and a summary of the material business terms on which Tenant would sublet such premises, and a description of the portion of the Premises to be sublet. Within thirty (30) days after receipt of Tenant's notice, Landlord may, by written notice delivered to Tenant, elect, except in the case of a Permitted Transfer, (1) in the event such sublease is for at least ninety percent of the remaining term of this Lease, to terminate this Lease with respect to such space as Tenant proposes to sublease, upon the terms and conditions hereinafter set forth or (2) if the proposed transaction is an assignment of this Lease to terminate this Lease with respect to the entire Premises, which termination shall be effective on the date of the proposed assignment or sublet.

**Section 14.3 Landlord's Termination.** If Landlord exercises its option to terminate all or a portion of this Lease pursuant to Section 14.2, this Lease shall end and expire with respect to all or a portion of the Premises, as the case may be, on the date that such assignment or sublease was to commence, Rent shall be apportioned, paid or refunded as of such date, Tenant, upon Landlord's request, shall enter into an amendment of this Lease ratifying and confirming such total or partial termination, and setting forth any appropriate modifications to the terms and provisions hereof, and Landlord shall be free to lease the Premises (or any part thereof) to Tenant's prospective assignee or subtenant.

**Section 14.4 Intentionally Omitted.**

**Section 14.5 Conditions to Assignment/Subletting.**

(a) **Prerequisites.** If Landlord does not exercise any of Landlord's options provided under Section 14.2 and provided that no Event of Default then exists, Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld, conditioned or delayed. Such consent shall be granted or declined, as the case may be, within thirty (30) days after Landlord's receipt of a true and complete statement reasonably detailing the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the Premises, current financial information with respect to the proposed assignee or subtenant, including its most recent financial statements, and any other information Landlord may reasonably request, provided that:

(i) in Landlord's reasonable judgment, the proposed assignee or subtenant is engaged in a business or activity, and the Premises will be used in a manner, which (1) is in keeping with the then standards of the Building, (2) conforms to Tenant's Permitted Use as set forth in subsection (i) of the definition of Permitted Use hereunder, and (3) does not violate any restrictions set forth in this Lease, any Mortgage or Superior Lease or any negative covenant as to use of the Premises required by any other lease in the Building of which Tenant had been given prior written notice;



(ii) the proposed assignee or subtenant is a reputable person or entity of good character with sufficient financial means to perform all of its obligations under this Lease or the sublease, as the case may be, and Landlord has been furnished with reasonable proof thereof;

(iii) if Landlord has, or reasonably expects to have within six months thereafter, comparable space available in the Building, neither the proposed assignee or subtenant nor any person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or subtenant is then an occupant of the Building (provided that the limitation set forth in this Section 14.5(a)(iii) shall not apply to occupants of the Building on the same floor as Tenant);

(iv) the proposed assignee or subtenant is not a person or entity (or affiliate of a person or entity) who is not then an occupant of the Building with whom Landlord or Landlord's agent is then or has been within the prior six months negotiating in connection with the rental of space in the Building;

(v) the form of the proposed sublease or instrument of assignment shall be reasonably satisfactory to Landlord and shall comply with the provisions of this Article 14;

(vi) there shall be not more than three (3) subtenants of the Premises;

(vii) Tenant shall, upon demand, reimburse Landlord for all reasonable, out-of-pocket third party expenses incurred by Landlord in connection with such assignment or sublease, including any investigations as to the acceptability of the proposed assignee or subtenant, reviewing any plans and specifications for Alterations proposed to be made in connection therewith, and all legal costs reasonably incurred in connection with the granting of any requested consent not to exceed \$1,500.00 per request if Tenant utilizes Landlord's standard consent to assignment or sublease form without revision;

(viii) the proposed subtenant or assignee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity, regardless of whether the proposed assignee or subtenant agrees to waive such diplomatic or sovereign immunity, and shall be subject to the service of process in, and the jurisdiction of the courts of, County of Cook and State of Illinois; and

(ix) in Landlord's reasonable judgment, the proposed assignee or subtenant shall not be of a type or character, or engaged in a business or activity, or owned or controlled by or identified with any entity, which may result in protests or civil disorders or commotions at, or other disruptions of the normal business activities in, the Building.

(b) **Terms.** With respect to each and every subletting and/or assignment authorized by Landlord under the provisions of this Lease, it is further agreed that:

(i) the form of the proposed assignment or sublease shall be reasonably satisfactory to Landlord and shall comply with the provisions of this Article 14;

(ii) no sublease shall be for a term ending later than one day prior to the Expiration Date of this Lease;

(iii) no subtenant shall take possession of any part of the Premises, until an executed counterpart of such sublease has been delivered to Landlord and approved in writing by Landlord as provided in Section 14.5(a);

(iv) if an Event of Default shall occur and be continuing on the effective date of such assignment or subletting, then Landlord's consent thereto, if previously granted, shall be immediately deemed revoked without further notice to Tenant, and if such assignment or subletting would have been permitted without Landlord's consent pursuant to Section 14.9, such permission shall be void and without force and effect, and in either such case, any such assignment or subletting shall constitute a further

Event of Default hereunder;

(v) if an Event of Default shall occur under this Lease, Landlord may require the subtenant under any sublease to pay the rent and other sums due under the sublease directly to Landlord; and

(vi) each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, it being the intention of Landlord and Tenant that Tenant shall assume and be liable to Landlord for any and all acts and omissions of all subtenants and anyone claiming under or through any subtenants which, if performed or omitted by Tenant, would be a default under this Lease; and Tenant and each subtenant shall be deemed to have agreed that upon the occurrence and during the continuation of an Event of Default hereunder, Tenant has hereby assigned to Landlord, and Landlord may, at its option, accept such assignment of, all right, title and interest of Tenant as sublandlord under such sublease, together with all modifications, extensions and renewals thereof then in effect and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be liable for any previous act or omission of Tenant under such sublease, subject to any counterclaim, offset or defense not expressly provided in such sublease, which theretofore accrued to such subtenant against Tenant, bound by any previous modification of such sublease not consented to by Landlord or by any prepayment of more than one month's Rent, bound to return such subtenant's security deposit, if any, except to the extent Landlord shall receive actual possession of such deposit and such subtenant shall be entitled to the return of all or any portion of such deposit under the terms of its sublease, or obligated to make any payment to or on behalf of such subtenant, or to perform any work in the subleased space or the Building, or in any way to prepare the subleased space for occupancy, beyond Landlord's obligations under this Lease. The provisions of this Section 14.5(b)(vi) shall be self-operative, and no further instrument shall be required to give effect to this provision, provided that the subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such subordination and attornment.

**Section 14.6 Binding on Tenant; Indemnification of Landlord.** Each sublease pursuant to this Article 14 shall be subject to all of the covenants, terms and conditions of this Lease. Notwithstanding any assignment or subletting or any acceptance of Rent by Landlord from any assignee or subtenant, Tenant shall remain fully liable for the payment of all Rent due and for the performance of all the covenants, terms and conditions contained in this Lease on Tenant's part to be observed and performed, and any default under any term, covenant or condition of this Lease by any subtenant or assignee or anyone claiming under or through any subtenant or assignee shall be deemed to be a default under this Lease by Tenant. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all losses, liabilities, damages and expenses (including reasonable attorneys' fees and disbursements) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant or anyone claiming under or through any subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease, irrespective of whether Landlord shall give or decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise any of its options under this Article 14.

**Section 14.7 Tenant's Failure to Complete.** If Landlord consents to a proposed assignment or sublease and Tenant fails to execute and deliver to Landlord such assignment or sublease within one hundred eighty (180) days after the giving of such consent, then Tenant shall again comply with all of the provisions and conditions of Section 14.2 and 14.5 hereof before assigning this Lease or subletting all or part of the Premises.

**Section 14.8 Profits.** If Tenant shall enter into any assignment or sublease permitted hereunder or consented to by Landlord, Tenant shall, within sixty (60) days of Landlord's consent to such assignment or sublease, deliver to Landlord a complete list of Tenant's reasonable third-party brokerage fees, concessions (including rent abatement), construction costs and allowances, legal fees and architectural fees paid, to be paid, or given in connection with such transaction, together with a list of all of Tenant's Property to be transferred to such assignee or sublessee. Tenant shall deliver to Landlord

evidence of the payment of such fees, costs and allowances promptly after the same are paid. In consideration of such assignment or subletting, Tenant shall pay to Landlord:

(a) **Assignment.** In the case of an assignment, on the later of the effective date of the assignment or ten (10) Business Days after Tenant's receipt of consideration from the assignee, an amount equal to 50% of all sums and other consideration paid to Tenant by the assignee for or by reason of such assignment after first deducting Tenant's reasonable third-party brokerage fees, concessions (including rent abatement), construction costs and allowances, legal fees, architectural fees, and other marketing and leasing costs in connection with such transaction; or

(b) **Sublease.** In the case of a sublease, 50% of any consideration payable under the sublease to Tenant by the subtenant which exceeds on a per square foot basis the Fixed Rent and Additional Rent accruing during the term of the sublease in respect of the subleased space after first deducting Tenant's reasonable third-party brokerage fees, construction costs and allowances, concessions (including rent abatement), legal fees, architectural fees, and other marketing and leasing costs in connection with such transaction, and if such sublease is less than the entire Premises, the actual cost incurred by Tenant in separately demising the subleased space. The sums payable under this clause shall be paid by Tenant to Landlord within ten (10) Business Days after the subtenant's payment to Tenant.

#### **Section 14.9 Other Transfers.**

(a) **Deemed and Permitted Transfers.** If Tenant is a corporation, the transfer (by one or more transfers) of a majority of the stock of Tenant shall be deemed a voluntary assignment of this Lease; provided, however, that the provisions of this Article 14 shall not apply to the transfer of shares of stock of Tenant if and so long as Tenant or the transferor is publicly traded on a nationally recognized stock exchange. For purposes of this Section 14.9 the term "transfers" shall be deemed to include the issuance of new stock which results in a majority of the stock of Tenant being held by a person or entity which does not hold a majority of the stock of Tenant on the date hereof. If Tenant is a partnership, the transfer (by one or more transfers) of a majority interest in the partnership shall be deemed a voluntary assignment of this Lease. If Tenant is a limited liability company, trust, or any other legal entity, the transfer (by one or more transfers) of a majority of the beneficial ownership interests in such entity, however characterized, shall be deemed a voluntary assignment of this Lease. The provisions of Section 14.1 shall not apply to transactions with a corporation, limited liability company, or partnership into or with which Tenant is merged or consolidated or to which all or substantially all of Tenant's assets are transferred so long as such transfer was made for a legitimate independent business purpose and not for the principal purpose of transferring this Lease, the successor to Tenant has a net worth computed in accordance with generally accepted accounting principles at least equal to the greater of (1) the net worth of Tenant immediately prior to such merger, consolidation or transfer, and (2) the net worth of the original Tenant on the date of this Lease, provided that proof satisfactory to Landlord of such net worth is delivered to Landlord at least ten (10) days prior to the effective date of any such transaction. Tenant may also permit an Affiliate to use the Premises and, upon prior notice to and with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed, assign this Lease to any Affiliate or permit any Affiliate to sublet all or part of the Premises for any Permitted Use, and further, such Affiliate assumes, in writing, all of Tenant's duties and obligations hereunder, which assumption shall be in form and substance reasonably acceptable to Landlord. The transfers permitted under the preceding two sentences shall hereinafter be referred to as the "Permitted Transfers". Such sublease shall not be deemed to vest in any such Affiliate any right or interest in this Lease or the Premises, nor shall any assignment and/or sublease relieve, release, impair or discharge any of Tenant's or any Affiliates', successors', assigns' or Guarantor's obligations hereunder. Notwithstanding the foregoing, Tenant shall have no right to assign this Lease or sublease all or any portion of the Premises without Landlord's consent pursuant to this Section 14.9 if Tenant is not the initial Tenant herein named or a person or entity who acquired Tenant's interest in this Lease in a transaction approved by Landlord. Upon any assignment of this Lease by Tenant, the Guaranty shall be terminated if either the assignee on such assignment has a tangible net worth equal to or in excess of the tangible net worth of Guarantor, or such assignee provides to Landlord a guarantor executing a guaranty in the form and substance as attached

hereto as Exhibit C, which guarantor shall have a tangible net worth equal to or in excess of that of Guarantor and shall otherwise be acceptable to Landlord.

(b) **Applicability.** The limitations set forth in this Section 14.9 shall apply to subtenant(s), assignee(s) and Guarantors of this Lease, if any, and any transfer by any such entity in violation of this Section 14.9 shall be a transfer in violation of Section 14.1.

**Section 14.10 Assumption of Obligations.** Any assignment or transfer, whether made with Landlord's consent or without Landlord's consent, if and to the extent permitted hereunder, shall not be effective unless and until the assignee executes, acknowledges and delivers to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee assumes Tenant's obligations under this Lease and agrees that, notwithstanding such assignment or transfer, the provisions of Section 14.1 hereof shall be binding upon it in respect of all future assignments and transfers.

**Section 14.11 Tenant's Liability.** The joint and several liability of Tenant and any successors-in-interest of Tenant and the due performance of Tenant's obligations under this Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord, extending the time, or modifying any of the terms and provisions of this Lease, or by any waiver or failure of Landlord, or any grantee or assignee of Landlord, to enforce any of the terms and provisions of this Lease.

**Section 14.12 Listings in Building Directory/Signage.** Subject to Landlord's reasonable approval as to the design, location and size of such signage, and in accordance with all Building Rules and Regulations, Tenant shall have the right during the Term to install Building standard signage on its entrance door. Tenant is also granted its proportionate share of signage space on the Building's directory board or directory monitor, if applicable. To the extent Landlord provides such services to all other tenants and occupants of the Building, Landlord agrees to install Building standard signage on the walls of the elevator lobbies and "way finding" signage in the eighth floor lobby of the Building identifying Tenant, which signage shall be reasonably acceptable to Tenant. Tenant shall pay Landlord, as Additional Rent, the standard Building charges for such installation and maintenance. The listing of any name other than that of Tenant on the doors of the Premises, the Building directory or elsewhere shall not vest any right or interest in this Lease or in the Premises, nor be deemed to constitute Landlord's consent to any assignment or transfer of this Lease or to any sublease of the Premises or to the use or occupancy thereof by others. Any such listing shall constitute a privilege revocable in Landlord's discretion by notice to Tenant. Subject to Landlord's reasonable approval as to the design, location and size of such signage, and in accordance with all Building Rules and Regulations, Tenant shall have the right during the Term to install signage on the exterior Building kiosk in the amount of Tenant's Proportionate Share. Tenant shall pay Landlord, as Additional Rent, the standard Building charges for the installation and maintenance of such sign.

**Section 14.13 Lease Disaffirmance or Rejection.** If at any time after an assignment by Tenant named herein, this Lease is disaffirmed or rejected in any proceeding of the types described in Section 16.1(g) hereof or upon a termination of this Lease due to any such proceeding, Tenant named herein, upon request of Landlord given after such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall pay to Landlord all Rent and other charges due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and as "tenant," enter into a new lease of the Premises with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Expiration Date, unless sooner terminated in accordance therewith, at the same Rent and upon the then executory terms, covenants and conditions contained in this Lease, except that the rights of Tenant named herein under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any persons claiming through or under such assignee or by virtue of any statute or of any order of any court, such new lease shall require all defaults existing under this Lease to be cured by Tenant named herein with due diligence, and such new lease shall require Tenant named herein to pay all Rent which,

had this Lease not been so disaffirmed, rejected or terminated, would have become due under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant named herein commits a default in its obligations to enter into such new lease for a period of ten (10) Business Days after Landlord's request, then, in addition to all other rights and remedies by reason of default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant named herein as if it had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

## **ARTICLE 15. ACCESS TO PREMISES**

### **Section 15.1 Landlord's Access.**

(a) Tenant shall permit Landlord, Landlord's agents and public utilities servicing the Building to erect, use and maintain concealed ducts, pipes and conduits in and through the Premises. Landlord or Landlord's agents shall have the right to enter the Premises at all reasonable times upon reasonable prior notice (except no such prior notice shall be required in case of emergency), which notice may be oral, to examine the same, to show them to prospective purchasers, Mortgagees, Superior Lessors or lessees of the Building and their respective agents and representatives or, during the last twelve (12) months of the Term, to show them to prospective tenants of the Premises (it being understood that Tenant shall have the right to accompany Landlord during any inspection or exhibition of the Premises, except in the event of an emergency), and to make such repairs, alterations, improvements or additions (a) as Landlord may reasonably deem necessary to the Premises or to any other portion of the Building, or (b) which Landlord may elect to perform following Tenant's failure to make repairs or perform any work which Tenant is obligated to make or perform under this Lease, or (c) required for the purpose of complying with Legal Requirements, and Landlord shall be allowed to take all material into and upon the Premises that may be required therefor without the same constituting an eviction or constructive eviction of Tenant in whole or in part and Fixed Rent and Additional Rent will not be abated while said repairs, alterations, improvements or additions are being made, by reason of loss or interruption of business of Tenant, or otherwise. Landlord shall take commercially reasonable steps to minimize the impact of such work on Tenant's business operations and shall repair any damage caused by Landlord during the performance of such work (except to the extent such damage is caused by Tenant).

(b) If Tenant shall not be present when for any reason entry into the Premises shall be necessary or permissible, after notice as aforesaid, Landlord or Landlord's agents may enter the same without rendering Landlord or such agents liable therefor (if during such entry Landlord or Landlord's agents shall accord reasonable care to Tenant's Property), and without in any manner affecting this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Building or any part thereof, other than as herein provided.

**Section 15.2 Alterations to Building.** Provided that it does not materially alter the light or views of the Premises or materially affect access to and from the Building and the Premises (except on a temporary basis) or increase Tenant's Proportionate Share, Landlord shall have the right from time to time to alter the Building and, without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor (except to the extent caused by the negligence or intentional misconduct of Landlord or Landlord's Agents), to change the arrangement or location of entrances or passageways, doors and doorways, and corridors, elevators, stairs, toilets, or other public parts of the Building to install sidewalk bridges, decking, platforms, hoists and scaffolding in or around the Building and temporarily cover windows or block sidewalks, streets or entryways and to change the name, number or designation by which the Building is commonly known. All parts (except surfaces facing the interior of the Premises) of all walls, windows and doors bounding the Premises (including exterior Building walls, exterior core corridor walls, exterior doors and entrances other than doors and entrances solely servicing the Premises), all balconies, terraces and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways, chutes, pipes, conduits, ducts, fan rooms, heating, air cooling, plumbing and other mechanical facilities, service closets and other Building facilities

are not part of the Premises, and Landlord shall have the use thereof, as well as, if necessary, access thereto through the Premises for the purposes of operation, maintenance, alteration and repair.

## **ARTICLE 16. TENANT'S DEFAULTS.**

### **Section 16.1 Events of Default.**

Each of the following events shall be an "Event of Default" hereunder:

(a) Tenant fails to pay when due any installment of Rent and such default shall continue for five (5) days after written notice of such default is given to Tenant (which notice may be in the form of an Illinois Statutory 5-day notice utilized in Forcible Entry and Detainer Proceedings), except that if Landlord shall have given three such notices of default in the payment of any Rent in any twelve month period, Tenant shall not be entitled to any further written notice of its delinquency in the payment of any Rent; or

(b) Tenant uses the Premises for a purpose which constitutes a Prohibited Use and if such use continues for more than ten (10) days after notice by Landlord to Tenant of such default or, if such use is of a nature that it cannot be completely remedied within ten (10) days, failure by Tenant to cease such use within thirty (30) days; or

(c) Tenant fails to observe or perform any other term, covenant or condition of this Lease to be observed or performed by Tenant and if such failure continues for more than thirty (30) days after written notice by Landlord to Tenant of such failure, or if such failure is of such a nature that it cannot be completely remedied within thirty (30) days, failure by Tenant to commence to remedy such failure within said thirty (30) days, and thereafter diligently prosecute to completion all steps necessary to remedy such default within one hundred twenty (120) days; or

(d) Tenant shall fail to complete Tenant's Initial Alterations to the entire Premises in accordance with Article 4 within one (1) year of the Commencement Date; or

(e) Tenant's interest in this Lease shall devolve upon or pass to any person, whether by operation of law or otherwise, except as expressly permitted under Article 14 hereof; or

(f) Tenant or Guarantor is unable to, or admits in writing its inability to, pay its debts as they become due; or

(g) Tenant or Guarantor files a voluntary petition in bankruptcy or insolvency, or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or makes an assignment for the benefit of creditors or seeks or consents to or acquiesces in the appointment of any trustee, receiver, liquidator or other similar official for Tenant or Guarantor or for all or any part of Tenant's or Guarantor's property; or

(h) if, within sixty (60) days after the commencement of any proceeding against Tenant or Guarantor whether by the filing of a petition or otherwise, seeking bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee, receiver, liquidator or other similar official for Tenant or Guarantor or for all or any part of Tenant's or Guarantor's property, without the consent or acquiescence of Tenant or Guarantor, as the case may be, such appointment shall not have been vacated or otherwise discharged, or if any lien, execution or attachment or other similar filing shall be made or issued against Tenant or Guarantor or any of Tenant's or Guarantor's property pursuant to which the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant or Guarantor; or

(i) A default shall occur under the Guaranty which with respect to a non-monetary default is not cured within thirty (30) days of notice thereof from Landlord to Guarantor, or if such non-monetary default is of such a nature that it cannot be completely remedied within such thirty (30) days, failure by Guarantor to commence to remedy such failure within said thirty (30) days, and thereafter use best efforts to prosecute the completion in the shortest time period possible of all steps necessary to remedy such non-monetary default within one hundred twenty (120) days. Any timely payment or performance by Guarantor shall be accepted by Landlord as such payment or performance, as the case may be, by Tenant and shall cure any outstanding defaults by Tenant for failure to make such payment or performance.

Upon the occurrence of any one or more of such Events of Default, Landlord may, at its sole option, give to Tenant three (3) days' notice of cancellation of this Lease (or of Tenant's possession of the Premises), in which event this Lease and the Term (or Tenant's possession of the Premises) shall come to an end and expire (whether or not the Term shall have commenced) upon the expiration of such three day period with the same force and effect as if the date set forth in the notice was the Expiration Date stated herein; and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable for damages as provided in Article 17 hereof. Any notice of cancellation of the Term (or Tenant's possession of the Premises) may be given simultaneously with any notice of default given to Tenant.

**Section 16.2 Tenant's Liability.** If, at any time, Tenant shall be comprised of two or more persons, Tenant's obligations under this Lease shall have been guaranteed by any person other than Tenant, or Tenant's interest in this Lease shall have been assigned, the word "Tenant," as used in Section 16.1(f), 16.1(g) and 16.1(h), shall be deemed to mean any one or more of the persons primarily or secondarily liable for Tenant's obligations under this Lease. Any monies received by Landlord from or on behalf of Tenant during the pendency of any proceeding of the types referred to in this Article 16 shall be deemed paid as compensation for the use and occupancy of the Premises and the acceptance of any such compensation by Landlord shall not be deemed an acceptance of Rent or a waiver on the part of Landlord of any rights under this Lease.

## **ARTICLE 17. REMEDIES AND DAMAGES.**

### **Section 17.1 Landlord's Remedies.**

(a) **Possession/Reletting.** If any Event of Default occurs, and this Lease and the Term, or Tenant's right to possession of the Premises, terminates as provided in Article 16:

(i) **Surrender of Possession.** Tenant shall quit and surrender the Premises to Landlord, and Landlord and its agents may immediately, or at any time after such Event of Default, re-enter the Premises or any part thereof, without notice, either by summary proceedings, or by any other applicable action or proceeding, or by force (to the extent permitted by law) or otherwise in accordance with applicable legal proceedings (without being liable to indictment, prosecution or damages therefor), and may repossess the Premises and dispossess Tenant and any other persons from the Premises and remove any and all of their property and effects from the Premises.

(ii) **Landlord's Reletting.** Landlord, at Landlord's option, may relet all or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for any term ending before, on or after the Expiration Date, at such rental and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole discretion, may determine. Landlord shall have no obligation to accept any tenant offered by Tenant and shall not be liable for failure to relet or, in the event of any such reletting, for failure to collect any rent due upon any such reletting; and no such failure shall relieve Tenant of, or otherwise affect, any liability under this Lease. However, to the extent required by law, Landlord shall use reasonable efforts to mitigate its damages but shall not be required to divert prospective tenants from any other portions of the Building. Landlord, at Landlord's option, may make such alterations, decorations and other physical changes in and to the Premises as Landlord, in its reasonable discretion, considers advisable or necessary in connection with such reletting

or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(b) **Tenant's Breach.** Upon the breach or threatened breach by Tenant, or any persons claiming through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to enjoin such breach and to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach. The rights to invoke the remedies set forth above are cumulative and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

#### **Section 17.2 Landlord's Damages.**

(a) **Amount of Damages.** If this Lease and the Term, or Tenant's right to possession of the Premises, expire and come to an end as provided in Article 16, or by or under any summary proceeding or any other action or proceeding, or if Landlord shall re-enter the Premises as provided in Section 17.1, then, in any of such events:

(i) Tenant shall pay to Landlord all Fixed Rent, all sums payable pursuant to Article 7 of this Lease (including Tenant's Tax Payment and Tenant's Operating Payment) and all other items of Rent payable under this Lease by Tenant to Landlord up to the Expiration Date or to the date of re-entry upon the Premises by Landlord, as the case may be;

(ii) Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as prepaid Rent, or otherwise, which monies, to the extent not otherwise applied to amounts due and owing to Landlord, shall be credited by Landlord against any rent or damages payable by Tenant to Landlord;

(iii) Tenant shall pay to Landlord, in monthly installments, on the days specified in this Lease for payment of installments of Fixed Rent and all other items of Rent payable under this Lease, any Deficiency (as hereinafter defined); it being understood that Landlord shall be entitled to recover the Deficiency from Tenant each month as the same shall arise, and no suit to collect the amount of the Deficiency for any month, shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(iv) whether or not Landlord shall have collected any monthly Deficiency, Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency and as liquidated and agreed final damages, a sum equal to the amount by which the Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent during such period to be the same as was payable for the year immediately preceding such termination or re-entry, increased in each succeeding year by three (3) percent (on a compounded basis)) exceeds the then fair and reasonable rental value of the Premises, for the same period (with both amounts being discounted to present value at a rate of interest equal to two percent below the then Base Rate) less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 17.2(a)(iii) for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord to any independent third party in an arms' length transaction for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) **Deficiency.** For all purposes of this Lease the term "Deficiency" shall mean the difference between (a) the Fixed Rent and Additional Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding such termination or re-entry), and (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of the Lease for any part of such period (after first deducting from such rents all expenses incurred by Landlord in



connection with the termination of this Lease, Landlord's re-entry upon the Premises and such reletting, including repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, and alteration costs).

(c) **Reletting.** If the Premises, or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this Section 17.2. Tenant shall not be entitled to any rents collected or payable under any reletting, whether or not such rents exceed the Fixed Rent reserved in this Lease. Nothing contained in Articles 16 or 17 shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any Legal Requirement, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this Section 17.2.

**Section 17.3 Default Interest; Other Rights of Landlord.** Any Rent or damages payable under this Lease and not paid when due shall bear interest at the Default Rate from the due date until paid, and the interest shall be deemed Additional Rent. If Tenant fails to pay any Additional Rent when due, Landlord, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Tenant in the payment of Fixed Rent. If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit, regardless of any request by Tenant.

**Section 17.4 Landlord Default.** Landlord shall be in default hereunder if Landlord violates or fails to perform any covenant, agreement or condition herein contained, or any other obligation of Landlord, and such failure continues for more than thirty (30) days after receipt of written notice from Tenant (or, if such failure cannot be cured within such 30 days, if Landlord fails to commence such cure within thirty (30) days or thereafter fails to diligently pursue such cure to completion). Upon the occurrence of a default by Landlord, and after the expiration of the applicable cure period, Tenant shall have all remedies available at law or in equity, including the right to enforce the provisions of this Lease by specific performance.

## **ARTICLE 18. FEES AND EXPENSES**

**Section 18.1 Landlord's Right To Cure.** If an Event of Default shall occur under this Lease, or if Tenant shall fail to comply with its obligations under this Lease and the preservation of property or the safety of any tenant, occupant or other person is threatened, Landlord may, after reasonable prior written notice to Tenant except in an emergency, perform the same for the account of Tenant or make any reasonable expenditure or incur any obligation for the payment of money for the account of Tenant. All amounts expended by Landlord in connection with the foregoing, including reasonable attorneys' fees and disbursements in instituting, prosecuting or defending any action or proceeding or recovering possession, and the cost thereof, with interest thereon at the Default Rate, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant to Landlord within ten (10) days of rendition of any bill or statement to Tenant therefor.

**Section 18.2 Late Charge.** If Tenant shall fail to pay any installment of Fixed Rent and/or Additional Rent when due, Tenant shall pay to Landlord, in addition to such installment of Fixed Rent and/or Additional Rent, as the case may be, as a late charge and as Additional Rent, a sum equal to interest at the Default Rate on the amount unpaid, computed from the date such payment was due to and including the date of payment.

**Section 18.3 Expenses of Enforcement.** Except as otherwise provided in this Lease, in any action, litigation or proceeding to enforce the terms and provisions of this Lease, the nonprevailing party in such action, litigation or proceeding shall pay the prevailing party thereto all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in successfully enforcing the nonprevailing party's obligations or successfully defending the prevailing party's rights under this Lease against the nonprevailing party.

## ARTICLE 19. NO REPRESENTATIONS BY LANDLORD

Except as otherwise provided in this Lease, Landlord and Landlord's agents have made no warranties, representations, statements or promises with respect to (a) the rentable and usable areas of the Premises or the Building, (b) the amount of any current or future Operating Expenses or Taxes, (c) the compliance with applicable Legal Requirements of the Premises or the Building, or (d) the suitability of the Premises for any particular use or purpose. No rights, easements or licenses are acquired by Tenant under this Lease, by implication or otherwise, except as expressly set forth herein. This Lease (including any Exhibits referred to herein and all supplementary agreements provided for herein) contains the entire agreement between the parties and all understandings and agreements previously made between Landlord and Tenant are merged in this Lease, which alone fully and completely expresses their agreement. Tenant is entering into this Lease after full investigation, and is not relying upon any statement or representation made by Landlord not embodied in this Lease and accepts the Premises in "as is, whereas" condition subject only to the performance of Landlord's Alterations.

## ARTICLE 20. END OF TERM

**Section 20.1 Expiration.** Upon the expiration or other termination of this Lease or of Tenant's right to possession of the Premises, Tenant shall quit and surrender to Landlord the Premises, vacant, broom clean, in good order and condition, casualty, condemnation, ordinary wear and tear and damage for which Tenant is not responsible under the terms of this Lease excepted, and Tenant shall remove all of Tenant's Property from the Premises, and this obligation shall survive the expiration or sooner termination of the Term.

**Section 20.2 Holdover Rent.** Landlord and Tenant recognize that the damage to Landlord resulting from any failure by any Tenant Party to timely surrender possession of the Premises may be substantial, may exceed the amount of the Rent theretofore payable hereunder, and will be impossible to accurately measure. Tenant therefore agrees that if possession of the Premises is not surrendered to Landlord within 24 hours after the Expiration Date or sooner termination of the Term, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall pay to Landlord for each month (or any portion thereof) during which any Tenant Party holds over in the Premises after the Expiration Date or sooner termination of the Term, a sum equal to (i) one and one-half (1 ½) times the Rent payable under this Lease for the last full calendar month of the Term determined on a gross basis for the first one hundred twenty (120) days of holdover and (ii) two (2) times the Rent payable under this Lease for the last full calendar month of the Term determined on a gross basis from the one hundred twenty-first (121st) day of holdover until Tenant vacates the Premises and delivers possession to Landlord; and Tenant shall be liable to Landlord for any payment or rent concession (including, without limitation, any consequential damages) which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") in order to induce such New Tenant not to terminate its lease by reason of the holding-over by any Tenant Party, and the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding-over by any Tenant Party, and indemnify Landlord against all claims for damages by any New Tenant. No holding-over by any Tenant Party, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof, nor constitute any tenancy other than a "month to month" tenancy at will. Nothing herein contained shall be deemed to permit any Tenant Party to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from any Tenant Party after the Expiration Date or sooner termination of the Term shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Article 20, nor shall it operate as a waiver of Landlord's right of re-entry or any other right or remedy of Landlord under this Lease. All of Tenant's obligations under this Article 20 shall survive the expiration or earlier termination of the Term of this Lease.

## ARTICLE 21. QUIET ENJOYMENT

Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or persons claiming by, through or under Landlord subject, nevertheless, to the terms and conditions of this Lease.

## ARTICLE 22. NO WAIVER; NO LIABILITY

**Section 22.1 No Surrender Or Release.** No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of this Lease or a surrender of the Premises. Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property and neither Landlord nor its agents shall be liable for any damage to property of Tenant or of others entrusted to employees of the Building, nor for the loss of or damage to any property of Tenant by theft or otherwise.

**Section 22.2 No Waiver.** The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations set forth or hereafter adopted by Landlord, shall not prevent a subsequent act, which would have originally constituted a violation, from having all of the force and effect of an original violation. The receipt by Landlord of Fixed Rent and/or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of the Rules and Regulations set forth, or hereafter adopted, shall not be deemed a waiver of any such Rules and Regulations. Landlord shall enforce the Rules and Regulations in a uniform and non-discriminatory manner. No provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Fixed Rent or any Additional Rent shall be deemed to be other than on account of the next installment of Fixed Rent or Additional Rent, as the case may be, or as Landlord may elect to apply same, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Fixed Rent or Additional Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Fixed Rent or Additional Rent or pursue any other remedy in this Lease provided. Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an amendment of this Lease in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought. All references in this Lease to the consent or approval of Landlord shall be deemed to mean the written consent or approval of Landlord and no consent or approval of Landlord shall be effective for any purpose unless such consent or approval is set forth in a written instrument executed by Landlord.

**Section 22.3 No Liability.** Without diminishing Landlord's repair obligations hereunder and except to the extent caused by Landlord's gross negligence or willful misconduct, neither Landlord nor its agents, except to the extent of Landlord's insurance recovery shall be liable for any injury or damage to persons or property or interruption of Tenant's business resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Building or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature; nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons in the Building or caused by construction of any private, public or quasi-public work; nor shall Landlord be liable for any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in Article 6). Nothing in the foregoing shall affect any right of Landlord to the indemnity from Tenant to which Landlord may be entitled under Article 28 in order to recoup for payments made to compensate for losses of third parties.

### **ARTICLE 23. WAIVER OF TRIAL BY JURY**

THE RESPECTIVE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER (EXCEPT FOR PERSONAL INJURY OR PROPERTY DAMAGE) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR FOR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE. If Landlord commences any summary proceeding against Tenant, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding (unless failure to impose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim), and will not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant.

### **ARTICLE 24. INABILITY TO PERFORM**

(a) This Lease and the obligation of Tenant to pay Fixed Rent and Additional Rent hereunder and perform all of the other covenants and agreements hereunder on the part of Tenant to be performed will not be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease expressly or impliedly to be performed by Landlord or because Landlord is unable to make, or is delayed in making any repairs, additions, alterations, improvements or decorations or is unable to supply or is delayed in supplying any equipment or fixtures, if Landlord is prevented or delayed from so doing by reason of strikes or labor troubles or by accident, any act or omission of Tenant or any other Tenant Party (or any of their respective employees, contractors, agents, representatives, directors, officers, successors or assigns) or by any cause whatsoever reasonably beyond Landlord's control, including acts of God, terrorism, natural disasters, laws, governmental preemption in connection with a national emergency or by reason of any Legal Requirements (except those with which Landlord refuses to comply) or by reason of the conditions of supply and demand which have been or are affected by war or other emergency ("Unavoidable Delays").

(b) This Lease and the obligation of Tenant to perform all of its covenants, agreements and obligations hereunder (except for the obligation to pay Rent or any other amount due hereunder) will not be deemed delinquent or deemed to constitute an Event of Default hereunder because Tenant is unable to fulfill any such obligation, agreement or covenant (except for the obligation to pay Rent or any other amount due hereunder), if Tenant is prevented or delayed from so doing by reason of the occurrence of an Unavoidable Delay.

### **ARTICLE 25. BILLS AND NOTICES**

Except as otherwise expressly provided in this Lease, and subject to change by notice by the party changing its address for notice, any bills, statements, consents, notices, demands, requests or other communications given or required to be given under this Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand (against a signed receipt), sent by a nationally recognized overnight courier service, or sent by registered or certified mail (return receipt requested) and addressed:

if to Tenant, (i) (a) until the Commencement Date at the address for Tenant given on page 1 of this Lease, thereafter at Tenant's address at the Premises, or (b) at any place where Tenant or any agent or employee or Tenant may be found if mailed subsequent to Tenant's abandoning or surrendering the Premises and (ii) with a copy to: Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, Illinois 60603, Attention: Jeffrey Jahns, Esq.; or

if to Landlord, as follows: c/o Angelo, Gordon & Co., L.P., 245 Park Avenue, 26th Floor, New York, New York 10167, Attn: Andrew C. Jacobs, with a copy to each of (i) Duval & Stachenfeld LLP, 300 East 42nd Street, New York, New York 10019, Attn: Bruce M. Stachenfeld, (ii) c/o Taconic Investment Partners LLC, 111 Eighth Avenue, Suite 1500, New York, New York

10011, Attention: Mr. Charles Bendit and Mr. Gregory P. Knoop, and (iii) Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, Attention: Elizabeth K. McCloy, Esq.

Any such bill, statement, consent, notice, demand, request or other communication given as provided in this Article 25 shall be deemed to have been rendered or given (i) on the date when it shall have been hand delivered, (ii) three (3) Business Days from the date when it shall have been mailed, or (iii) one (1) Business Day from the date when it shall have been sent by overnight courier service.

## **ARTICLE 26. RULES AND REGULATIONS**

Landlord reserves the right, from time to time, to adopt additional reasonable, uniform and non-discriminatory Rules and Regulations and to amend the Rules and Regulations then in effect, provided the same do not materially reduce any of Tenant's rights or materially increase Tenant's obligations under this Lease. Tenant and all Tenant Parties shall comply with the Rules and Regulations, as so supplemented or amended and delivered to Tenant. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees. If there shall be any inconsistencies between this Lease and the Rules and Regulations, the provisions of this Lease shall prevail.

## **ARTICLE 27. BROKER**

**Section 27.1 Broker Representations.** Each of Landlord and Tenant represents and warrants to the other that it has not dealt with any broker in connection with this Lease other than Brokers and that to the best of its knowledge and belief, no other broker, finder or similar Person procured or negotiated this Lease or is entitled to any fee or commission in connection herewith. Landlord shall pay the Brokers' commissions pursuant to a separate agreement.

**Section 27.2 Indemnity.** Each of Landlord and Tenant shall indemnify, defend, protect and hold the other party harmless from and against any and all losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys' fees and disbursements) which the indemnified party may incur by reason of any claim of or liability to any broker, finder or like agent (other than Brokers) arising out of any dealings claimed to have occurred between the indemnifying party and the claimant in connection with this Lease, or the above representation being false. The provisions of this Article 27 shall survive the expiration or earlier termination of the Term of this Lease.

## **ARTICLE 28. INDEMNITY**

**Section 28.1 Tenant's Indemnity.** Tenant shall not do or permit any act or thing to be done upon the Premises which may subject Landlord and any partner, shareholder, director, officer, principal, employee or agent, directly and indirectly, of Landlord, to any liability or responsibility for injury, damages to persons or property or to any liability by reason of any violation of law or of any Legal Requirement, but shall exercise such control over the Premises as to fully protect Landlord against any such liability. Subject to the terms of Section 11.2 hereof, Tenant shall defend, indemnify and save harmless Landlord and any partner, shareholder, director, officer, principal, employee or agent, directly and indirectly, of Landlord (individually, each a "Landlord Party" and collectively, "Landlord Parties"), from and against (a) all claims of whatever nature against Landlord and any other Landlord Party arising from any act, omission or negligence of Tenant or any Tenant Party, (b) all claims against Landlord and any other Landlord Party arising from any accident, injury or damage whatsoever caused to any person or to the Property of any person and occurring during the Term in or about the Premises, (c) all claims against Landlord and any other Landlord Party arising from any accident, injury or damage occurring outside of the Premises but anywhere within or about the Real Property where such accident, injury or damage results or is claimed to have resulted from an act, omission or negligence of Tenant or any Tenant Party and (d) any breach, violation or non-performance of any covenant, condition or agreement in this Lease

set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed. Nothing contained herein shall require Tenant to indemnify, defend or save harmless Landlord Parties from and against any claim to the extent the same results from or arises out of the negligence or intentional misconduct of Landlord or any Landlord Party. This indemnity and hold harmless agreement shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses of any kind or nature (including reasonable attorneys' fees and disbursements) incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

**Section 28.2 Hazardous Materials.** Tenant agrees to defend, indemnify and hold harmless Landlord and any partner, shareholder, director, officer, principal, employee or agent, directly and indirectly, of Landlord, from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against Landlord or any such party directly or indirectly based on, or arising or resulting from (a) the actual or alleged presence of Hazardous Materials on the Premises or in the Building which is caused or permitted by Tenant, and (b) any Environmental Claim relating in any way to Tenant's operation or use of the Premises or the Building.

The provisions of this Article 28 shall survive the expiration or sooner termination of this Lease.

## **ARTICLE 29. BUILDING IMPROVEMENTS.**

### **Section 29.1 Intentionally Deleted.**

**Section 29.2 Building Improvements.** From time to time during the Term of this Lease, including renewals and extensions, Landlord may alter the Building by (a) installation of additional elevator(s) and/or risers in the Building, together with such space as may be required for lobbies and other common areas, (b) modification or improvement of the Building Systems, (c) construction of public corridors to create access to rentable space now existing or to be constructed in the future on the floor on which the Premises are located, and/or (d) performing any other construction, demolition, repair, maintenance and/or decorative work to the Building (interior or exterior) and/or Real Property which Landlord deems necessary or desirable, in Landlord's sole and absolute discretion (any or all of the foregoing work, "Building Improvements"). With respect to such Building Improvements, Landlord shall have no right to materially and adversely impact (i) any portion of the Premises, (ii) the means of ingress or egress to the Premises, (iii) Tenant's light and views or (iv) any of the material services provided under this Lease. Tenant shall provide Landlord with access to the Premises necessary to perform the work to install and maintain the Building Improvements, including the right to take all necessary materials and equipment into the Premises, without the same constituting an eviction and, except as provided in this Section 29.2 and in Section 10.6(b) hereof, Tenant shall not be entitled to any abatement of rent by reason of any such entry, or any damages by reason of loss or interruption of business or otherwise. Landlord shall use commercially reasonable efforts to minimize interference with Tenant's access to and use and occupancy of the Premises in making any Building Improvements. Notwithstanding anything to the contrary contained in this Lease, Tenant hereby acknowledges that during any period that Landlord is performing (or causing or permitting to be performed) any Building Improvements, Landlord and Landlord's agents, contractors and representatives (including, without limitation, any other tenants of the Building or their contractors or representatives) may perform significant construction and demolition work to the Building and/or Real Property, and that such construction and demolition work may result in interference (including, without limitation, interference caused by entry in the Premises by Landlord and other tenants of the Building (and their contractors, employees, agents and representatives) for purposes of performing construction and/or demolition work, and interference caused by the presence of noise, vibrations, dust and other emissions in or about the Premises) with Tenant's or any Tenant Party's use, enjoyment and occupancy of the Premises. However, Landlord shall give Tenant twenty-four (24) hours prior written notice prior before any entry into the Premises pursuant to the previous sentence, which notice must specify the type of work to be performed, the name of the individuals performing it and their affiliations, and the duration of their presence in the Premises; provided, however, that any entry into the Premises pursuant to the previous sentence is only permitted under this Lease if (i) such entry is

necessary for the performance of the work; and (ii) the presence of Landlord or third parties in the Premises is limited to the extent, and continues only as long as is, necessary for the performance of the work. Except as provided in Section 10.6(b) hereof, there shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from any such interference, or otherwise by reason of the performance of such Building Improvements. Except as otherwise provided herein (or as otherwise provided in Section 10.6(b)) to the contrary, Tenant, for itself and for all Tenant Parties, and their respective employees, agents and contractors, to the fullest extent permitted under applicable law, hereby fully and forever waives any and all claims, demands and causes of action against Landlord, and fully and forever releases Landlord for any loss, cost, damage, liability or expense (including injury to persons or property) suffered or incurred by Tenant any Tenant Party, or any of their respective employees, agents or contractors, in connection with or resulting from the performance of such Building Improvements. Promptly following the completion of any Building Improvements, Landlord shall make such repairs to and restoration of the Premises as may be reasonably required as a direct result thereof.

**ARTICLE 30. INTENTIONALLY DELETED**

**ARTICLE 31. MISCELLANEOUS**

**Section 31.1 Limitation on Liability.**

(a) **Prior To and After Transfer.** The obligations of Landlord under this Lease shall not be binding upon Landlord named herein after the sale, conveyance, assignment or transfer by such Landlord (or upon any subsequent landlord after the sale, conveyance, assignment or transfer by such subsequent landlord) of its interest in the Building or the Real Property, as the case may be, and in the event of any such sale, conveyance, assignment or transfer, Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder; provided that the transferee of Landlord's interest in the Building or the Real Property, as the case may be, shall be deemed to have assumed all obligations under this Lease, provided further, that Landlord (or any subsequent Landlord) shall not be freed or relieved from any obligations or covenants under this Lease accruing before any sale, conveyance, assignment or transfer. Prior to any such sale, conveyance, assignment or transfer, the liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Real Property and Tenant shall not look to any other property or assets of Landlord or the property or assets of any of the Exculpated Parties (defined below) in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations.

(b) **No Personal Liability.** Notwithstanding anything contained herein to the contrary, Tenant shall look solely to Landlord's interest in the Building or the Real Property and proceeds therefrom to enforce Landlord's obligations hereunder and no partner, shareholder, director, officer, principal, employee or agent, directly or indirectly, of Landlord (collectively, the "Exculpated Parties") shall be personally liable for the performance of Landlord's obligations under this Lease. Tenant shall not seek any damages against any of the Exculpated Parties.

**Section 31.2 Intentionally Omitted.**

**Section 31.3 Certain Interpretational Rules.**

(a) All of the Exhibits attached to this Lease are incorporated in and made a part of this Lease, but, in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the Exhibits hereto, the terms and provisions of this Lease shall control. This Lease may not be changed, modified, terminated or discharged, in whole or in part, except by a writing, executed by the party against whom enforcement of the change, modification, termination or discharge is to be sought. Wherever appropriate in this Lease, personal pronouns shall be deemed to include the other genders and the singular to include the plural. The word "or" is not exclusive and the word

"including" is not limiting. References to a law include any rule or regulation issued under the law and any amendment to the law, rule or regulation. Wherever a period of time is stated in this Lease as commencing or ending on any particular date, such period of time shall be deemed inclusive of such stated commencement and ending dates. The captions hereof are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof. All Article and Section references set forth herein shall, unless the context otherwise specifically requires, be deemed references to the Articles and Sections of this Lease. Whenever the words "include", "includes", or "including" are used in this Lease, they shall be deemed to be followed by the words "without limitation".

(b) **Governing Law.** This Lease shall be governed in all respects by the laws of the State of Illinois applicable to agreements executed in and to be performed wholly within the State.

(c) **Unenforceability.** If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(d) **Parties Bound.** The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and, except as otherwise provided in this Lease, their assigns. Each party represents that it is authorized to execute this Lease and, upon such execution, the obligations in this Lease shall be binding upon such party. Each party signing this Lease shall have joint and several liability.

**Section 31.4 Jurisdiction.** Except as expressly provided to the contrary in this Lease, Tenant agrees that all disputes arising, directly or indirectly, out of or relating to this Lease, and all actions to enforce this Lease, shall be dealt with and adjudicated in the state courts of Illinois or the Federal courts sitting in Chicago, Illinois; and for that purpose hereby expressly and irrevocably submits itself to the jurisdiction of such courts.

**Section 31.5 Waiver of Immunity.** Tenant hereby irrevocably waives, with respect to itself and its property, any diplomatic or sovereign immunity of any kind or nature, and any immunity from the jurisdiction of any court or from any legal process, to which Tenant may be entitled, and agrees not to assert any claims of any such immunities in any action brought by Landlord under or in connection with this Lease. Tenant acknowledges that the making of such waivers, and Landlord's reliance on the enforceability thereof, is a material inducement to Landlord to enter into this Lease.

**Section 31.6 Tax Increment Reporting Requirements.** By execution hereof, Tenant acknowledges that Tenant shall be required to comply with any reporting requirements imposed upon Tenant and/or Landlord by the City of Chicago or an affiliate thereof with respect to tax increment financing of the Building; and that these reporting requirements shall include, inter alia, submitting various documentation and other reports as the City of Chicago, an affiliate thereof or Landlord may reasonably request with respect to the creation of jobs and shall be limited to one time per calendar year. Landlord acknowledges that Tenant is currently pursuing funding through tax increment financing from the City of Chicago or an Affiliate thereof and certain incentives from the State of Illinois or an Affiliate thereof and Landlord agrees, at no cost to Landlord, to (i) deliver all documentation reasonably required in order for Tenant to obtain such financing or incentives and (ii) pass through to Tenant any benefit from such financing or incentive Landlord might receive in connection with Tenant's application therefor. This Section 31.6 shall survive the expiration of the Term or earlier termination of this Lease for a period of two (2) years.

**Section 31.7 Security Key Cards.** Landlord shall provide to Tenant, at no additional cost to Tenant, up to 75 Building security key cards for use by Tenant and its employees for purposes of gaining entry to the tenant-occupied portions of the Building. In the event that Tenant desires to obtain



any additional Building security key cards, Tenant shall purchase the same from Landlord at Landlord's then current standard charges therefor. Tenant shall keep and maintain (and shall cause its employees to keep and maintain) all security key cards provided to Tenant and its employees in a safe and secure manner, and shall not permit any person or entity other than Tenant and its employees to use or possess any of such security key cards. In addition, Tenant and its employees shall observe all reasonable rules and regulations promulgated by Landlord from time to time regarding the use and possession of Building security key cards and the Building key card security system. Landlord shall not be responsible for any lost, stolen, damaged or destroyed security key cards, and, in the event that Tenant desires to obtain any replacements of any such key cards, Tenant shall purchase the same from Landlord at Landlord's then current standard charges therefor. Upon the expiration or earlier termination of the Term of this Lease, Tenant shall return to Landlord all security key cards provided to Tenant and/or its employees, and shall pay to Landlord Landlord's then current standard charges for any lost or missing security key cards.

### **ARTICLE 32. CANCELLATION OPTION**

(a) Notwithstanding any other provision of the Lease, Tenant shall have the option ("Cancellation Option") to cancel this Lease effective as of the last day of the seventy-second (72<sup>nd</sup>) full calendar month of the Term ("Cancellation Date"), provided that:

(i) No Event of Default exists under this Lease and is beyond any applicable notice and cure period at the time of the giving of the Cancellation Notice (hereinafter defined), and

(ii) Tenant has delivered written notice ("Cancellation Notice") to Landlord exercising Tenant's rights under this Article 32 no later than twelve (12) months prior to the Cancellation Date ("Cancellation Notice Date"), and

(iii) Tenant pays to Landlord a cancellation fee ("Cancellation Fee") equal to \$798,080.00 which amount represents the unamortized Landlord Contribution with respect to the Premises, the Fixed Rent abatement and leasing commissions based on 10% interest. The Cancellation Fee is subject to adjustment upon Tenant's exercise of its rights under Articles 33 and 34, hereof. In the event Tenant exercises any of the options granted under Articles 33 and 34 hereof, the parties agree to execute a memorandum memorializing the increased Cancellation Fee based upon Tenant's additional space in the Building.

(b) Landlord and Tenant acknowledge that the Cancellation Fee is not a penalty, but represents Landlord's and Tenant's good faith estimate of (i) Landlord's loss of the benefit of its bargain with Tenant under the Lease; (ii) the costs for improvements to the Premises to make the Premises ready for a new tenant; and (iii) lost rent, leasing commissions, attorneys' fees and other costs Landlord may incur with the re-letting of the Premises. Tenant hereby acknowledges and agrees that Tenant shall not be entitled to any rebate or return of any portion of the Cancellation Fee as a consequence of the actual costs incurred by Landlord in re-letting the Premises being less than the Cancellation Fee.

(c) The Cancellation Option shall automatically expire if the Lease is no longer in full force and effect. If Tenant does not deliver the Cancellation Notice on or before the Cancellation Notice Date, then Tenant will be deemed to have waived the Cancellation Option and the Cancellation Option will terminate and be of no further force or effect. If Tenant delivers the Cancellation Notice, but Tenant does not pay the Cancellation Fee to Landlord within five (5) Business Days of the date Tenant delivers the Cancellation Notice, Tenant shall be deemed to have waived the Cancellation Option, the Cancellation Option shall terminate and be of no further force and effect, the Cancellation Notice delivered by Tenant shall be deemed to be null and void and this Lease shall continue in full force and effect.

(d) If Tenant delivers the Cancellation Notice and Cancellation Fee, as provided above, and unless Landlord, in its sole and absolute discretion, otherwise agrees in writing, if Tenant is not then in default under this Lease beyond any notice and cure period, then, on or before 12:00 midnight on the Cancellation Date, Tenant will surrender the Premises to Landlord, and, provided that Tenant has complied with all of the provisions of this paragraph and of this Lease, this Lease and all of Tenant's

obligations hereunder, other than those obligations which expressly survive the termination or expiration of this Lease, will terminate as of 12:00 midnight on such date. If Tenant fails to so surrender the Premises on such date, then Tenant will be deemed to be a hold over tenant and the hold over provisions of the Lease will apply. Provided that Tenant has satisfied all of the requirements of this Article 32 relating to such termination, Landlord and Tenant will execute a termination agreement upon such termination of this Lease.

(e) The rights conferred upon Tenant pursuant to this Article 32 are personal to Tenant and are not assignable or transferable to any assignee or sublessee (regardless of whether any such assignment or sublease was made with or without Landlord's consent) or other party, excluding a Permitted Transfer pursuant to Section 14.9 hereof.

### **ARTICLE 33. EXPANSION RIGHT.**

**Section 33.1** Tenant is hereby granted the option to lease an additional 18,913 Rentable Square Feet on the eighth (8<sup>th</sup>) floor of the Building, the location and configuration of which shall be as designated on Exhibit H attached hereto (the "Expansion Premises"). Tenant shall exercise the option for the Expansion Premises by delivering irrevocable written notice to Landlord of its lease of the Expansion Premises no later than December 31, 2006 (the "Expansion Notice").

**Section 33.2** Landlord shall lease the Expansion Premises to Tenant on all of the same terms, covenants and conditions as set forth in the Lease, including a Free Rent Period, Landlord's Contribution in an amount equal to \$65.00 per Rentable Square Feet contained within the Expansion Premises and the Kitchen Facilities Area may, at Tenant's election, be increased to an approximately 15,000 Rentable Square Foot area.

**Section 33.3** If Tenant gives Landlord the Expansion Notice, then Landlord and Tenant shall promptly execute an amendment of this Lease to reflect the demise of the Expansion Premises to Tenant. Tenant's obligation to commence paying Rent with respect to the Expansion Premises shall commence on the Commencement Date. Any work performed by Tenant with respect to the Expansion Premises shall be performed in accordance with Article 4 hereof.

**Section 33.4** Notwithstanding the foregoing, Tenant shall not have the right to exercise its right to lease the Expansion Premises, and Landlord shall not be required to lease the Expansion Premises to Tenant at any time if an Event of Default shall exist at the time of the Expansion Notice.

### **ARTICLE 34. RIGHT OF FIRST REFUSAL**

Provided that no Event of Default under this Lease is continuing, commencing on January 1, 2007, Tenant shall have a right of first refusal ("Right of First Refusal") to lease (i) such contiguous vacant Rentable Square Footage consisting of at least 18,913 square feet and no more than 23,710 square feet (at Landlord's sole discretion) on the eighth (8<sup>th</sup>) floor of the Building (so long as Tenant has not exercised its rights with respect to such space in accordance with the terms and provisions of Article 33 hereof) as generally identified on Exhibit I attached hereto and made a part hereof prior to Landlord leasing such space to a third party (the "ROFR Space"), in accordance with the provisions of this Article 34. In the event that Landlord submits or receives a proposal to or from a prospective tenant for the lease of premises consisting in whole or in part of the ROFR Space (the "Third Party Offer") then, prior to (A) accepting any proposal or letter of intent received from such prospective tenant or (B) submitting a revised proposal to such prospective tenant, Landlord shall give Tenant a notice ("ROFR Notice") identifying (i) the available ROFR Space, (ii) the lease term under the Third Party Offer and (iii) the "fixed rent" and, if any, "landlord contribution to tenant improvements," that Landlord is prepared to accept. For a period of ten (10) Business Days following delivery of the ROFR Notice, Tenant shall have the option to lease all (but not less than all) of the portion of such ROFR Space designated in such ROFR Notice for the fixed rent designated in the ROFR Notice and with the landlord contribution to tenant improvements, if any, designated in such ROFR Notice and upon such other terms and conditions as are set forth in the ROFR Notice. Tenant's lease of such ROFR Space shall be

coterminous with Tenant's lease of the Premises. Tenant shall have the right to lease the ROFR Space on all of the other terms, covenants and conditions as are set forth in the Lease, provided that Tenant exercises its right to lease such ROFR Space by written notice to Landlord within ten (10) Business Days of Landlord's delivery of such ROFR Notice, and a failure to deliver written notice of the exercise of such right within such ten (10) Business Day period shall constitute a conclusive election by Tenant not to exercise such right and Tenant's rights hereunder shall automatically terminate and be of no further force and effect (subject to Tenant's rights under the penultimate sentence of this Article). Promptly after Tenant's exercise of its Right of First Refusal, Landlord shall prepare an amendment to this Lease, in a form reasonably satisfactory to Landlord and Tenant, to reflect changes in the size of the Premises, Fixed Rent, Tenant's Proportionate Share of Taxes and Operating Expenses and the Kitchen Facilities Area may, at Tenant's election, be increased to an approximately 15,000 Rentable Square Foot area, all other terms and provisions of the ROFR Notice, and any other mutually agreed upon terms, resulting from the addition of such ROFR Space, and the parties shall promptly execute such amendment. Notwithstanding anything to the contrary herein, commencing on July 1, 2007, in no event shall: (i) any Landlord Contribution be due and payable with respect to the ROFR Space, or (ii) Tenant be entitled to any rent abatement or rent credit (as may have been provided hereunder with respect to Tenant's lease of the initial Premises) arising from Tenant's lease of the ROFR Space, except to the extent that any such items (i) and (ii) were part of the Third Party Offer ROFR Notice. If Tenant does not exercise its Right of First Refusal following receipt of the ROFR Notice, and Landlord does not subsequently enter into a lease with such prospective tenant within nine (9) months after the date of the ROFR Notice upon substantially the same terms as set forth therein (i.e., within five percent (5%) of the economic terms set forth in the ROFR Notice), then Tenant's Right of First Refusal shall apply again to the ROFR Space and the same procedures shall be followed as provided herein for any subsequent proposed lease of the ROFR Space to a third party by Landlord. Notwithstanding anything to the contrary in this Lease, in the event that Tenant exercises the Right of First Refusal for the ROFR Space prior to June 30, 2007, Tenant shall lease the ROFR Space on all of the same terms, covenants, conditions as set forth in this Lease and the terms and provisions of the ROFR Notice shall not apply.

## **ARTICLE 35. RENEWAL OPTIONS.**

**Section 35.1 Tenant's Renewal Options.** Tenant shall have the right, at its option (referred to herein as the "First Renewal Option" and "Second Renewal Option" and collectively as the "Renewal Options"), to renew the initial term of this Lease, for the entire Premises, for two (2) renewal terms (referred to herein as the "First Renewal Term" and "Second Renewal Term" and collectively as the "Renewal Terms"), the first option of which shall commence on the day following the Expiration Date (the "First Renewal Term Commencement Date") and expiring on the fifth (5th) anniversary of the Expiration Date (the "First Renewal Term Expiration Date"), and the second option commencing on the day following the First Renewal Term Expiration Date (the "Second Renewal Term Commencement Date") and expiring on the tenth (10th) anniversary of the Expiration Date (the "Second Renewal Term Expiration Date"). Except for the Renewal Options, Tenant shall have no other right to extend or renew the Term of the Lease. Tenant shall have no right to exercise the Renewal Option(s) unless all of the following conditions have been satisfied on the date of the applicable Renewal Notice (as defined below) and on the First Renewal Term Commencement Date and Second Renewal Commencement Date, as applicable:

- (i) No Event of Default shall have occurred and be continuing under this Lease;
- (ii) The named Tenant hereunder (or a permitted assignee, sublessor, successor or transferee pursuant to Section 14.9, but not any other assignee or successor tenant), and its Affiliates shall occupy at least fifty percent (50%) of the then-existing Premises Area; and
- (iii) With respect to the Renewal Option for the Second Renewal Term, Tenant shall have exercised its Renewal Option for the First Renewal Term and the named Tenant hereunder (or a permitted assignee, sublessor, successor or transferee pursuant to Section 14.9, but not any other assignee, sublessee, transferee, or successor tenant), and its Affiliates shall occupy at least fifty percent (50%) of the then-existing Premises Area for the entire First Renewal Period.

**Section 35.2 Exercise.** If Tenant elects to renew this Lease for the Renewal Term(s), Tenant shall exercise such Renewal Option by sending to Landlord written notice thereof (each, a "Renewal Notice"), by certified mail, return receipt requested, no sooner than fifteen (15) months nor less than twelve (12) months prior to the Expiration Date with respect to the First Renewal Option and no sooner than fifteen (15) months nor less than twelve (12) months prior to the First Renewal Term Expiration Date with respect to the Second Renewal Option, and time shall be of the essence with respect to the giving of the Renewal Notice. If Tenant shall send the applicable Renewal Notice within the time and in the manner herein provided, this Lease shall be deemed renewed for the applicable Renewal Term upon the terms, covenants and conditions in this Lease contained, with the exception of (a) the Fixed Rent and Landlord Contribution and (b) the Premises shall be leased for such Renewal Term(s) in "as is, where is" condition.

**Section 35.3 Determination of Fixed Rent.** Fixed Rent for each of the Renewal Terms shall be determined as of the commencement of the respective Renewal Term and shall be one hundred percent (100%) of the fair market value of the Premises for the applicable Renewal Term (the "Renewal Term FMV") in accordance with Section 35.3(d) of this Lease.

**Section 35.4 Rental Notice.** Within twenty (20) days after the giving by Tenant of the applicable Renewal Notice, Landlord will notify Tenant of the amount of the Fixed Rent for the applicable Renewal Term (the "Rental Notice"), which Rental Notice shall set forth Landlord's calculation of the Renewal Term FMV for such Renewal Term. In the event that Tenant shall dispute Landlord's calculation of the Renewal Term FMV, such dispute shall be submitted to arbitration and shall be determined in the manner set forth in Section 35.5.

**Section 35.5 Arbitration.** (a) If Tenant shall dispute Landlord's calculation of the Renewal Term FMV as set forth in the Rental Notice, then Landlord and Tenant shall, working cooperatively, in good faith and with reasonable diligence, attempt to resolve such dispute in a manner satisfactory to both parties. In the event that Landlord and Tenant are unable to resolve such dispute within ten (10) Business Days after the delivery of the Rental Notice to Tenant ("Outside Date"), then each party shall make a separate determination of the Renewal Term FMV, as the case may be, within five (5) Business Days, and such determination shall be submitted to arbitration. Each of Landlord and Tenant shall select its own arbitrator meeting the standards set forth in the next sentence within fifteen (15) days of the Outside Date, and the two (2) arbitrators so selected shall jointly select a third arbitrator which meets the standards set forth in the next sentence within ten (10) days of the expiration of the fifteen (15) day period. Such arbitrator shall be impartial and shall have not less than five (5) years' experience in the Chicago metropolitan area in a calling related to the leasing of commercial space in buildings comparable to the Building. The non-prevailing party shall bear the cost of the three arbitrators.

(b) The three arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Renewal Term FMV, and shall notify Landlord and Tenant in writing. If either Landlord or Tenant fails to appoint an arbitrator within 15 days after the applicable Outside Date, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant. If the two arbitrators fail to agree upon and appoint a third arbitrator, or both parties fail to appoint an arbitrator, then the appointment of the third arbitrator or any arbitrator shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association. It is expressly understood that the decision of the majority of the three arbitrators shall be final and binding upon the parties hereto.

(c) For purposes of the determination of the Renewal Term FMV, whether by estimate of Landlord or such arbitrator, Landlord or such arbitrator shall take into account the then current rentals or occupancy fees which Landlord shall then be receiving for the renting of or granting of use or occupancy rights for comparable space in the Building and other landlords shall be receiving at comparable buildings located for comparable tenants of similar size, credit, quality and stature. The Renewal Term FMV shall take into account and compare all existing provisions of this Lease for the Renewal Term and all comparable material lease provisions including, and not limited to, market provisions for improvement

allowances, market Tenant procurement costs, free rent (if applicable), other lease concessions (if applicable), lease term, base years, lease rate escalations, operating expenses and taxes and brokerage commissions and shall be based upon a renewal leasing transaction and considering all relevant factors including, without limitation standard office use for the Premises Area. The Taxes and the Operating Expenses applicable to Tenant's Tax Payment, to be made by Tenant with respect to the Premises for the Renewal Term pursuant to Article 7 shall not be modified for purposes of the determination of the Renewal Term FMV hereunder; provided, however, that the determination of the Renewal Term FMV shall take into account the Taxes and the Operating Expenses, and the amounts payable hereunder in assessing comparable rental rates. It is expressly understood that any determination of the Renewal Term FMV shall be based on the assumptions and criteria stated in this Article 35, and that the arbitrator shall not have the power to add to, modify or change any of the provisions of this Lease.

(d) After a determination has been made of the Renewal Term FMV, the parties shall execute and deliver to each other a mutually acceptable agreement setting forth the Fixed Rent as hereinabove determined.

If the final determination of Fixed Rent for the Premises for the Renewal Term shall not be made on or before the Renewal Term Commencement Date in accordance with the provisions of this Article 35, then pending such final determination, Tenant shall pay as Fixed Rent for the Premises for the Renewal Term 105% of the Fixed Rent paid for the immediately preceding Lease Term. If, based upon the final determination of such Fixed Rent as provided herein, the payments made by Tenant on account of Fixed Rent were (i) less than Fixed Rent as finally determined in accordance with the provisions hereof, Tenant shall pay to Landlord the amount of such deficiency within thirty (30) days after demand therefor, or (ii) greater than Fixed Rent as finally determined in accordance with the provisions hereof, Landlord shall, at Landlord's option, either credit the amount of such excess against the next installments of Fixed Rent due under this Lease, or refund the amount of such excess to Tenant.

#### **ARTICLE 36. SERVING OF ALCOHOLIC BEVERAGES.**

With regard to the serving of alcoholic beverages, Tenant agrees that:

(i) no person shall be served or continue to be served any alcoholic beverages who appears to be intoxicated;

(ii) it will not serve alcoholic beverages for consumption outside of the Premises and will use its best efforts to ensure that its guests and/or customers do not carry such beverages outside of the Premises, and to that end will not serve alcoholic beverages in disposable containers;

(iii) it will comply with all applicable codes and ordinances from time to time in effect in regard to the serving of alcoholic beverages, including but not limited to restrictions as to the serving of alcoholic beverage to minors, the age of persons serving alcoholic beverages and the hours and days during which such beverages may be served pursuant to Tenant's liquor license and permits;

(iv) it will at all times, at Tenant's sole cost and expense, obtain and keep in full force and effect all necessary licenses, permits, authorizations and approvals from all governmental authorities having jurisdiction in respect to the serving of alcoholic beverages;

(v) it will hold Landlord, Landlord's beneficiaries and their respective agents, harmless from and indemnify them against any and all liability, loss, cost, damage and/or expense (including reasonable attorney's fees and expenses) of any kind or nature whatsoever, including but not limited to that resulting from any injury to or death of any persons or damage to or loss of property, by reason of or in any way relating to Tenant's serving of alcoholic beverages in the Premises, including but not limited to liability under any Dram Shop law, host liquor law or similar Legal Requirements, whether nor in effect or hereafter adopted by the State of Illinois, County of Cook, the City of Chicago or any other Governmental Authority; and

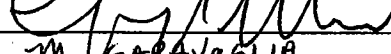
(vi) at its sole cost and expense, it shall purchase and keep in full force and effect dram shop insurance (as hereinafter described) during the use or gift of so-called "alcoholic liquors" (within the meaning of the Illinois Liquor Control Act, as now or hereafter amended) on or from the Premises. Tenant shall, at least ten (10) days before the commencement of such activity and continuously thereafter, deliver to Landlord an original policy of dram shop insurance in form, substance and with insurers satisfactory to Landlord, with total limits of liability for bodily injury, loss of means of support, and property damage because of each occurrence of not less than \$1,000,000.00 of primary insurance coverage together with \$2,000,000.00 umbrella policy, indemnifying Landlord and its beneficiaries and their respective agents, Tenant and such other persons as Landlord may designate, against any and all liability by virtue of the Illinois Liquor Control act, any amendments or supplements thereto, or any kindred legislation concerning the use or giving away of alcoholic liquors. If at any time the required dram shop insurance is for any reason not in force, then during all and any such times no merchandising, transfer, giving away, or exchange of so-called "alcoholic liquors" shall be made by Tenant in, upon or from any part of the Premises.

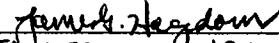
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In Witness Whereof, Landlord and Tenant have respectively executed this Lease as of the day and year first above written.

**Tenant:**

BARRY CALLEBAUT U.S.A. LLC, a Delaware limited liability company

By:    
Name: M. GARAVAGLIA  
Title: PRESIDENT

By:   
Name: JAMES G. HAGEDORN  
Title: CFO


Tenant's Federal Tax Identification Number: 26-0072915

**Landlord:**

EPOR 600 PROPERTY OWNER, L.L.C., a Delaware limited liability company

By: Epor 600, L.L.C., a Delaware limited liability company, its managing member

By: AG Asset Manager, Inc., its sole manager

By:   
Name: ANDREW JACOBS  
Title: VICE PRESIDENT

STATE OF Illinois )  
COUNTY OF Cook ) ss.:

On the 22nd day of Dec. in the year 2006 before me, the undersigned, personally appeared MASSIMO GARAVAGLIA, and JAMES G. HAGEDORN personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Laine B. Drogos  
Notary Public

[NOTARY STAMP OFFICIAL SEAL  
**LAINÉ B. DROGOS**  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 11-1-2010

STATE OF New York )  
COUNTY OF New York ) ss.:

On the 26 day of December in the year 2006 before me, the undersigned, personally appeared Andrew Jacobs, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Jenny A. Dailey  
Notary Public

[NOTARY STAMP]

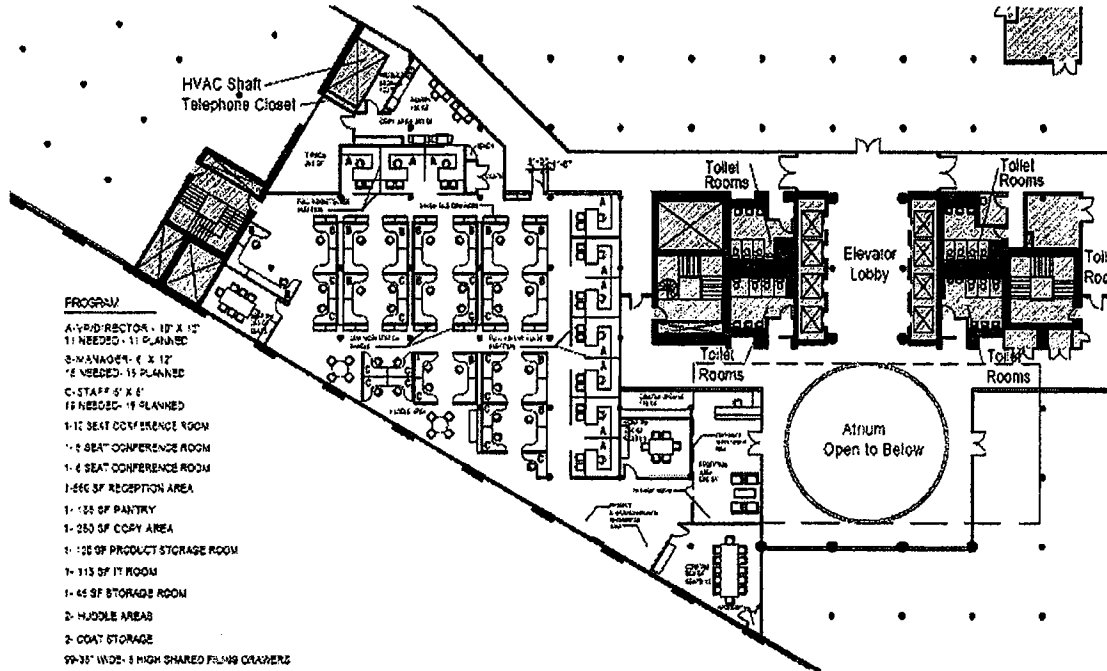
**JENNIFER A. DAILEY**  
Notary Public, State of New York  
No. 01DA6153797  
Qualified in New York County  
Commission Expires Oct. 16, 2010



EXHIBIT A

FLOOR PLAN OF THE PREMISES

The floor plan which follows is intended solely to identify the general outline of the Premises, and should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.



DRAWING TITLE: 608 W. CHICAGO 100 FLOOR SPACE PLAN DATE: 10/1/98 NOT TO SCALE  
 PROJECT NAME: BARRY CALLEBAUT PPSN: 0200617 ISK-11  
 Architect: Planning Design Group 425 N. Michigan Street, Level 11, Chicago, IL 60611 Telephone: (312) 467-1100

## EXHIBIT B

### RULES AND REGULATIONS

1. The rights of tenants in the entrances, corridors, elevators of the Building are limited to ingress to and egress from tenants' premises for tenants and their employees, licenses and invitees, and no tenant shall use, or permit the use of, the entrances, corridors, or elevators for any other purpose. No tenant shall invite to such tenant's premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the entrances, corridors, elevators and other facilities of the Building by other tenants. Fire exits and stairways are for emergency use only, and shall not be used for any other purposes by the tenants, their employees, licensees or invitees. No tenant shall encumber or obstruct, or permit the encumbrance or obstruction of, any of the sidewalks, entrances, corridors, elevators, fire exits or stairways of the Building. Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of tenants, in such manner as it reasonably deems best for the benefit of tenants generally.

2. Tenant's employees shall not loiter around the hallways, stairways, elevators, front, roof or any other part of the Building used in common by the occupants thereof.

3. Tenant shall not alter the exterior appearance of the Building by installing signs, advertisements, notices or other graphics on exterior walls, or interior surfaces visible from outside, without prior written permission from Landlord. Similarly, electrical fixtures hung in offices or other spaces along the perimeter of the Building which affect its exterior appearance must be fluorescent and a quality, type, design and bulb color, previously approved in writing by Building management.

4. Except as specifically provided in the Lease, the cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other tenants, caused by a tenant or the employees, licensees or invitees of the tenant, shall be paid by such tenant.

5. The requirements of tenants will be attended to only upon application at the Building Management Office. Employees of the Building shall not perform any work or do anything outside of their regular assigned duties, unless under special instructions from the Building Management Office.

6. Except as specifically provided in the Lease, Tenant shall have no right of access to the roof of the Building and shall not install, repair or replace any satellite dish, antennae, fan, air conditioner or other devices on the roof of the Building without the prior written consent of Landlord. Any such device installed without such written consent shall be subject to removal, at Tenant's expense, without notice, at any time.

7. Exterior signs on doors and any directory tablet must be approved by Landlord.

8. Except as specifically provided in the Lease, no awnings or other projections over or around the windows shall be installed by any tenant and only such window blinds as are permitted by Landlord shall be used in any tenant's premises.

9. No acids, vapors or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building, except as specifically provided in the Lease. The water and service closets and other plumbing fixtures in or serving any tenant's premises shall not be used for any purpose other than the purpose for which they were designed or constructed and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.

10. Tenant shall not disturb others. This rule prohibits any noise audible from the hallway, adjoining office suites or outside whether created by musical instruments, radios, television sets, group activities or any other source.

11. All hand trucks used in the Building shall be equipped with rubber tires and side guards.

12. Except as specifically provided in any tenant lease, no tenant shall install wires, conduit, sleeves or similar installations in Building shaftways without prior written consent of Landlord, and as Landlord may direct.

13. Each tenant shall, at its expense, provide artificial light in the premises demised to such tenant for Landlord's agents, contractors and employees while performing janitorial or other cleaning services and making repairs or alterations therein.

14. Tenants shall not permit any cooking or food odors emanating from their demised premises to be detectable in any other portions of the Building, except as specifically provided in the Lease.

15. Tenants shall provide Building management with keys or combinations to all locks, bolts or other mechanical security systems except those protecting high security areas. Upon vacating the Building, tenants must return keys to storerooms, offices and toilets or pay replacement costs.

16. All entrance doors in each tenant's premises shall be left locked when the tenant's premises are not in use. Entrance doors shall not be left open at any time.

17. Tenants shall not keep pets, bicycles (except in sanctioned bike storage areas), or other vehicles in their premises without prior written approval by Landlord. Exceptions are made for seeing-eye dogs and conveyances required by handicapped persons. Tenant shall not use or permit the use of any portion of the Premises as living quarters, sleeping apartments or lodging rooms.

18. Regular suppliers of outside services must be approved by Building management, which may establish hours or other conditions for entrance to the Building. Such suppliers include vendors of food, spring water, ice, towels, barbering, shoe shining and other products and services.

19. Canvassing, soliciting and peddling of products or services are prohibited in the Building, and tenants shall cooperate with Landlord in attempting to prevent such acts in the Building.

20. Landlord may refuse admission to the Building outside of normal hours to any person not having a pass issued by Landlord or not properly identified, and may require all persons admitted to or leaving the Building outside of normal business hours to register. Tenant's employees, agents and visitors shall be permitted to enter and leave the Building whenever appropriate arrangements have been previously made between Landlord and Tenant. Each tenant shall be responsible for all persons for whom such person requests such permission and shall be liable to Landlord for all acts of such persons. Any person whose presence in the Building at any time shall, in the reasonable judgment of Landlord, be prejudicial to the safety, character, reputation and interests of the Building or its tenants may be denied access to the Building or may be rejected therefrom. In case of invasion, riot, public excitement or other commotion, Landlord may prevent all access to the Building during the continuance of the same, by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building. Landlord may require any person leaving the Building with any package or other object to exhibit a pass from the tenant from whose premises the package or object is being removed, but the establishment and enforcement of such requirements shall not impose any responsibility on Landlord for the protection of any tenant against the removal of property from the premises of the tenant. Landlord

shall in no way be liable to any tenant for injury or loss arising from the admission, exclusion or ejection of any person to or from the tenant's premises or the Building under the provisions of this rule.

21. Tenant, at its sole cost and expense, shall cause the Premises to be exterminated from time to time to the reasonable satisfaction of the Building Management Office, and shall employ such exterminators therefor as shall be approved by the Building Management Office.

22. Tenants shall not serve or permit the serving of alcoholic beverages in the its premises unless Tenant shall have procured host liquor liability insurance, issued by companies and in amounts reasonably satisfactory to Landlord, naming Landlord and its managing agent as additional insureds.

23. The Building loading docks may be used only for loading and unloading procedures. Tenants may not use the loading dock area for parking. Tenants may not place any dumpsters at the loading docks or any other portion of the Building without the prior written approval of Landlord.

24. No shutdowns of any Building systems will be permitted without prior written approval of Landlord and supervision by the Building engineer.

25. Tenant's contractors or vendors may not use any space within the Building outside the Premises for storage or moving of materials or equipment or for the location of a field office or facilities for the employees of such contractors or vendors without obtaining Landlord's prior written approval for each such use. Landlord shall have the right to terminate such use and remove all such contractor's or vendor's materials, equipment and other property from such space, without Landlord being liable to tenant or to such contractor or vendor, and the cost of such termination and removal shall be paid by Tenant to Landlord.

26. Tenants are required to have a full service maintenance contract covering their supplemental HVAC, Uninterrupted Power Supply (UPS) and Automatic Transfer systems, and to provide copies of such contracts to the Building management office.

27. The Building reserves the right to restrict the use of certain materials (for example, Omega sprinkler heads and piping manufactured in The Republic of China) in the Building based on notifications that declare the materials unsafe.

28. Trucks using the Tenant Shipping Platforms on the ground floor of the Building, and the upper floor truck lobbies, will load and discharge at the place or places thereat and therein as indicated by the duly authorized representative of Landlord in charge of such operation.

29. Elevators for freight handling service will be operated during Business Hours on Business Days, unless special arrangement is made with Landlord for operation at other times.

30. The use of the private right of way and the truck elevators will be subject to and under the reasonable direction and control of the duly authorized representative of Landlord in charge of such operation. When in the interest of continuity of service or in the interest of the common service, Tenant's freight departing from or arriving at the Building by truck may at the direction of Landlord be handled over and through the Tenant Shipping Platforms on the ground floor and the freight elevators. Landlord reserves the right to direct such handling in lieu of truck elevator service.

31. In the interest of preserving the continuity of freight elevator service, freight will not be floored upon the freight elevator, but will at all times be handled and moved upon suitable vehicles of the indoor industrial wheeler type permitting such freight to be economically and expeditiously wheeled on and off the freight elevators. Freight which cannot be handled upon such equipment will be handled in such alternative manner as may be approved by Landlord.

32. (a) The Tenant Shipping Platforms located on first or ground floor of the Building are designed to accomplish the immediate transfer and movement of freight between the freight elevators and trucks. The use of such facility by Tenant or any of its agents, servants, employees, representatives or contractors will be confined to such purpose, under the reasonable direction and control of the duly authorized representative of Landlord in charge of such operation.

(b) No storage or holding of freight on such Tenant Shipping Platforms awaiting the arrival of trucks, or awaiting transfer by Tenant from such Tenant Shipping Platforms to the Premises, will be permitted. No automobiles of Tenant or any Tenant Party may enter on or be stored in any portion of the Building, except in areas designated by Landlord, and provided Tenant pays for such parking at rates designated by Landlord, its agents or parking lessees.

(c) Any violation of this rule or disregard of directions issued by Landlord will give Landlord the right to handle, transfer, remove or store such freight in or to other premises in the Building. When such handling, transfer, removal or storage is performed by Landlord, and when it shall be deemed necessary by Landlord to preserve the continuity of common service provided by this facility, any and all expense will be at Tenant's sole cost and expense. Landlord will not be responsible for any loss or damage which any such freight may suffer by such handling, removing or storage.

33. Neither Tenant nor any Tenant Party will at any time be permitted to operate any freight, passenger or truck elevator.

34. The Building is equipped with scuppers for carrying off water which may result from sprinkler operation or other causes. Tenant shall not, under any circumstances, deposit or permit to be deposited sweepings or any other rubbish in such scuppers, and Tenant will keep the scuppers within the Premises at all times free of any and all rubbish, sweepings, and other obstructions of any nature whatsoever.

35. Tenant shall not, under any circumstances, permit the accumulation of sweepings or any other rubbish in the expansion joints of the Building, or in any other portions of the Building outside of the Premises, and all such sweepings or rubbish shall be removed daily by Tenant in such manner as Landlord shall direct. Tenant will keep the Building's expansion joints free of any and all rubbish, sweepings and any other obstruction of any nature whatsoever. Tenant will not place machinery or equipment in a position so that such machinery or equipment straddles an expansion joint, or erect a partition which intersects an expansion joint, unless one end of such machinery, equipment or partition is free to permit the expansion and contraction of such expansion joint.

36. If any electrical or telephone installations made or operated by Tenant shall emit any electromagnetic interference, Tenant shall immediately discontinue use of such installations until such electromagnetic interference is eliminated to Landlord's satisfaction.

37. Landlord reserves the right at any time and from time to time, to rescind, alter, waive, modify, add to or delete, in whole or in part, any of these Rules and Regulations in order to protect the comfort, convenience and safety of all tenants at the Building. Tenant shall not have any rights or claims against Landlord by reason of non-enforcement of these rules and regulations against any tenant, and such non-enforcement will not constitute a waiver as to Tenant.

38. If there shall be any inconsistencies between the text of the main body of the Lease and these Rules and Regulations, the provisions of the Lease shall prevail.

## EXHIBIT C

### FORM OF GUARANTY

This GUARANTY ("Guaranty") is made as of the \_\_\_ day of December, 2006, by BARRY CALLEBAUT U.S.A. HOLDING, INC., a Delaware corporation ("Guarantor") in favor of EPORT 600 PROPERTY OWNER, LLC, a Delaware limited liability company (together with its successors and assigns, the "Landlord"). This Guaranty is delivered in connection with that certain Agreement of Lease dated as of the date hereof (as the same may be amended, modified, supplemented or renewed from time to time, the "Lease") by and between Landlord, as landlord, and BARRY CALLEBAUT U.S.A. LLC, a Delaware limited liability company, as tenant ("Tenant"). Unless otherwise defined herein, terms used herein shall have the same meaning as set forth in the Lease.

1. Guaranty of Lease. For value received and in consideration of the execution of the Lease by Landlord and Tenant, the Guarantor unconditionally and irrevocably guarantees for the benefit of the Landlord, the following (the "Obligations"): (i) the full and prompt payment of all Rent and any and all other amounts due and owing by Tenant to Landlord from time to time and at any time pursuant to the Lease; (ii) the payment of all enforcement costs incurred by Landlord in enforcing Landlord's rights under the Lease (including, without limitation, attorneys' fees and disbursements); and (iii) the full, complete and punctual observance, performance, and satisfaction of each and all of the obligations, duties, indemnities and agreements of Tenant under the Lease. Upon the occurrence of a default by Tenant in the payment or performance of any of the Obligations, the Guarantor agrees upon demand by Landlord to pay or perform all such unpaid and unperformed Obligations. All of the remedies set forth herein, in the Lease, at law or in equity, shall be equally available to Landlord, and the choice by Landlord of one such alternative over another shall not be subject to question or challenge by the Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Landlord to recover or seek any other remedy under this Guaranty, nor shall such choice preclude Landlord from subsequently electing to exercise a different remedy. The Guarantor hereby agrees that this Guaranty is an absolute guaranty of payment and performance.

2. Obligations Unconditional. Guarantor hereby agrees that its obligations under this Guaranty shall be unconditional until termination of the Lease and payment of all Obligations due thereunder to Landlord, irrespective of: (a) the validity, enforceability, avoidance or subordination of any of the Obligations or the Lease; (b) the absence of any attempt by, or on behalf of, the Landlord to collect, or to take any other action to enforce, all or any part of the Obligations; (c) the election of any remedy by, or on behalf of, the Landlord with respect to all or any part of the Obligations; (d) the waiver, consent, extension, forbearance or granting of any indulgence by, or on behalf of, the Landlord with respect to any provision of the Lease; (e) the election by, or on behalf of, the Landlord, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 1010 et seq.) as amended or modified from time to time (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code; (f) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Landlord for repayment of all or any part of the Obligations; or (g) any other circumstance other than termination of the Lease and payment of all Obligations due thereunder to Landlord which might otherwise constitute a legal or equitable discharge or defense of the Tenant or the Guarantor.

3. Intentionally Omitted.

4. Enforcement; Application of Payments; Waivers. After the occurrence of an Event of Default, the Landlord may proceed directly and at once, against the Guarantor to obtain performance of the Obligations and to collect and recover the full amount, or any portion, of the same, without first proceeding against the Tenant or any other party. Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of the Tenant, protest or notice with respect to the Obligations, all setoffs and counterclaims and all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor

and notices of acceptance of this Guaranty, the benefits of all statutes of limitation, and all other demands whatsoever (and shall not require that the same be made on the Tenant as a condition precedent to the Guarantor's obligations hereunder), and covenants that this Guaranty will not be discharged, except by complete payment and performance of the Obligations and any other obligations contained herein. Without in any way limiting any other provision contained herein, the Guarantor specifically waives any right to assert the benefit of the limitation on liability set forth in Section 502(b)(vi) of the Bankruptcy Code. The Landlord is hereby authorized, without notice or demand and without affecting the liability of the Guarantor hereunder, from time to time, (i) with Tenant's written consent (other than an acceleration in connection with a Tenant default) to renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, all or any part of the Obligations, or to otherwise modify, amend or change the terms, provisions or conditions of the Lease; (ii) to accept partial payments on all or any part of the Obligations; (iii) to take and hold security or collateral for the payment and performance of all or any part of the Obligations; (iv) to exchange, enforce, waive and release any such security or collateral; and (v) to settle, release, exchange, enforce, waive, compromise or collect or otherwise liquidate all or any part of the Obligations or security therefor. The Guarantor agrees that any of the foregoing may be done in any manner, without affecting or impairing the obligations of the Guarantor hereunder.

5. Reinstatement. The Guarantor agrees that, to the extent that the Tenant or the Guarantor make a payment or payments to the Landlord, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to the Tenant or the Guarantor, or their respective estates, trustees, receivers or any other party, under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the part of the Obligations which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the time immediately preceding such initial payment, reduction or satisfaction.

6. Subrogation; Subordination. The Guarantor (i) shall have no right of subrogation with respect to the Obligations and (ii) waives any right to enforce any remedy which the Landlord now has or may hereafter have against the Tenant or all or any part of the Obligations. The Guarantor agrees that any and all claims of the Guarantor against the Tenant with respect to the Obligations shall be subordinate and subject in right of payment to the prior irrevocable payment and performance, in full, in cash, of all the Obligations to the Landlord. Notwithstanding any right of the Guarantor to ask, demand, sue for, take or receive any payment from the Tenant, all rights, liens and security interests of the Guarantor, whether now or hereafter arising and howsoever existing, in any assets of the Tenant shall be and hereby are subordinated to the rights of the Landlord in those assets. If all or any part of the assets of the Tenant, or the proceeds thereof, are subject to any distribution, division or application to the creditors of the Tenant, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of the Tenant is dissolved or if substantially all of the assets of the Tenant are sold, then, and in any such event, any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of the Tenant to the Guarantor ("Tenant Indebtedness") shall be paid or delivered directly to the Landlord for application to any of the Obligations, due or to become due, until such Obligations shall have been fully paid, performed and satisfied. The Guarantor irrevocably authorizes and empowers the Landlord to demand, sue for, collect and receive every such payment or distribution and give acquittance therefor and to make and present for and on behalf of the Guarantor such proofs of claim and take such other action, in the Landlord's own name or in the name of the Guarantor or otherwise, as the Landlord may deem reasonably necessary or advisable for the enforcement of this Guaranty. The Landlord may vote such proofs of claim in any such proceeding, receive and collect any and all dividends or other payments or disbursements made thereon in whatever form the same may be paid or issued and apply the same on account of any of the Obligations. Should any payment, distribution, security or instrument or proceeds thereof be received by the Guarantor upon or with respect to the Obligations prior to the satisfaction of all of the Obligations, the Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Landlord and as the Landlord's property and shall forthwith deliver the same to the Landlord, in precisely the form received (except for the endorsement or assignment of the Guarantor where necessary), for application against any of the Obligations. If the Guarantor fails to make any such

endorsement or assignment to the Landlord, the Landlord or any of its officers or employees are hereby irrevocably authorized to make the same. The Guarantor agrees that until the Obligations have been fully paid, performed and satisfied, the Guarantor will not assign or transfer to others any claim the Guarantor has or may have against the Tenant.

7. Enforcement; Amendments; Waivers. No delay on the part of the Landlord in the exercise of any right or remedy arising under this Guaranty, the Lease or otherwise with respect to all or any part of the Obligations shall operate as a waiver thereof, and no single or partial exercise by any such party of any such right or remedy shall preclude any further exercise thereof. No modification or waiver of any of the provisions of this Guaranty shall be binding upon the Landlord or Guarantor, except as expressly set forth in a writing duly signed and delivered by the Landlord or Guarantor. Failure by the Landlord at any time or times hereafter to require strict performance by the Tenant or the Guarantor or any of the provisions, warranties, terms and conditions contained in the Lease or this Guaranty shall not waive, affect or diminish any right of the Landlord at any time or times hereafter to demand strict performance thereof and such right shall not be deemed to have been waived by any act or knowledge of the Landlord, or its agents, officers or employees, unless such waiver is contained in an instrument in writing, directed and delivered to the Tenant or the Guarantor, as applicable, specifying such waiver, and is signed by the Landlord. No waiver of any default by the Landlord shall operate as a waiver of any other default or the same default on a future occasion, and no action by the Landlord permitted hereunder shall in any way affect or impair the Landlord's rights and remedies or the obligations of the Guarantor under this Guaranty.

8. Representations and Warranties of Guarantor. Guarantor makes the following representations and warranties as of the date of this Guaranty, and Guarantor agrees to notify Landlord immediately in writing in the event that there is a change in circumstances which causes (or with the passage of time is likely to cause) one or more of the following representations and warranties to be inaccurate or incomplete in any material respect:

a. Guaranty Authorized and Binding. The execution, delivery, and performance of this Guaranty: is duly authorized and does not require the consent or approval of any governmental body or other regulatory authority; is not in contravention of, or in conflict with, any law or regulation; and this Guaranty is a valid and legally binding obligation of Guarantor, enforceable in accordance with its terms.

b. No Conflict. The execution and delivery of this Guaranty is not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any agreement, indenture, or undertaking to which Guarantor is a party or by which Guarantor or any of Guarantor's property is or may be bound or affected and do not, and will not, cause any security interest, lien, or other encumbrance to be created or imposed upon any such property.

c. Litigation. There is no litigation or other proceeding pending or, to the best of Guarantor's knowledge, threatened against or affecting Guarantor or Guarantor's property which, if determined adversely to Guarantor, would have a materially adverse effect on the financial condition, property, businesses, or operations of Guarantor, or which prevents or interferes with or adversely affects Guarantor's entering into this Guaranty or the validity of this Guaranty or the carrying out of the terms of this Guaranty, and Guarantor is not in default with respect to any order, writ, injunction, decree, or demand of any court or other governmental or regulatory authority.

d. Financial Condition. Guarantor has the financial ability to satisfy each and all of its obligations and liabilities under this Guaranty that Guarantor might reasonably expect to incur under this Guaranty.

e. Solvency. Guarantor is not Insolvent (as defined below) as of the date of this Guaranty and neither the execution and delivery of this Guaranty nor Guarantor's performance of the obligations that Guarantor might reasonably expect to incur under this Guaranty will render



Guarantor Insolvent under generally accepted accounting principles, or result in Guarantor incurring Debts (as defined below) beyond Guarantor's ability to pay those Debts when and as they mature. For the purposes of this Subsection (e), "Insolvent" means that the present fair salable value of assets is less than the amount that will be required to pay the probable liability on existing and reasonably anticipated Debts as those Debts become absolute and matured. For the purposes of this Subsection (e), "Debts" means and includes any legal liability for indebtedness, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

f. Financial or other Benefit or Advantage. Guarantor acknowledges and warrants that Guarantor has derived and expects to derive financial or other benefit as a result of the Lease. Guarantor acknowledges that Landlord is not the agent, instrumentality, or alter ego of Guarantor, and that Landlord is an independent and separate business entity, fully and adequately capitalized for its own business purposes.

9. Successors and Assigns. This Guaranty shall be binding upon the Guarantor and upon the successors and assigns of the Guarantor and shall inure to the benefit of the Landlord and its successors and assigns; all references herein to Tenant and to the Guarantor shall be deemed to include their successors and assigns, including, without limitation, their respective receivers, trustees or debtors-in-possession.

10. WAIVER OF JURY TRIAL. EACH OF THE LANDLORD AND THE GUARANTOR IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS GUARANTY.

11. Notice. Any notice, demand, request or other communication which Landlord or the Guarantor may be required or may desire to give hereunder shall be in writing and shall be given in accordance with the terms of the Lease, if to the Guarantor, at the Guarantor's address at 400 Industrial Park Road, St. Albans, VT 05478-1875 Attention: \_\_\_\_\_ with a copy at the same time to: Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, Illinois 60603, Attention: Jeffrey Jahns, Esq. and if to the Landlord, at the addresses for notice set forth in the Lease. Guarantor shall have the right to change, from time to time, the foregoing address(es) for notice to Guarantor by notice as aforesaid from Guarantor to Landlord.

12. Advice of Counsel. Guarantor represents and acknowledges to Landlord that Guarantor has consulted with its attorneys regarding the terms, conditions, and waivers set forth in this Guaranty. Guarantor's attorneys have advised Guarantor of the true legal consequences of each waiver set forth in this Guaranty, including the rights Guarantor would have in the absence of such waivers.

13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Illinois.

14. Further Assurances. Guarantor will, at Guarantor's expense, execute, acknowledge, and deliver all such further documents, instruments, assurances, and the like, and will take all such further actions as Landlord may reasonably require in order to carry out the intentions or facilitate the provisions of this Guaranty.

15. Miscellaneous. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be effective to the extent of such prohibitions or invalidity without invalidating the remainder of such provision of this Guaranty. This Guaranty represents the final agreement of the Guarantor with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements between the Guarantor and the Landlord.

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IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered by the Guarantor as of the day and year first set forth above.

GUARANTOR:

BARRY CALLEBAUT U.S.A. HOLDING, INC., a  
Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**  
**FIXED RENT SCHEDULE**

**Exhibit D**  
**Fixed Rent Schedule**

Total rentable square footage  
11,207

	Annual Fixed Rent	Monthly Fixed Rent	Fixed Rent Per RSF
Year1	\$ 235,347.00	\$ 19,612.25	\$ 21.00
2	\$ 240,950.50	\$ 20,079.21	\$ 21.50
3	\$ 246,554.00	\$ 20,546.17	\$ 22.00
4	\$ 252,157.50	\$ 21,013.13	\$ 22.50
5	\$ 257,761.00	\$ 21,480.08	\$ 23.00
6	\$ 274,571.50	\$ 22,880.96	\$ 24.50
7	\$ 280,175.00	\$ 23,347.92	\$ 25.00
8	\$ 285,778.50	\$ 23,814.88	\$ 25.50
9	\$ 291,382.00	\$ 24,281.83	\$ 26.00
10	\$ 296,985.50	\$ 24,748.79	\$ 26.50
11	\$ 226,941.75	\$ 25,215.75	\$ 27.00

## EXHIBIT E

### CLEANING SPECIFICATIONS

#### TENANT CLEANING SPECIFICATIONS

<u>Task</u>	<u>Services Per Year</u>
<u>General Office Areas</u>	
Empty all trash receptacles; replace liners if necessary but not less than weekly	260
Remove all collected trash to designated area	260
Dust all horizontal surfaces	52
Vacuum traffic areas; spot vacuum where necessary	260
Sweep or dust mop all hard surface floors to remove dust and debris	260
Spot mop floors to remove visible spots and stains	260
Thoroughly damp mop hard surface floors including corners and edges	12
Spray buff resilient tile floors	12
Strip/scrub and refinish resilient tile floors	2
<u>Restrooms</u>	
Refill dispensers, paper products and hand soap to be supplied by building management	260
Empty trash and sanitary receptacles	260
Clean and sanitize all basins, bowls, urinals and other fixtures	260
Wipe counters, clean mirrors, wipe chrome, spot clean partitions	260
Thoroughly clean and dry all towel and tissue dispensers	260
Sweep and damp mop floors using a germicidal disinfectant	260
Machine scrub floors with germicidal detergent solution; detail corners and edges	12
Flush floor drains with germicidal solution	52
Report any malfunctioning equipment or fixtures to building management	260
<u>Entrance Lobby</u>	
Empty all trash receptacles; replace liners if necessary but not less than weekly	260
Dust high and low reach areas (ledges, frames, sills, pictures, clocks, etc.)	260
Dust mop all hard surface areas using a treated or electrostatic dust mop	260
Spot mop all stains and spills	260
Thoroughly clean all entry doors and side glass, wiping frames and handles where necessary	260
Clean cigarette urns and replace sand or water as necessary	260
Clean and sanitize public phones	260
Vacuum and spot clean entry mats	260
Machine scrub flooring	260
Dust all lighting fixtures where possible	12
<u>Elevators</u>	

Clean walls and ceiling; detail clean around call buttons	260
Thoroughly vacuum (wall to wall) carpet paying close attention to corners and edges	260
Clean and polish all brightwork	260
Vacuum tracks and saddles; spot clean as necessary	260
Clean and polish tracks and saddles	104
Spot clean carpet to remove soluble spots and stains	260
Shampoo carpet, ensuring that adequate drying time is allowed	12
<u>Elevator Lobbies and Public Corridors</u>	
Sweep/dust mop hard surface floors with treated mops to remove dust and debris	260
Damp mop hard surface floors as needed	260
Thoroughly vacuum and spot clean carpets and mats	260
Empty waste receptacles and spot clean containers as necessary	260
Spot clean walls around switch plates and elevator call buttons	260
Clean all glass surfaces	260
<u>Stairwells</u>	
Police to remove trash and debris	260
Sweep stairs and landings; dust handrails and stringers	52
Damp mop stairs and landings	12
Perform high dusting	4
<u>Loading Dock</u>	
Sweep floors to remove dust and debris	260
Damp mop hard surface floors as needed	156
Thoroughly mop/hose dock and dumpster area	52
Machine scrub concrete floor	12
<u>Miscellaneous</u>	
Police exterior plaza for debris; empty waste receptacles	260
Spot sweep plaza as necessary	260
Police sidewalks and building entries; remove trash and debris as necessary	260
Dust mop stock and storage areas	52
Dust and damp mop electrical, telephone, and janitorial closets	2

**EXHIBIT F**

**LANDLORD ALTERATIONS**

The following building condition issues shall be defined as "Base Building" and will be Landlord's sole cost and responsibility unless otherwise specified. Work involving any or all of these issues shall not be deducted from the "Landlord's Contribution", or otherwise defined as the Tenant's Allowance for interior improvements to the Premises. Landlord's Work shall be done in accordance with applicable Legal Requirements and sound engineering practice.

Landlord's Work:

- a. Landlord will furnish and install the main air handlers and medium pressure ductwork distribution.

Tenant shall install VAV terminal units. Landlord shall reimburse Tenant for the materials as outlined below for one VAV terminal unit with DDC controller for each 1,500 square feet of useable space according to the following box allocation:

% of VAV terminal units with electrical re-heat coil	% of VAV terminal units – cooling only
70%	30%

VAV Boxes	
Nailor Industries # D 3001 12" w/ control enclosure, air flow sensor, etc.	(Landlord cost)
Controller and Transformer installed in factory	(Landlord cost)
Sensor, programming, wiring, engineering, etc.	(Tenant cost)

FP VAV Boxes	
Nailor Industries # D 35PE (1500 cfm) w/ control enclosure, air flow sensor, filter, 2-stage heater, disconnect, etc.	(Landlord cost)
Controller and Transformer installed in factory	(Landlord cost)
Sensor, programming, relays, wiring, engineering, etc.	(Tenant cost)

Tenant shall tie in DDC controls to Landlord control system using Landlord's designated building automation contractor. Tenant shall install at its sole cost the connection to the medium pressure ductwork, VAV & FP VAV boxes and distribution ductwork. Landlord and Tenant shall test all ductwork that it has installed. The work shall be per industry standard, providing minimum ventilation air rate per building code. Two fan powered VAV are also existing. Tenant to relocate as necessary. Landlord will reimburse for the balance of the boxes per the ratio above.

- b. In addition to Landlord's Contribution, Landlord shall provide an allowance to Tenant equal to \$2.00 per USF for Tenant's Standard Sprinkler distribution system. Tenant shall tie into existing stubs located on the floor at the bathrooms, stairwells & electrical closets.

- c. Landlord shall furnish and install electrical service and main feeders to an electrical closet within the Premises with electrical capacity equal to 8 watts per usable square foot, at 277/480 volt 3 phase 4 wire service (II) Landlord has installed a telephone net pop in the basement of the building. From the net pop the Landlord has also provided continuous conduit to a designated within the Premises. It is the responsibility of the tenant to provide all cabling from the net pop to their demised premise using the base building cable riser management company. Fire stopping shall be the responsibility of Tenant.
- d. ADA approved Life Safety system riser and controls / panels to support audio and visual codes along with installation of elements in common areas only, to meet latest ADA and UL requirements. Tenant shall provide additional speaker/strobe devices and amplification as required by code. Base building fire alarm contractor must be used for permit drawings and programming.
- e. Spray on fireproofing on all structural steel members, if required by code. This includes, but not limited to columns, beams, floor and ceiling systems that would provide protection for typical office construction improvements.
- f. Tenant shall be responsible for installing a gas meter and an electricity meter.
- g. Landlord provided HVAC system for all general office areas, in operation during regular business hours of all Business Days, shall be sufficient to maintain the following temperatures within the Building (Based on ASHRE 1993 1% Midway Airport Value):

Temperature	Heating Season	Cooling Season
Outside:	-10F	94F DB 74F WB
Inside:	68F (+/-2F)	74F (±2°F)
Discharge Air Temperature:		55F
Air quality	1 CFM/USF	1 CFM/USF

Indoor air quality: To meet the latest ASHRE Standard for "Indoor Air Quality" and local code whichever is more stringent. (20 CFM/one person per 150 s.f. ASHRAE 62-89r)

- h. Landlord shall demise the Premises from the adjacent space and prepare the demising wall on the interior of the Premises for Tenant's finish. Landlord shall finish the opposite side of the demising wall, and Tenant shall have no obligation as to such side of the demising wall.

**EXHIBIT G**  
**FORM OF SNDA**

TENANT: Barry Callebaut

**SUBORDINATION,  
NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "**Agreement**") is entered into by and among Barry Callebaut U.S.A. LLC, a Delaware limited liability company ("**Tenant**"), whose address is 400 Industrial Park Road, St. Albans, VT 05478-1875, Eport 600 Property Owner, L.L.C., a Delaware limited liability company ("**Landlord**"), whose address is c/o Angelo, Gordon & Co., L.P., 245 Park Avenue, 26th Floor, New York, New York 10167, Attn: Andrew C. Jacobs, and iStar Financial Inc., a Maryland corporation (together with its successors and assigns, "**Lender**"), whose address is 1114 Avenue of the Americas, 27th Floor, New York, NY 10036.

**WITNESSETH:**

**WHEREAS**, Landlord is the owner in fee simple of certain real property known as 600 West Chicago Avenue, Chicago, IL 60610, as more particularly described on **Exhibit A** attached hereto, together with the improvements thereon (the "**Property**").

**WHEREAS**, Landlord or its predecessor and Tenant have entered into a certain Lease dated \_\_\_\_\_ (as the same may have been or may hereafter be amended, modified, restated, renewed or extended, the "**Lease**"), leasing to Tenant a portion of the entire Property as described in the Lease (the "**Premises**");

**WHEREAS**, Lender has made a certain loan to Landlord in the principal amount of up to \$180,000,000.00 (the "**Loan**"), which Loan is secured by, among other things, a mortgage or deed of trust, as the case may be (the "**Security Instrument**") from Landlord to Lender encumbering the Property;"

**WHEREAS**, Lender, Landlord and Tenant desire to confirm their understanding with respect to the Lease and the Loan and the rights of Tenant and Lender thereunder.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Subordination**. Notwithstanding anything to the contrary set forth in the Lease, Tenant hereby subordinates and subjects the leasehold estate created by the Lease to the Security Instrument and the liens thereof and all advances and rights of Lender thereunder and to any and all renewals, modifications, consolidations, replacements and extensions thereof, as fully and as if the Security Instrument and all of its renewals, modifications, consolidations, replacements and extensions had been executed, delivered and recorded prior to execution of the Lease. Without affecting the foregoing subordination, Lender may, from time to time: (a) extend, in whole or in part, by renewal or otherwise, the terms of payment or performance of any obligation secured by the Security Instrument; (b) release, surrender, exchange or modify any obligation secured by the Security Instrument, or any security for such obligation; or (c) settle or compromise any claim with respect to any obligation secured by the Security Instrument or against any person who has given security for any such obligation.



2. Non-Disturbance. If, at any time, Lender or any person or entity or any of their successors or assigns who shall acquire the interest of Landlord under the Lease through a foreclosure of the Security Instrument, the exercise of the power of sale under the Security Instrument, a deed-in-lieu of foreclosure, an assignment-in-lieu of foreclosure or otherwise (each, a "New Owner") shall succeed to the interests of Landlord under the Lease, so long as the Lease is then in full force and effect, Tenant complies with this Agreement and no default after the giving of any required notice, and expiration of any applicable grace or cure period, under the Lease (a "Default") on the part of Tenant exists under the Lease, the Lease shall continue in full force and effect as a direct lease between the New Owner and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term thereof. Tenant hereby agrees to attorn to and accept any such New Owner as landlord under the Lease and to be bound by and perform all of the obligations imposed by the Lease, and Lender, or any such New Owner of the Property, agrees that it will not disturb the possession of Tenant and will be bound by all of the obligations imposed on the Landlord by the Lease; provided, however, that New Owner shall not be:

(a) liable for any act or omission of Landlord (except to the extent such act or omission continues beyond the date when New Owner succeeds to Landlord's interest and Tenant gives notice of such act or omission to New Owner);

(b) subject to any defense, claim, offsets or counterclaim, which Tenant may have against Landlord;

(c) bound by any prepayment of more than one month's Rent to any prior landlord;

(d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time New Owner succeeded to Landlord's interest;

(e) bound by any obligation to perform any work or to make improvements to the Premises except for repairs and maintenance required to be made by Landlord under this Lease continuing after the date New Owner takes possession;

(f) bound by any assignment (except as permitted by the Lease), surrender, release, waiver, cancellation, amendment or modification of the Lease made without the written consent of Lender; or

(g) obligated to make any payment to Tenant except for the timely return of any security deposit actually received by such New Owner.

3. Cure by Lender of Landlord Defaults. Tenant hereby agrees that from and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate or cancel the Lease or to claim a partial or total eviction, or to abate or reduce rent, Tenant will not exercise any such right until it has given written notice of such act or omission to Lender, and Lender has failed, within thirty (30) days after receipt of such notice by Lender, to commence to cure such act or omission and to thereafter diligently prosecute such cure to completion; provided that in the event Lender cannot commence such cure without possession of the Property, Tenant will not exercise any such right if Lender commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion; further, Tenant shall not, as to Lender, require cure of any such act or omission which is not susceptible to cure by Lender.

4. Payments to Lender and Exculpation of Tenant. Tenant is hereby notified that the Lease and the rent and all other sums due thereunder have been assigned to Lender as security for the Loan. In the event that Lender or any future party to whom Lender may assign the Security Instrument notifies Tenant of a default under the Security Instrument and directs that Tenant pay its rent and all other sums due under the Lease to Lender or to such assignee, Tenant shall honor such direction without inquiry and pay its rent and all other sums due under the Lease in accordance with such notice. Landlord agrees that

Tenant shall have the right to rely on any such notice from Lender or any such assignee without incurring any obligation or liability to Landlord, and Tenant is hereby instructed to disregard any notice to the contrary received from Landlord or any third party.

5. Limitation of Liability. Lender shall not, either by virtue of the Security Instrument, the Assignment of Leases or this Agreement, be or become a mortgagee-in-possession or be or become subject to any liability or obligation under the Lease or otherwise unless and until Lender shall have acquired the interest of Landlord in the Premises, by foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises. Furthermore, in the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

6. Notice. Any notice, demand, statement, request, consent or other communication made hereunder shall be in writing and delivered (i) personally, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested or (iii) by depositing the same with a reputable private courier service, postage prepaid, for next business day delivery, to the parties at their addresses first set forth above and shall be deemed given when delivered personally, or four (4) business days after being placed in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such private courier service. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other parties thereto at least fifteen (15) days' prior written notice hereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses to any other address within the United States of America. Tenant agrees to send a copy of any notice or statement under the Lease to Lender at the same time such notice or statement is sent to Landlord.

7. Miscellaneous.

(a) In the event of any conflict or inconsistency between the provisions of this Agreement and the Lease, the provisions of this Agreement shall govern; provided, however, that the foregoing shall in no way diminish Landlord's obligations or liability to Tenant under the Lease. Lender's enforcement of any provisions of this Agreement or the Security Instrument shall not entitle Tenant to claim any interference with the contractual relations between Landlord or Tenant or give rise to any claim or defense against Lender with respect to the enforcement of such provisions.

(b) Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

(c) Tenant agrees that it will not subordinate the Lease to the lien of any mortgage or deed of trust other than the Security Instrument for so long as the Security Instrument shall remain a lien on the Property.

(d) This Agreement shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that the interest of Tenant under this Agreement may not be assigned or transferred without prior written consent of Lender.

(e) The captions appearing under the paragraph number designations of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

(f) If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

(g) This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(h) This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.

(i) This Agreement cannot be altered, modified, amended, waived, extended, changed, discharged or terminated orally or by any act on the part of Tenant, Landlord or Lender, but only by an agreement in writing signed by the party against whom enforcement of any alteration, modified, amendment, waiver, extension, change, discharge or termination is sought.

8. Landlord's Representation. Lender represents to Tenant that it has no actual knowledge of a Default by Landlord under the Security Instrument or any other document executed by Landlord and Lender.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the dates set forth adjacent to their signatures below to be effective as of the date of the Security Instrument.

Date: \_\_\_\_\_, 2006

**TENANT:**

BARRY CALLEBAUT U.S.A. LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2006

**LANDLORD:**

EPORT 600 PROPERTY OWNER, L.L.C., a Delaware limited liability company

By: Eport 600, L.L.C., a Delaware limited liability company, its managing member

By: AG Asset Manager, Inc., its sole manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2006

**LENDER:**

iStar Financial Inc., a Maryland corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**WHEN RECORDED, RETURN TO:**

Gregory P. L. Pierce  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661-3693

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

On the \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

[notarial seal]

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

On the \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

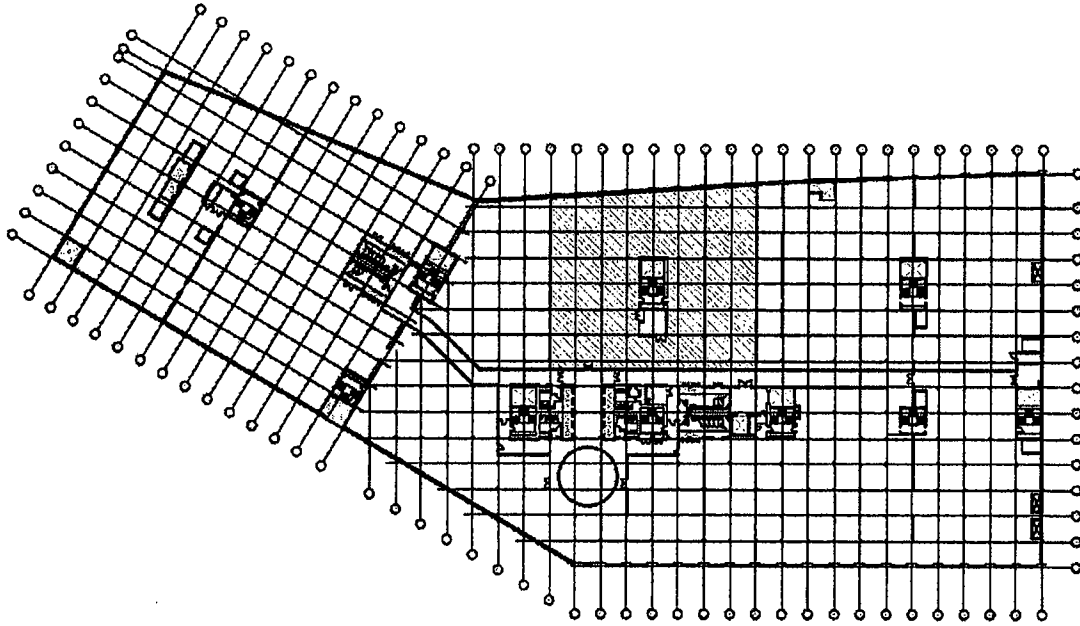
[notarial seal]



**EXHIBIT A**

**PROPERTY DESCRIPTION**

EXHIBIT H  
EXPANSION SPACE



LEASING PLAN  
DATE: 09.25.06

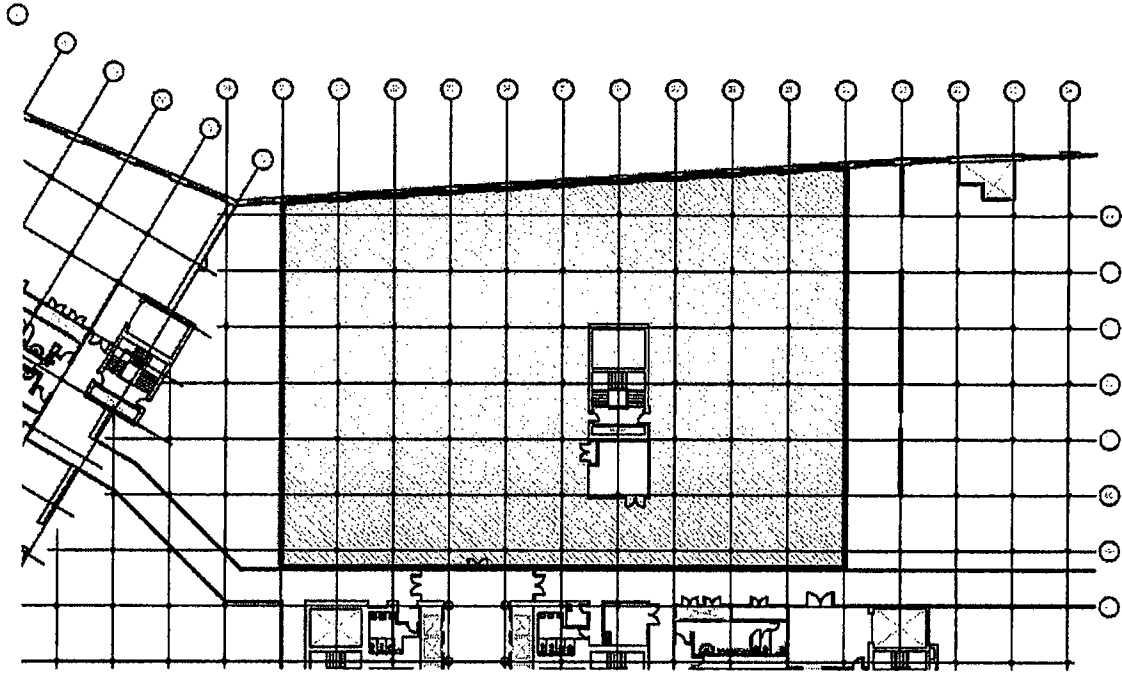


FLOOR: 8  
200,000 RSF  
SCALE: NONE

600WEST STUDIO : 435 W MICHIGAN AVE, SUITE 3100 : CHICAGO, ILLINOIS, 60611 : TEL. - 312.837.2700 : FAX - 312.837.2683



EXHIBIT I  
ROFR SPACE



AREA CALCULATION PLAN  
DATE: 11.21.06



FLOOR: 8  
XXX,XXX RSF  
SCALE: NONE

EASTLAKE STUDIO : 435 N. MICHIGAN AVE., SUITE 3100 : CHICAGO, ILLINOIS, 60611 : TEL. - 312.537.0288 : FAX - 312.537.0688

**EXHIBIT E-1**

**Project Budget**

<u>Uses</u>	<u>Amount</u>	
Hard Costs for on-site improvements (79.6% of total costs)		\$2,800,000
Soft Costs		
Architect and Engineering Fees	\$ 150,624	
Legal Fees	113,000	
Construction management	33,132	
Interest	30,000	
Other soft costs and contingency	393,244	
Total Soft Costs (20.4% of total costs)	720,000	
<b>Total Uses</b>		<b><u>\$3,520,000</u></b>
Of which, the first Phase is budgeted as follows:		
Hard costs for on-site improvements	\$1,061,480	
All Soft Costs (including hard and soft cost contingency)	\$360,000	
First Phase Total	\$1,781,480	

**EXHIBIT E-2**

**MBE/WBE Project Budget**

Phase 1 Hard Costs of Construction \$1,061,480  
of which \$254,755 MBE (24%)  
and \$42,459 WBE (3%)

Each subsequent Phase: MBE (24%) of Hard Costs  
of Construction; WBE (4%) of Hard Costs of  
Construction

## **EXHIBIT F**

### **Permitted Liens**

1. Liens or encumbrances against the Property:

Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any: None.

## **EXHIBIT G**

### **Approved Prior Expenditures**

Approved Prior Expenditures shall be determined after the Closing Date but prior to the Certificate being issued.

**EXHIBIT H**

**Requisition Form**

State of Illinois                    )  
  ) ss  
COUNTY OF COOK                )

The affiant, \_\_\_\_\_, \_\_\_\_\_ of Barry Callebaut USA, LLC, a \_\_\_\_\_ (the "Developer"), hereby certifies that with respect to that certain \_\_\_\_\_ Redevelopment Agreement between the Developer and the City of Chicago dated \_\_\_\_\_, 20\_\_ (the "Agreement"):

A. Expenditures (final cost) for the Project, in the total amount of \$\_\_\_\_\_, have been made:

B. This paragraph B sets forth and is a true and complete statement of all costs of TIF-Funded Improvements for the Project reimbursed by the City to date: \$\_\_\_\_\_

C. The Developer requests reimbursement for the following cost of TIF-Funded Improvements: \$\_\_\_\_\_

D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.

E. The Developer hereby certifies to the City that, as of the date hereof:

1. Except as described in the attached certificate, the representations and warranties contained in the Redevelopment Agreement are true and correct and the Developer is in compliance with all applicable covenants contained herein.

2. No Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

3. The number of FTEs currently employed at the Property is \_\_\_\_\_.

4. The Developer has maintained its operations within the City of Chicago and is operating the Property for the same use and at substantially the same capacity as described in the Developer's TIF application and/or the Redevelopment Agreement.

5. The financial statements for the Developer's most-recently-concluded fiscal year are attached to this Requisition Form.

F. Attached hereto is a copy of the final approval of the Monitoring and Compliance Division of the Department of Housing with respect to MBE/WBE, City Resident hiring and prevailing wage matters. [ATTACH WITH FIRST REQUISITION FORM ONLY]

G. Attached hereto are copies of the front and back of the building permit for the work covered by the Project, and/or, if applicable, the certificate of occupancy for the Project. [ATTACH WITH FIRST REQUISITION FORM ONLY]

H. Attached hereto is a copy of the inspecting architect's confirmation of construction completion. [ATTACH WITH THE FIRST REQUISITION FORM ONLY, IF REQUESTED BY DDP.]

All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

**Barry Callebaut USA, LLC**

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

Name

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

Subscribed and sworn before me  
this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Agreed and accepted:

\_\_\_\_\_

Name

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

City of Chicago

Department of Community Development

**EXHIBIT I**

**TIF-Funded Improvements**

<u>Line Item</u>	<u>Cost</u>
Hard costs for on-site improvements	\$ 2,800,000
Architecture	\$ 90,360
Engineering	\$ 60,264
Project Management	\$ 33,132
Interest	\$ 30,000
Attorney's Fees	\$ 113,000
Architecture/Engineering Reimbursable	\$ 19,000
Tele-Data	\$ 63,000
Insurance	\$ 119,000
Hard Cost increases within contingency	\$ 155,244
Soft Cost increases within contingency	\$ 37,000

The maximum amount of City Funds provided to the Developer shall not exceed \$880,000.



**EXHIBIT J**

**Form of Subordination Agreement**

This document prepared by and after recording return to:

Keith A. May, Esq.  
Assistant Corporation Counsel  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

**SUBORDINATION AGREEMENT**

This Subordination Agreement ("Agreement") is made and entered into as of the day of \_\_\_\_\_, \_\_\_\_\_ between the City of Chicago by and through its Department of Community Development (the "City"), [Name Lender], a [national banking association] (the "Lender").

**WITNESSETH:**

**WHEREAS**, Barry Callebaut USA, LLC (the "Borrower") intends to undertake the redevelopment project described in Exhibit 1 hereto (the "Project") with respect to certain property owned or leased by the Developer located within the Redevelopment Area and commonly known as 4201 West Victoria Street and legally described on Exhibit 2 (the "Property"). The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement. The Project will be carried out in accordance with this Agreement and the City of Chicago Peterson/Pulaski Redevelopment Project Area Tax Increment Financing Program Redevelopment Plan;

**WHEREAS**, [INSERT BANK NAME] ("Lender") and the Borrower have entered into a certain Loan Agreement dated as of \_\_\_\_\_ pursuant to which the Lender has agreed to make a loan to the Borrower in an amount not to exceed \_\_\_\_\_ (the "Loan"), which Loan is evidenced by a Mortgage Note and executed by the Borrower in favor of the Lender (the "Note"), and the repayment of the Loan is secured by, among other things, certain liens and encumbrances on the Property and other property of the Borrower pursuant to the following: (i) Mortgage dated \_\_\_\_\_ and recorded \_\_\_\_\_ as document number \_\_\_\_\_ made by the Borrower to the Lender; and (ii) Assignment of Leases and Rents dated \_\_\_\_\_ and recorded \_\_\_\_\_ as document number \_\_\_\_\_ made by the Borrower to the Lender (all such agreements referred to above and otherwise relating to the Loan referred to herein collectively as the "Loan Documents");

**WHEREAS**, the Developer desires to enter into a certain Redevelopment Agreement dated the date hereof with the City in order to obtain additional financing for the Project (the "Redevelopment Agreement," referred to herein along with various other agreements and documents related thereto as the "City Agreements");

**WHEREAS**, pursuant to the Redevelopment Agreement, the Developer will agree to be bound by certain covenants expressly running with the Property, as set forth in Sections 8.02,8.05 and 8.14 of the Redevelopment Agreement (the "City Encumbrances");

**WHEREAS**, the City has agreed to enter into the Redevelopment Agreement with the Developer as of the date hereof, subject, among other things, to (a) the execution by the Developer of the Redevelopment Agreement and the recording thereof as an encumbrance against the Property; and (b) the agreement by the Lender to subordinate their respective liens under the Loan Documents to the City Encumbrances; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

1. Subordination. All rights, interests and claims of the Lender in the Property pursuant to the Loan Documents are and shall be subject and subordinate to the City Encumbrances. In all other respects, the Redevelopment Agreement shall be subject and subordinate to the Loan Documents. Nothing herein, however, shall be deemed to limit the Lender's right to receive, and the Developer's ability to make, payments and prepayments of principal and interest on the Note, or to exercise its rights pursuant to the Loan Documents except as provided herein.

2. Notice of Default. The Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to the Lender, (a) copies of any notices of default which it may give to the Developer with respect to the Project pursuant to the Loan Documents or the City Agreements, respectively, and (b) copies of waivers, if any, of the Developer's default in connection therewith. Under no circumstances shall the Developer or any third party be entitled to rely upon the agreement provided for herein.

3. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

4. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender.

5. Section Titles; Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form.

6. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

If to the City:

City of Chicago  
Department of Community Development  
121 North LaSalle Street, Room 1000

Chicago, Illinois 60602  
Attention: Commissioner

With a copy to:

City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic  
Development Division

If to the Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

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

**IN WITNESS WHEREOF**, this Subordination Agreement has been signed as of the date first written above.

**[LENDER]**, [a national banking association]

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

Its: \_\_\_\_\_

**CITY OF CHICAGO**

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

Its: \_\_\_\_\_

Commissioner  
Department of Planning  
and Development

ACKNOWLEDGED AND AGREED TO  
THIS \_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_

Barry Callebaut USA, LLC,  
a \_\_\_\_\_

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

Its: \_\_\_\_\_



STATE OF ILLINOIS )

COUNTY OF COOK ) ss  
)

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of [Lender], a \_\_\_\_\_, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by Lender, as his/her free and voluntary act and as the free and voluntary act of the Lender, for the uses and purposes therein set forth.

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

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

My Commission Expires \_\_\_\_\_

(SEAL)

EXHIBIT 1 - PROJECT DESCRIPTION

EXHIBIT 2 - LEGAL DESCRIPTION



## EXHIBIT K

### Opinion of Developer's Counsel

[To be retyped on the Developer's Counsel's letterhead]

\_\_\_\_\_, 20\_\_

City of Chicago  
121 North LaSalle Street  
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to Barry Callebaut USA, LLC, a Delaware limited liability company (the "Developer"), in connection with the construction of certain facilities on certain property (the "Property") located in the Chicago/Kingsbury Redevelopment Project Area (the "Project"). In that capacity, we have examined, among other things, the following agreements, instruments and documents, hereinafter referred to as the "Documents":

- (a) Barry Callebaut North American Headquarters Redevelopment Agreement (the "Agreement") of even date herewith, executed by the Developer and the City of Chicago (the "City");
- (b) Lease dated December 22, 2006, by and between Developer and EPORT 600 Property Owner, LLC; and
- (c) all other agreements, instruments and documents executed by the Developer in connection with the foregoing.

In addition to the foregoing, we have examined

- (a) the original or certified, conformed or photostatic copies of the Developer's (i) Certificate of Formation, as amended to date, (ii) qualifications to do business and certificates of good standing in Delaware and Illinois, (iii) Operating Agreement, as amended to date, and (iv) records of all company proceedings relating to the Project; and
- (b) such other documents, records and legal matters as we have deemed necessary or relevant for purposes of issuing the opinions hereinafter expressed.

We have assumed the competency of all parties signing the Documents and other documents on behalf of all parties other than Developer, the genuineness of all signatures on behalf of all parties other than Developer, the authenticity of all documents submitted to us as originals on behalf of all parties other than Developer, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the accuracy and completeness of all records made available to us on behalf of all parties other than Developer. In making this opinion, we assume the accuracy of Developer's representations and

certifications as to factual matters, commercially obtained written searches of government files, including judgments, and government certificates.

Based on the foregoing, it is our opinion that:

1. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization, has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business under the laws of Illinois and Delaware.

2. The Developer has full right, power and authority to execute and deliver the Documents to which it is a party and to perform its obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, the Developer's Certificates of Formation or Operating Agreement or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, or, to the best of our knowledge after diligent inquiry, order, writ, injunction or decree of any court, government or regulatory authority, any of the terms, conditions or provisions of any agreement, instrument or document to which the Developer is a party or by which the Developer or its properties is bound. To the best of our knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which the Developer is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing.

3. The execution and delivery of each Document and the performance of the transactions contemplated thereby have been duly authorized and approved by all requisite action on the part of the Developer.

4. Each of the Documents to which the Developer is a party has been duly executed and delivered by a duly authorized officer of the Developer, and each such Document constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

5. Intentionally Omitted.

6. To the best of our knowledge after diligent inquiry, no judgments are outstanding against the Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Developer or affecting the Developer or its property, or seeking to restrain or enjoin the performance by the Developer of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of our knowledge after diligent inquiry, the Developer is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Developer or its business.

7. To the best of our knowledge after diligent inquiry, there is no default by the Developer under any material contract, lease, agreement, instrument or commitment to which the Developer is a party or by which the Developer or its properties is bound.

8. We have no knowledge of any mortgages, liens, pledges, security interests or encumbrances burdening the leasehold estate of Developer that is the subject of the Documents.

9. The execution, delivery and performance of the Documents by the Developer have not and will not require the consent of any person or the giving of notice to, any exemption by, any registration, declaration or filing with or any taking of any other actions in respect of, any person, including without limitation any court, government or regulatory authority.

10. To the best of our knowledge after diligent inquiry, the Developer owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business in Illinois.

11. A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law contained in the Documents and apply the law of the State of Illinois to the transactions evidenced thereby.

The foregoing opinions are limited and qualified as follows:

Wherever we indicate that our opinion with respect to the existence or absence of facts is based on our knowledge, or best of our knowledge with or without diligent inquiry, our opinion is based solely on (a) the current actual knowledge of Jeffrey Jahns and any other attorneys presently in our Firm's attorneys who have represented Developer in connection with the transactions contemplated by the Documents, (b) the representations and warranties contained in the Documents and (c) the documents expressly named in this opinion and the written reports of searches of government offices specified in the Agreement. Except as otherwise specifically indicated herein, we have made no independent investigation as to such factual matters and disclaim any responsibility to do so. However, we have no actual knowledge of any facts which lead us to believe such factual matters are untrue or inaccurate.

We have assumed that: (i) the Documents executed by you have been duly authorized, executed and delivered by you, are within your corporate power, are your legal, valid and binding obligations, and that you are in material compliance with all applicable laws, rules and regulations governing the conduct of your business with respect to this transaction; (ii) the Documents will be enforced in circumstances and in a manner which are commercially reasonable; and (iii) all terms, provisions and conditions relating to the transaction referred to in this opinion letter are correctly and completely reflected in the Documents.

Our opinion as to the enforceability of the Documents in accordance with their terms as discussed in Paragraph 4 is limited by:

1. Applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance or transfer, moratorium and other similar laws, decisional or statutory, heretofore or hereafter enacted, relating to or affecting the rights of creditors generally;

2. The exercise of judicial discretion and general principles of equity, including, without limitation, concepts of materiality, reasonableness, impracticability or impossibility of performance, good faith and fair dealing (regardless of whether enforcement is

sought in equity or at law) and upon the availability of injunctive relief or other equitable remedies;

3. The fact that a court may determine that there is a lack of good faith and fair dealing, or a breach of fiduciary duty, resulting in a limitation on enforceability, or that enforcement of remedies would be commercially unreasonable;

4. The fact that a court may determine that the remedies, covenants or provisions contained in the Documents were, at the time of the execution and delivery of the Documents, or are in application, contrary to public policy and therefore unenforceable;

5. The fact that a court may determine that any provision contained in the Documents restricting access to legal or equitable remedies, such as the specific performance of executory covenants, is unenforceable;

6. The fact that a court may determine that any provision contained in the Documents that requires that all amendments, modifications or waivers be in writing in order to be effective is unenforceable; and

7. The fact that a court may determine that any provision contained in the Documents relating to waivers, severability, indemnity, waiver of jury trial, submissions to jurisdiction, set-off, or delay or omission of enforcement of rights or remedies, is unenforceable.

The opinions are based upon existing laws, ordinances and regulations in effect as of the date hereof and as they presently apply. This opinion is rendered as of the date hereof, and we undertake no duty to update this opinion for any reason, including changes in applicable law.

We have not reviewed and do not opine as to Federal or state taxation, banking, securities or "blue sky" laws rules or regulations.

We are attorneys admitted to practice in the State of Illinois and we express no opinion as to any laws other than federal laws of the United States of America, the Limited Liability Company Act of the State of Delaware and the laws of the State of Illinois.

This opinion is limited to the matters set forth herein. No opinion may be inferred or implied beyond the matters expressly contained herein.

This opinion is issued at the Developer's request and only for the benefit of the City and its counsel, and may not be disclosed to or relied upon by any other person without the express written consent of the undersigned.

Very truly yours,

Seyfarth Shaw LLP

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

Name: Jeffrey Jahns

## EXHIBIT L

### Insurance Requirements

#### **A. Developer**

The Developer must provide and maintain at Developer's own expense during the term of the Agreement the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

(1) Workers Compensation and Employers Liability - Mandatory Coverage

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement, and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

(2) Commercial General Liability (Primary and Umbrella) - Mandatory Coverage

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary basis for any liability arising directly or indirectly from the work.

(3) All Risk Property - Mandatory Coverage

All Risk Property Insurance, including improvements and betterments in the amount of full replacement value of the Property.

#### **B. Developer or Contractor**

The Developer must provide and maintain, or caused to be provided by Contractor, the following insurance during the Construction phase of the Project work:

(1) Workers Compensation and Employers Liability - Mandatory Coverage

Same as (A)(1) above, but with coverage limits of not less than \$500,000 each accident or illness.

(2) Commercial General Liability (Primary and Umbrella) - Mandatory Coverage

Same as (A)(2) above.

(3) Automobile Liability (Primary and Umbrella) - Mandatory Coverage

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(4) Railroad Protective Liability - Specialized Coverage, As Applicable

When any work is to be done adjacent to or on railroad or transit property, Contractor must provide, with respect to the operations Contractor or subcontractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(5) Builders Risk - Mandatory Coverage

When Developer undertakes any construction, including improvements, betterments, and/or repairs, the Developer must provide or cause to be provided, All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility or project.

(6) Professional Liability - Mandatory Coverage

When any architects, engineers, or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(7) Valuable Papers - Mandatory Coverage

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

(8) Contractors Pollution Liability - Specialized Coverage, As Applicable

When any work is performed which may cause a pollution exposure, Contractor's Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Agreement scope of services with limits of not less than \$1,000,000 per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of one (1) year. The City of Chicago is to be named as an additional insured.

**C. ADDITIONAL REQUIREMENTS**

The Developer must furnish the City of Chicago, Department of Community Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The receipt of any certificate does

not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages. The Developer must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must provide for 30 days prior written notice to be given to the City in the event coverage is substantially canceled, or non-renewed.

Any and all deductibles or self-insured retentions on referenced insurance coverages must be borne by Developer.

The Developer agrees that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The Developer expressly understands and agrees that any coverages and limits furnished by the Developer must in no way limit the Developer's liabilities and responsibilities specified within the Agreement documents by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Developer under the Agreement.

The required insurance must not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity in this Agreement given as a matter of law.

The Developer must require the Contractor to provide the insurance required herein, or Developer may provide the coverages for the Contractor. All Contractors are subject to the same insurance requirements of Developer unless otherwise specified in this Agreement.

If the Developer, or any Contractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.