



City of Chicago



SO2016-7458

Office of the City Clerk

Document Tracking Sheet

| | |
|---------------------------------|--|
| Meeting Date: | 10/5/2016 |
| Sponsor(s): | King (4) |
| Type: | Ordinance |
| Title: | Long-term easement agreement with 401 South State Street Owner LLC for property at 401 S State St |
| Committee(s) Assignment: | Committee on Transportation and Public Way |

SUBSTITUTE ORDINANCE FOR LONG TERM EASEMENT

WHEREAS, The City of Chicago ("City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970 and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, 401 S. State Street Owner, LLC, a Delaware Limited Liability Company ("Grantee") is the owner of the Leiter II Building, an eight story commercial building and Chicago Landmark property commonly known as 401 South State Street (the "Property"); and

WHEREAS, the Property predates the existence of W. Congress Parkway and protrudes into W. Congress Parkway approximately between the planes of 26.4' CCD/ 11.8' above grade and 149.8' CCD/ 135.2', and for its support columns supporting same ("Easement Area"); and

WHEREAS, the Easement Area was previously permitted pursuant to a November 21, 1950 Indenture Agreement between the City and the Grantee's predecessor as approved by the Chicago City Council and as recorded with the Office of the Cook County Recorder of Deeds on July 25, 1952 as Document No. 15395845, Book 48135, Page 372; and

WHEREAS, Grantee seeks to continue its permitted use of the space occupied by its building over the public way, and for its columns supporting same, all in the Easement Area; and

WHEREAS, the Easement Area excludes the area at grade that will continue to serve as part of the public way containing pedestrian sidewalk and curb, and the vaults below grade as more fully described on the Plat of Easement attached hereto and make a part hereof as Exhibit A; and

WHEREAS, the Department of Transportation has determined that a long term easement for the Property will not interfere with the City's traffic infrastructure and will benefit the business; and

WHEREAS, the City is willing to grant Grantee an easement on the same terms and conditions set forth in the Public Way Easement Agreement (the "Public Way Easement Agreement") attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the City Council of the City of Chicago, after due investigation and consideration, has determined that the nature and extent of the public use and the public interest to be subserved is such as to warrant a long term easement for a preexisting, landmark building over the public street described in the following ordinance; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. LEGAL DESCRIPTION OF EASEMENT AREA
THAT PART OF THE SOUTH 16.5 FEET OF LOT 10, LYING BELOW A HORIZONTAL PLANE HAVING A VERTICAL ELEVATION OF +149.8 AND LYING ABOVE THE SIDEWALK, HAVING AN AVERAGE VERTICAL ELEVATION OF +14.6 FEET, ALL CITY OF CHICAGO DATUM, IN BLOCK 10 IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPLE MERIDIAN AS SURVEYED AND SUBDIVIDED BY THE BOARD OF CANAL COMMISSIONERS PURSUANT TO LAW IN THE MONTH OF APRIL, YEAR OF 1836, RECORDED JUNE 13, 1836, ANTE-FIRE, RE-RECORDED SEPTEMBER 24, 1877 AS DOCUMENT NUMBER 151609; EXCEPTING THAT PART OF SAID LOT 10 TAKEN FOR SOUTH STATE STREET AS WIDENED FROM JACKSON STREET TO HARRISON STREET BY ORDER OF POSSESSION JANUARY 24, 1887, ORDINANCE PASSED SEPTEMBER 8, 1878; ALSO EXCEPTING THAT PART OF SAID LOT 10 TAKEN FOR A NORTH-SOUTH 20 FOOT WIDE PUBLIC ALLEY LAID OUT BY AGREEMENT OF OWNERS, ANTE-FIRE, ALSO EXCEPTING THEREFROM THE VERTICAL SPACE OF THE ABOVE-DESCRIBED PROPERTY FROM THE LEVEL OF THE SIDEWALK ON SAID PROPERTY (AVERAGE ELEVATION +14.6, CITY OF CHICAGO DATUM) TO THE LEVEL OF THE BOTTOM OF THE LINTEL OF THE BUILDING PRIMARILY ON SAID PROPERTY (AVERAGE ELEVATION +26.4, CITY OF CHICAGO DATUM); RESERVING TO THE GRANTEE THE SPACE OCCUPIED BY THE EXISTING COLUMNS OF SAID BUILDING, ALL IN COOK COUNTY ILLINOIS. THE EASEMENT MAY BE SUBJECT TO OTHER AGREEMENTS ASSOCIATED WITH THIS AREA, THE TERMS OF WHICH ARE MORE FULLY DESCRIBED IN THE ORDINANCE AUTHORIZING SAID EASEMENT.

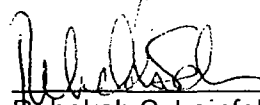
SECTION 2. The Commissioner of the Department of Transportation (the "Commissioner") or a designee of the Commissioner is each hereby authorized, along with the approval of the City's Corporation Counsel as to form and legality, to execute and deliver the Public Way Easement Agreement between Grantee and the City, in the form attached thereto as Exhibit B and made a part hereof, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Public Way Easement Agreement.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 4. The Public Way Easement Agreement herein provided for is made upon the express condition that within one hundred eighty (180) days after the passage of this ordinance, Grantee shall file or cause to be filed for recording in the Office of the Recorder of Deeds of Cook County, Illinois a copy of the Public Way Easement Agreement, together with its accompanying Plat of Easement as approved by the Department of Transportation's Acting Superintendent of Maps and Plats; as well as a separately recorded full sized copy of the corresponding Plat of Easement for greater clarity.

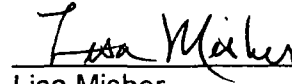
SECTION 5. This ordinance shall take effect upon its passage and need not be recorded. The Public Way Easement Agreement will take effect upon recording.

Easement approved:



Rebekah Scheinfeld
Commissioner of Transportation

Approved as to form and legality:



Lisa Misher
Chief Assistant Corporation Counsel

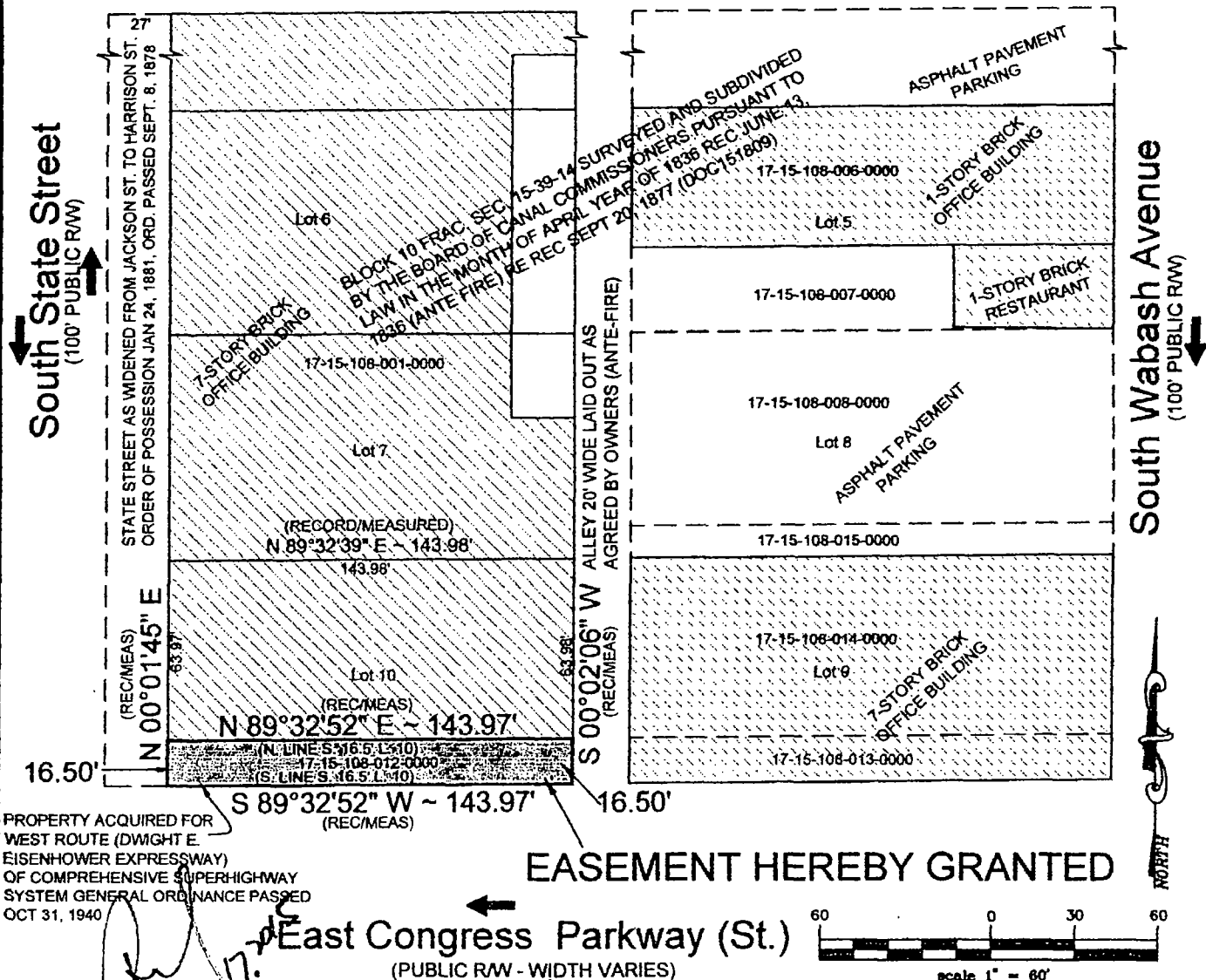
Honorable Sophia King
Alderman 4th Ward

PLAT OF EASEMENT

THAT PART OF THE SOUTH 16.5 FEET OF LOT 10, LYING BELOW A HORIZONTAL PLANE HAVING A VERTICAL ELEVATION OF +149.8 AND LYING ABOVE THE SIDEWALK, HAVING AN AVERAGE VERTICAL ELEVATION OF +14.6 FEET, ALL CITY OF CHICAGO DATUM, IN BLOCK 10 IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPLE MERIDIAN AS SURVEYED AND SUBDIVIDED BY THE BOARD OF CANAL COMMISSIONERS PURSUANT TO LAW IN THE MONTH OF APRIL, YEAR OF 1836, RECORDED JUNE 13, 1836, ANTE-FIRE, RE-RECORDED SEPTEMBER 24, 1877 AS DOCUMENT NUMBER 151609; EXCEPTING THAT PART OF SAID LOT 10 TAKEN FOR SOUTH STATE STREET AS WIDENED FROM JACKSON STREET TO HARRISON STREET BY ORDER OF POSSESSION JANUARY 24, 1887, ORDINANCE PASSED SEPTEMBER 8, 1878; ALSO EXCEPTING THAT PART OF SAID LOT 10 TAKEN FOR A NORTH-SOUTH 20 FOOT WIDE PUBLIC ALLEY LAID OUT BY AGREEMENT OF OWNERS, ANTE-FIRE, ALSO EXCEPTING THEREFROM THE VERTICAL SPACE OF THE ABOVE-DESCRIBED PROPERTY FROM THE LEVEL OF THE SIDEWALK ON SAID PROPERTY (AVERAGE ELEVATION +14.6, CITY OF CHICAGO DATUM) TO THE LEVEL OF THE BOTTOM OF THE LINTEL OF THE BUILDING PRIMARILY ON SAID PROPERTY (AVERAGE ELEVATION +26.4, CITY OF CHICAGO DATUM); RESERVING TO THE GRANTEE THE SPACE OCCUPIED BY THE EXISTING COLUMNS OF SAID BUILDING, ALL IN COOK COUNTY ILLINOIS. THE EASEMENT AS SHOWN AND DEPICTED HEREIN MAY BE SUBJECT TO OTHER AGREEMENTS ASSOCIATED WITH THIS AREA, THE TERMS OF WHICH ARE MORE FULLY DESCRIBED IN THE ORDINANCE AUTHORIZING SAID EASEMENT.

East Van Buren Street

(66' PUBLIC R/W)



CDOT# 15-02-14-3680

ZARKO SEKEREZ & ASSOCIATES, INC.

Land Surveyors & Land Planners
118 WEST CLARK STREET, CROWN POINT, IN 46307
ILL. PHONE: (312) 728-1313 ILL. FAX: (312) 236-9506
WWW.SEKEREZ.COM

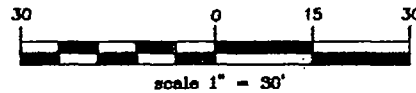
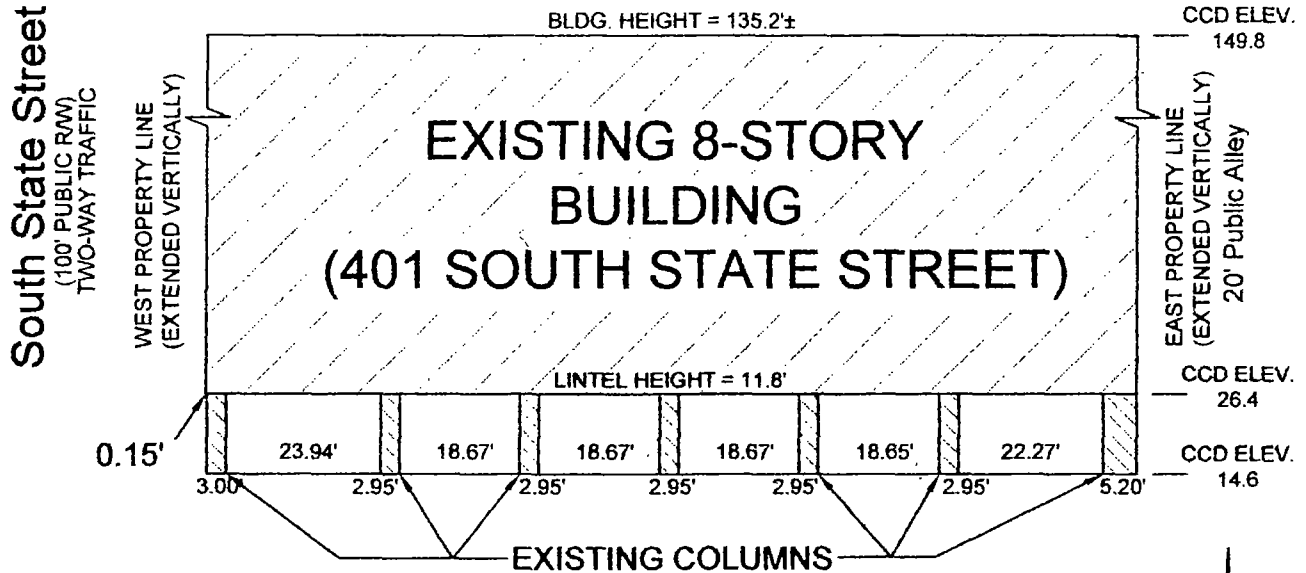
PAGE 1 OF 3

PS RI

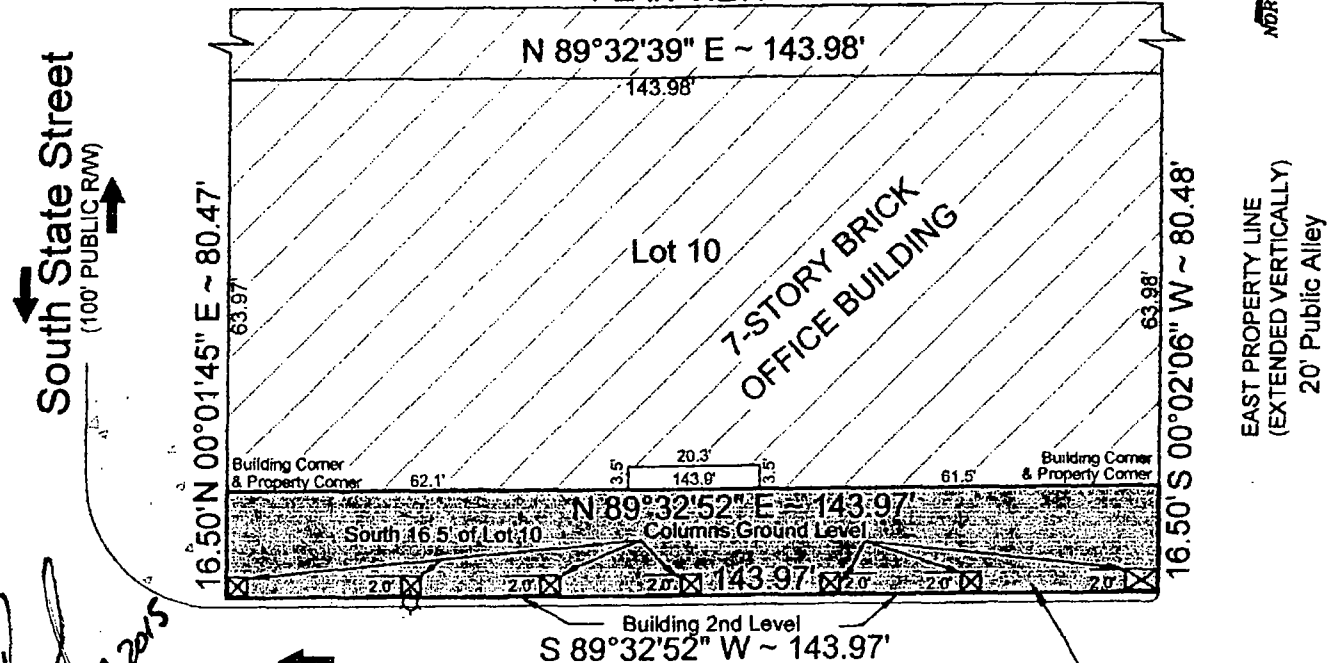
DATE: Jan 7, 2015

JOB NO: 9807

PLAT OF EASEMENT

ELEVATION OF BUILDING AT
EAST CONGRESS PARKWAY

PLAN VIEW



EASEMENT HEREBY GRANTED

CDOT# 15-02-14-3680

PAGE 2 OF 3

ZARKO SEKEREZ & ASSOCIATES, INC.

Land Surveyors & Land Planners
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ILL. PHONE (312) 726-1313 ILL. FAX (312) 236-9506
WWW.SEKEREZ.COM

| | | | |
|------|-------------|----------|----|
| DATE | PS | REVISION | RI |
| DATE | Jan 7, 2015 | | |
| DATE | 9807 | | |

SURVEYOR'S NOTES:

PLAT OF EASEMENT

1) SUBJECT PARCEL P.I.N. 17-15-108-012-0000,
AREA 2,375 SQ. FT. 0.055 ACRES
ADJOINING APPLICANT OWNED P.I.N.
17-15-108-001-0000

2) THE NORTH LINE OF CONGRESS PARKWAY IS
ASSUMED TO BEAR S 89°32'52" W

4) THE FIELD WORK FOR THIS SURVEY WAS
PERFORMED ON JANUARY 7, 2015

5) DIMENSIONS ARE SHOWN IN FEET AND DECIMAL
PARTS THEREOF

6) NO DIMENSIONS SHOULD BE ASSUMED BY SCALE
MEASUREMENTS UPON THE PLAT

7) THE EASEMENT PARCEL AND ALL SURROUNDING
PARCELS IN BLOCK 10 ARE ZONED "DX-16,
DOWNTOWN MIXED USE."

8) CLIENT CONTACT INFO:
TOM GARRITY
ANVAN MIDWEST REALTY MANAGEMENT
401 SOUTH STATE STREET
CHICAGO, ILLINOIS
312-393-8300 312-393-3009

9) BENCHMARK: MARK CUT ON N. SIDE OF
STANDARD BM NO. 5675 LOCATED ENTRANCE 228 S.
WABASH. 128 FT. N. OF NORTH LINE OF JACKSON
AND 1 FT. WEST OF WEST LINE OF WABASH.
ELEV. = +16.018
ELEVATIONS ARE WITH REFERENCE TO CITY OF
CHICAGO DATUM.

10) NO CORNERS OF EASEMENT AREA WERE SET



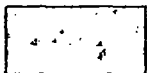
PROPOSED EASEMENT AREA
(AFFECTED BUILDING OVER SAME)



BUILDING ON AFFECTED PROPERTY
(NOT PART OF EASEMENT AREA)



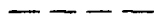
EXISTING BUILDING NOT
ON AFFECTED AREA



CONCRETE
WALK



TRAFFIC DIRECTIONAL
ARROW



ADJOINING PROPERTY NOT
AFFECTED BY EASEMENT



SUB-LOT DIVISION

(REC) (MEAS)

RECORD DIMENSION/MEASURED DIMENSION

To:
STATE OF ILLINOIS
COUNTY OF COOK

This professional service conforms to the current and minimum
standards for a boundary survey.

Radu M. S. Irimescu

Professional Land Surveyor No. 035-003638

SURVEYOR LICENSE EXPIRATION DATE: November 30, 2016

FIRM REGISTRATION NO. 17-15-108-012-0000

FIRM REGISTRATION EXPIRATION DATE: 4/30/2017

CDOT# 15-02-14-3680

DEPT. OF FINANCE

COOK CO.

C.D.O.T.

PAGE 3 OF 3

| | | | |
|---|--|------|-------------|
| ZARKO SEKEREZ & ASSOCIATES, INC. | | DATE | 9807 |
| Land Surveyors & Land Planners | | DATE | Jan 7, 2015 |
| 118 WEST CLARK STREET, CROWN POINT, IN 46307 | | DATE | 9807 |
| ILL. PHONE: (312) 726-1313 ILL. FAX: (312) 236-9506 | | DATE | 9807 |
| WWW.SEKEREZ.COM | | DATE | 9807 |

EXHIBIT B

This Instrument Prepared
By and After Recording
Return to:
Karen Bielarz
Senior Counsel
City of Chicago
Department of Law
121 North LaSalle Street, Room 600
Room 600
Chicago, Illinois 60602

(The Above Space For Recorder's Use Only)

Public Way Easement Agreement

This Agreement (the "Agreement") entered into as of this ___ day of ____, 2017, by and between the **CITY OF CHICAGO**, an Illinois home rule municipal corporation (the "City"), by and through its Department of Transportation, (the "CDOT"), and **401 S. State Street Owner, LLC**, a Delaware limited liability company ("Grantee"). City and Grantee together shall collectively be referred to herein from time to time as the "Parties", and individually as a "Party".

Witnesseth:

WHEREAS, Grantee is the owner of the Leiter II Building, an eight story commercial building built in 1891 ("Leiter II Building") and designated a Chicago Landmark in 1997, commonly known as 401 South State Street, Chicago, Illinois, as legally described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

WHEREAS, pursuant to a 1950 City condemnation matter and a prior agreement between the City and Grantee's predecessor in interest, certain easements and rights for the benefit of the Property were created by and reserved in deed by William Scott Bond, Philip F. W. Peck and Alfred M. Rogers, successor trustees under the last will and testament of Levi Z. Leiter, deceased, to the City of Chicago, in that certain Indenture dated November 21, 1950 and recorded July 25, 1952 as document 15395845 over, upon and under the south 16.5 feet of Lot 10 (except that part lying in South State Street and also except that part taken for 20 foot alley running north and south through Block 10) in Block 10 in Fractional Section 15 Addition to Chicago, Township 39 North Range 14, as set forth therein (the "1950 Indenture"); and

WHEREAS, the 1950 Indenture reserved for the benefit of the Property certain rights and easements to the Grantee above, on, and under the City's public right of way through January 2, 2009; and

WHEREAS, on January 14, 1997, the City designated the Leiter II Building a Chicago Landmark by ordinance recorded in the Journal of the Chicago City Counsel for January 14, 1997, pages 37540-37543, a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, in order that the Leiter II Chicago Landmark may continue to be preserved now and in the future, the extension of the easement created in the 1950 Indenture, as herein provided, is necessary; and

WHEREAS, the extension of the easement provided herein will promote the public interest and the preservation of this Chicago Landmark in keeping with the above-referenced January 14, 1997 Ordinance; and

WHEREAS, pursuant to Section 10-28-017 of the Chicago Municipal Code, no fee is charged for a public way use that is on or above the public way for a landmark building; and

WHEREAS, the City has changed the handling of easements and permits above, on, and under the City's public right of way; and

WHEREAS, currently the Leiter II Building occupies certain space above, on and under the City's public way pursuant to public way use permits ("Grants of Privilege") for: (1) vaulted areas under the public sidewalk (Permit No. 1104935 valid until 2018; and Permit No. 1119142 valid until 2020); (2) fire escape on the Leiter II Building (Permit No. 1104934 valid until 2018); (3) two clocks on the Leiter II Building (Permit No. 1104914 valid until 2018); (4) two signs on the Leiter II Building (Permit No. 1104913 valid until 2018); and (5) a Leiter II building projection ("Building Projection") over the City public way (Permit No. 1104938 valid until 2018) ("Building Projection Permit"); and

WHEREAS, the Grantee is currently seeking a twenty (20) year long term easement for the Building Projection on and above the public way, which building Projection shall be limited to a vertical height limitation of 149.8 feet, as more fully set for the on the Plat of Easement ("Plat") attached hereto as **Exhibit C** and made a part hereof and

WHEREAS, upon the Parties' execution of this Agreement, the Building Projection Permit will be discontinued and this Agreement shall control over the Building Projection area.

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

1. **Grant of Easement Area.** The City hereby grants to Grantee an easement ("Easement") above and on the public sidewalk adjacent to the Leiter II Building as identified and legally described on the Plat (the "Easement Area"), for the operation, maintenance, use, repair and support of the Leiter II Building at Grantee's sole cost and

expense. The Parties hereto may, upon review and approval of the CDOT Commissioner ("Commissioner"), or any successor department, may substitute a revised Easement Area legal description for the Easement Area legal description set forth on the Plat.

2. **Terms.** The following terms and conditions apply to the Easement:

(a) The Easement is an easement appurtenant in favor of the Grantee's Property.

(b) The Easement is granted for a term of twenty (20) years ("Term") without compensation, with the option of two (2) extensions of five (5) years each also without compensation (the "First Extension" and the "Second Extension" respectively), at the request of Grantee, subject to the consent of the Commissioner of CDOT, and subject to review and approval of the City's Corporation Counsel as to form and legality.

(c) The Easement shall burden the Easement Area as the servient tenement.

(d) Grantee warrants to the City that it is the owner ("Owner") of the Property and also the portion of the Leiter II Building located in the Easement Area and that the Grantee has sufficient title and fee interest to/in the Property to enter into this Agreement.

(e) The Easement above and on the public way granted pursuant to this Agreement constitutes a contemporaneous grant of interest in real property and is not executory in nature.

3. **Grantee's Obligations.**

(a) Subject to the prior review and approval of CDOT of any exterior construction in the Easement Area, the Grantee shall expressly warrant that any construction in the Easement Area shall be designed and constructed in compliance with all federal, state and local laws and regulations. The Grantee shall expressly warrant that any construction in the Easement Area shall be designed and constructed in compliance with accessibility standards, including, but not limited to: (1) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., and the regulations promulgated thereunder; (2) the Illinois Environmental Barriers Act (410 ILCS 25/ 1 et seq. (1996)); (3) The Illinois Accessibility Code, 71 Ill. A. Code 400; (4) all local City ordinances, codes, regulations.

(b) The Grantee shall be responsible for obtaining all approvals of and paying for any and all removals, relocations, alterations, additional maintenance and restorations of or to any utility or public service structures or facilities, or any structures or facilities located in or adjacent to the Easement Area which are owned by any third party utility company, and the City, including pavements, bridges, poles, and other facilities and utilities, which are or may be necessary or appropriate to facilitate construction of or work related to any construction in the Easement Area. The Grantee shall be responsible for obtaining the consent of and making suitable arrangements with all entities owning and having an interest in such structures and facilities, including any City department.

(c) The Grantee shall secure all necessary permits, including but not limited to, building permits.

4. **Uses Within the Easement Area**

(a) The public sidewalk on the south 16.5 feet of Lot 10 (the "Public Sidewalk") shall remain open for use by the public, except for the space occupied by the columns providing support for the Leiter II Building as depicted on the Plat.

(b) The Grantee may not authorize any use above or on the Public Sidewalk for any purpose that will substantially interfere with the use of the Public Sidewalk by the public.

(c) The Grantee may lease the Easement Area above the Public Sidewalk to third parties provided that: (1) all such leases shall require the respective lessees to be bound by and comply with the terms and conditions of this Agreement; and (2) any such use(s) by Grantee or lessees of Grantee shall not substantially interfere with the public's use of the Public Sidewalk.

5. **Indemnity.** Except with respect to the negligent or wrongful intentional acts of City (to the extent the same are the cause of an injury or loss to a third person), Grantee hereby indemnifies and agrees to hold harmless and defend City from and against any and all claims, demands, damages, lawsuits, legal proceedings, losses, liens, liabilities, judgments, orders or decrees, and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, court costs, and other reasonable expenses related to litigation), arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to the City, any natural person, or the City's property, including but not limited to the Public Sidewalk, Easement Area, and all other impacted City right-of-way areas, the property of any person, arising out of, or occurring as a result of use of the Easement Area by Grantee, its officers, employees, and agents. In the event any legal action is taken against City or its agents or any claim is made relating to the Easement Area, the City may elect to tender said defense to Grantee which shall and must defend such action or claim at Grantee's own cost and expense (including reasonable attorneys' fees and costs) and City shall cooperate with Grantee in the defense thereof. Grantor shall have the right to join Grantee as a party defendant in any such legal action. This indemnity shall not be the exclusive remedy of the City, and City shall maintain whatever other right of indemnity it may have under common law, by statute, or by ordinance. This indemnification shall survive any termination or expiration of this Agreement.

6. **Grantee's Operation, Maintenance and Security of the Easement Area during the Term of this Agreement.**

(a) Grantee shall maintain the Easement Area at its sole cost and expense.

(b) Grantee shall maintain the Easement Area so that the improvement does not unduly interfere with any use of the Public Sidewalk by the City, the public, or any person or entity authorized to use or occupy the public way.

(c) Grantee shall conduct regular, documented inspections of the Easement Area and maintain the Easement Area in a structurally sound, clean, aesthetically attractive, and usable condition. All Easement Area maintenance records shall be made available to CDOT upon CDOT's written request for such documentation to Grantee.

(d) Grantee shall cooperate with the City concerning the coordination of uses of the Public Sidewalk, including prompt responses to inquiries, attending meetings and site visits, and providing complete disclosure of information concerning the Easement Area and Public Sidewalk.

(e) Grantee shall pay for any and all utility expenses incurred with respect to the operation, maintenance, repair, and/or replacement of, or security of the Easement Area.

(f) Grantee shall provide security over the Easement Area at its sole cost and expense.

7. **City Has No Maintenance and Operational Duties.** The Grantee acknowledges that City is not responsible for the operation, maintenance, repair, and/or replacement of or security of the Easement Area and City has no obligations with respect thereto (other than the provision, through the exercise of the City's right to access the Easement Area for City business purposes and services available to all similarly situated improvements).

8. **Insurance.**

(a) The Grantee shall procure and maintain, at all times, including but not limited to, all of the types and coverages of insurance and endorsements specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations within the Easement Area under this Agreement, whether performed by the Grantee or any of its lessees or contractors or subcontractors ("Contractor"). Grantee shall procure and maintain, or shall cause any/all Contractors to procure and maintain, all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations within the Easement Area under this Agreement, whether performed by Grantee or any of its Contractors.

(b) The kinds and amounts of insurance required are as follows:

(i) Workers' Compensation and Occupational Disease Insurance. Workers' Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees who are to provide Work under this Agreement. Employers' liability coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, illness or disease.

(ii) Commercial Liability Insurance (Primary and Umbrella). Commercial General Liability Insurance, or equivalent, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage liability. All premises and operations, products/completed operations,

independent contractors, explosion, collapse, underground, pollution, separation of insureds, defense and contractual liability coverages are to be included. The City is to be named as an additional insured on a primary non-contributory basis for any liability related directly or indirectly to this Agreement.

Contractors performing work for Grantee within the Easement Area must maintain limits of not less than \$2,000,000 with the same terms herein.

(iii) Automobile Liability Insurance. (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed within the Easement Area, the Grantee provide or cause to be provided, Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The Grantor is to be named as an additional insured on a primary, non-contributory basis.

Contractor performing work for Grantee within the Easement Area must maintain limits of not less than \$1,000,000 with the same terms herein.

(c) Additional Requirements

At least thirty (30) days after the date of this Agreement, the Grantee must provide and cause any of its contractors to provide the City of Chicago, Department of Transportation, 30 North LaSalle Street, Room 500, Chicago, Illinois 60602-2570, original Certificates of Insurance, and endorsements, 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 Grantee and contractor is not a waiver by the City of any requirements for the Grantee to obtain and maintain the specified coverages. The Grantee and Grantee's contractors must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantee and contractor of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work within the Easement Area until proper evidence of insurance is provided.

Grantee agrees to make commercially reasonable efforts to obtain from its insurers, when and if available in the industry, a certificate providing that such coverage shall not be suspended, voided, canceled, non-renewed, or reduced in scope or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Grantee and Contractor.

The Grantee hereby agrees and will cause its Contractors to agree that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Grantee and contractor in no way limit the Grantee's and contractor's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Grantee and Contractor under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Grantee or Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Grantee must require the contractor to provide the insurance required herein. All contractors are subject to the same insurance requirements of Grantee unless otherwise specified in this Agreement.

Notwithstanding any provisions in this Agreement to the contrary, the City's Risk Management Department maintains the right to modify, delete, alter or change these requirements, to the extent commercially reasonable.

9. **Default.** The Grantee shall be in default hereunder in the event of a material breach by Grantee of any term or condition of this Agreement including, but not limited to, a representation or warranty, where Grantee has failed to cure such breach within sixty (60) days after written notice of breach is given to Grantee by City setting forth the nature of such breach. Failure of City to give written notice of breach to Grantee shall not be deemed to be a waiver of the City's right to assert such breach at a later time. If the default is not capable of being cured within the sixty (60) day period, then provided Grantee has commenced to cure the default and is diligently proceeding to cure the default within the sixty (60) day period, and thereafter diligently prosecutes such cure through to completion, then the sixty (60) day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the City may institute such proceedings at law or in equity as may be necessary or desirable to cure and remedy the default, including but not limited to, termination of this Agreement.

10. **No Lien.** Grantee shall not permit any lien to stand against the Easement Area or any improvement thereon for any labor or material in connection with work of any character performed in the Easement Area at the direction or sufferance of Grantee.

11. **Compliance With Law.** The Grantee agrees that the Easement Area shall be used, and any alterations to the structures located within the Easement Area shall be constructed, installed, used, operated, inspected, maintained, repaired and replaced in complete compliance with all applicable laws, statutes and ordinances.

12. **Partial Invalidity.** If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect.

13. **Notices.** Any and all notices or other communications required or permitted pursuant hereto shall be in writing and shall be deemed to have been given if and when personally delivered or on the next following business day if transmitted by reputable overnight carrier. Notices shall be addressed to Grantee and City at their respective addresses set forth below, or to such substitute address as Grantee or City may have designated by notice in accordance herewith:

If to City:

Commissioner of Transportation
30 North LaSalle Street, Room 500
Chicago, Illinois 60602
Attn: Maps and Plats /Easements

With a copy to:

Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attn: Deputy Corporation Counsel
Real Estate and Land Use Division

If to Grantee:

401 S. State Street Owner, LLC
401 S. State Street
Chicago, IL 60605
Attn: Thomas L. Garrity

With a copy to:

Drinker Biddle & Reath, LLP
191 N. Wacker Dr., Suite 3700
Chicago, IL 60606
Attn: John A. Simon, Esq.

Addressees may be changed by the Parties by notice given in accordance with the provisions hereof.

14. **Illinois Law.** This Agreement has been negotiated, executed and delivered at Chicago, Illinois and shall be construed and enforced in accordance with the laws of Illinois.

15. **Execution And Recordation of Agreement.** The execution and recordation of this Agreement shall be subject to the finalization of utility negotiations, if any, and further provided that the Grantee supplies the City with sufficient proof of ownership of the Property, and any other documents that the City may deem necessary.

16. **No Third-Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit solely of Grantee and City and their respective successors, assigns, licensees and legal representatives. This document and the terms hereof are intended solely for the benefit of the parties hereto and their successors, licensee and assigns, as expressly referred to herein. No other person shall have any rights, responsibilities or obligations hereunder nor may such person enforce any of the terms or be entitled to any of the benefits hereof.

17. **Authority and Validity.** Each party represents and warrants to the other party that (i) this Agreement has been duly authorized, executed and delivered by it and (ii) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

18. **Miscellaneous.**

(a) The terms, benefits, and privileges set forth in this Agreement shall be deemed and taken to be covenants running with the Property and shall be binding upon the Grantee, its successors and assigns having any interest in the Property.

(b) If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that this Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties.

(c) In the event the time for performance hereunder falls on a Saturday, Sunday, or legal holiday, the actual time for performance shall be the next business day.

(d) This Agreement and the accompanying Plat shall be governed by, and construed in accordance with, the internal laws of the State of Illinois. In the event that an adjudication of any kind shall be required in connection with this Agreement, the Parties agree that the venue therefor shall be the state or federal courts located in Cook County, Illinois, whichever may be applicable.

(e) This Agreement constitutes the entire contract between the Parties with respect to the subject matter of this Agreement, and may not be modified except by an

instrument in writing signed by all the Parties and dated a date subsequent to the date of this Agreement.

(f) Each Party agrees that it will execute and deliver such other reasonable documents and take such other reasonable actions as may be reasonably requested by the other party to effectuate the purposes and intention of this Agreement.

19. **Business Relationships.**

The Grantee acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it 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 the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, 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 Grantee hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

20. **Patriot Act Certification.**

The Grantee represents and warrants that neither the Grantee nor any Affiliate thereof (as defined in the next paragraph) 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.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to the Grantee that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Grantee, 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 share ownership, a trust, a contract or otherwise.

21. Prohibition on Certain Contributions Mayoral Executive Order 2011-4.

Grantee agrees that Grantee, any person or entity who directly or indirectly has an ownership or beneficial interest in Grantee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Grantee's contractors (i.e., any person or entity in direct contractual privity with Grantee 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 (Grantee 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 Grantee, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Grantee and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Grantee represents and warrants that from the later to occur of (a) May 16, 2011, and (b) the date the City approached the Grantee or the date the Grantee 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.

Grantee 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.

Grantee agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Grantee 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. 2011-4 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 Grantee intentionally violates this provision or Mayoral Executive Order No. 2011-4 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 is 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 Grantee 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.

22. **Failure To Maintain Eligibility To Do Business With The City.**

Failure by Grantee or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of the Agreement and the transactions contemplated thereby. Grantee shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

23. **Inspector General and Legislative Inspector General.**

It is the duty of every officer, employee, department, agency, contractor, subcontractor, Grantee and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code of Chicago. The Grantee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code of Chicago.

24. **Waste Ordinance Provisions.**

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Grantee warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Amendment is executory, Grantees, any general contractors or any subcontractors violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Amendment, at law or in equity. This section does not limit Grantee's, general contractor's and its subcontractor's duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Amendment. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Amendment, and may further affect Grantee's eligibility for future contract awards.

25. **Shakman Accord.**

(a) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Grantee is aware that City policy prohibits City employees from directing any individual to apply for a position with Grantee, either as an employee or as a subcontractor, and from directing Grantee to hire an individual as an employee or as a subcontractor. Accordingly, Grantee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Grantee under this Agreement are employees or subcontractors of Grantee, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Grantee.

(c) Grantee will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Grantee by a City employee or City official in violation of Section 24 (b) above, or advocating a violation of Section 24 (c) above, Grantee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Agreement. Grantee will also cooperate with any inquiries by IGO Hiring Oversight or the *Shakman* Monitor's Office related to the contract.

THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Signatures appears on the following page

IN WITNESS WHEREOF, Grantee and City have caused this Agreement to be executed by their duly authorized officers, as of the day and year first written above.

401 S. STATE STREET OWNER, LLC,
a Delaware limited liability company

By: _____
Joseph P. Nicosia III, Authorized Person

CITY OF CHICAGO,
a municipal corporation,
by and through its Department of Transportation

By: _____

Name: Rebekah Scheinfeld
Title: Commissioner

Approved As To Form And Legality
(excluding the Legal Descriptions):

CITY OF CHICAGO
Department of Law

By: _____
Name: Karen Bielarz
Title: Senior Counsel

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I. _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Rebekah Scheinfeld personally known to me to be the Commissioner of the Department of Transportation of the City of Chicago, an Illinois municipal corporation, 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 being first duly sworn by me acknowledged that as the Commissioner, she signed and delivered the instrument pursuant to authority given by the City of Chicago, as her free and voluntary act and as the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this _____ day of _____, 2017.

NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joseph P. Nicosia III, personally known to me to be an Authorized Person of 401 S. State Street Owner, LLC, 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 being first duly sworn by me severally acknowledged that as such Authorized Person, he signed and delivered the instrument pursuant to authority given by organizational documents as his free and voluntary act and as the free and voluntary act and deed of 401 S. State Street Owner, LLC, for the uses and purposes therein set forth.

GIVEN under my notarial seal this _____ day of _____, 2017.

NOTARY PUBLIC

EXHIBIT A
LEGAL DESCRIPTION
OF THE PROPERTY

LOTS 2, 3, 6, 7 AND 10 OF BLOCK 10 (ALSO KNOWN AS THE WEST ½ OF BLOCK 10) IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THE WEST 27 FEET OF SAID LOTS 2, 3, 6, 7 AND 10 TAKEN FOR WIDENING OF STATE STREET, AND EXCEPT THE SOUTH 16.5 FEET OF LOT 10 AND EXCEPT THAT PART OF SAID LOTS 2, 3, 6, 7 AND 10 TAKEN FOR 20 FOOT ALLEY RUNNING NORTH AND SOUTH THROUGH SAID BLOCK 10.

Commonly known as: 401 South State Street, Chicago, Illinois 60605

Property Index Number:

EXHIBIT B

**(LEITER II BUILDING LANDMARK ORDINANCE)
(Attached)**

EXHIBIT C

PLAT OF EASEMENT
(Attached)