

RESOLUTION R-67-15

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND DIRECTING THE CITY CLERK TO ATTEST TO THAT CERTAIN AMENDED AND RESTATED PARKING GARAGE LEASE AND OPERATING AGREEMENT BETWEEN THE CITY OF WHEATON AND WHEATON APARTMENTS OWNER LLC

WHEREAS, the City of Wheaton is the owner of certain land containing a two-story parking garage located at 631 W Liberty Drive, Wheaton, Illinois; and

WHEREAS, the Wheaton Apartment Owner LLC's (hereinafter "Lessee") predecessor constructed a parking garage on the land; and

WHEREAS, since 1970, the City of Wheaton has leased the land and garage site to the owners of the Wheaton Tower's Planned Unit Development; and

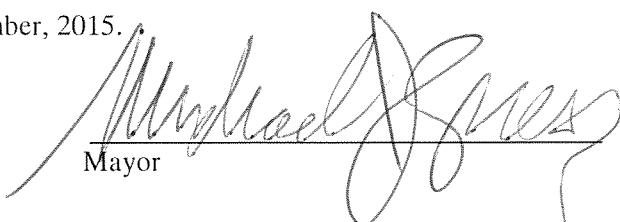
WHEREAS, the Lessee has recently committed substantial monetary resources to the rehabilitation of the parking garage; and

WHEREAS, the City of Wheaton and the Lessee elect to amend and restate the parking garage lease for a longer term and adopt provisions consistent with current commercial financing and government lease standards.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, IL, pursuant to its home rule authority that:

1. The Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest, to the amended and restated parking garage lease and operating agreement between the City of Wheaton and Wheaton Apartments Owners, LLC, which is attached hereto and incorporated herein and is fully set forth as Group Exhibit 1 (hereinafter "Lease").
2. City Staff is authorized to undertake any and all acts consistent with and in furtherance of the administration of the Lease.

ADOPTED this 2nd day of November, 2015.


Mayor

ATTEST:


Aaron Bennett Hagan
City Clerk

Roll Call Vote:

Ayes: Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo
Councilwoman Fitch
Councilman Prendiville

Nays: None
Absent: Councilman Suess

Motion Carried Unanimously

AMENDED AND RESTATED PARKING GARAGE LEASE AND OPERATING

AGREEMENT

(Operation of Wheaton Center Garage)

THIS AMENDED AND RESTATED PARKING GARAGE LEASE AND OPERATING AGREEMENT ("Lease") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the City of Wheaton, an Illinois municipal corporation, the address of which is 303 West Wesley Street, Wheaton, IL 60187 (the "City" or the "Lessor"), and Wheaton Apartments Owner LLC, a Delaware limited liability company (the "Lessee"), the address of which is c/o Draper and Kramer, Incorporated, 33 W. Monroe, Suite 1900, Chicago, IL 60603).

WITNESSTH

WHEREAS, the City is the owner of certain land described on Exhibit A, attached hereto (the "Land") on which a predecessor-in-interest of the Lessee constructed a parking garage containing 414 automobile parking spaces (the "Garage"). The Land the Garage are sometimes collectively referred to herein as the ("Garage Site"); and

WHEREAS, Lessee leases the Garage Site from the City on a long-term basis for Wheaton Center Apartments resident use and daily use of commuters of the Metra Rail System, pursuant to the terms of that certain Parking Garage Lease and Building Agreement dated December 18, 1970 entered into by and between the City and Lessee's predecessors-in-interest, American National Bank and Trust Company of Chicago, a National Banking Association, as Trustee under Trust Agreement dated February 18, 1970, and known as Trust No. 29451, and not personally, and Baird & Warner, Inc., an Illinois corporation and McHugh Levin Associates, a general partnership (collectively, "Original Lessee") a copy of which was recorded in the Office of the Recorder of Deeds of DuPage County, Illinois (the "Recorder") as Document Number R71-12212, as modified by that certain Declaration of Commencement and Termination Date of Lease dated July 14, 1972 and recorded with the Recorder on July 20, 1972 as Document Number R72-41829, as further modified by that certain Amendment to Parking Garage Lease and Building Agreement dated December 18, 1972 and recorded with the Recorder on December 27, 1972 as Document Number R72-78536, as further modified by that certain Ordinance No. E-3402 adopted by the City of Wheaton on December 19, 1988, and as assigned by Original Lessee and Wheaton Center Venture, an Illinois limited partnership to Wheaton Center, LLC, a Delaware limited liability company ("WCLLC") pursuant to that certain Assignment and Assumption of Leasehold Estate dated as of September 29, 2006 and recorded with the Recorder on October 6, 2006 as Document Number R2006-194996 and as further assigned by WCLLC to "Lessee" pursuant to that certain Assignment and Assumption of Leasehold Estate dated as of May 29, 2014 and recorded with the Recorder on May 30, 2014 as Document Number R2014-0455312 (with all of the foregoing documents being collectively referred to herein as the "Original Lease") pursuant to which the City has leased to Lessee the Land; and

WHEREAS, Lessor and Lessee desire to amend and restate the Lease in its entirety but in no manner shall the amendment/restatement constitute an amendment of any zoning ordinances, property maintenance ordinances or codes, applicable to the property and the Wheaton Towers PUD (as hereinafter defined); and

WHEREAS, the Garage Site shall at all times contain a total of no less than 414 automobile parking stalls in conformance with Ordinance Number E-1156, An Ordinance Authorizing the Issuance of a Conditional Use Permit and Planned Unit Development for the Parcel of Property Commonly Called the Aurora Yards (the “Wheaton Towers PUD”), subject to the rights of the City set forth herein; and

WHEREAS, Lessee is in the process of making certain capital improvements, repairs and replacements to the Garage Site pursuant to City of Wheaton Permit No. 2014GAR1112 issued July 18, 2014 (collectively, the “Garage Repairs”); and

WHEREAS, the City believes that the Garage Repairs are in the best interests of the City and the health, safety, and welfare of its residents; and

WHEREAS, pursuant to this Lease, the City is leasing the Garage Site to Lessee for an initial term of seventy- five (75) years, with two (2) successive renewal options of ten (10) years each; and

WHEREAS, no City funds will be used to pay for any portion of the cost of maintenance, repair, reconstructing or operating the improvements on the Garage Site.

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

1. RECITALS

The foregoing recitals are incorporated herein as fully set forth as representing the intent of the parties and as substantive understandings.

2. LEASE OF GARAGE SITE

(A) **As-Is Condition.** The City has not made any representations or warranties concerning the condition or characteristics of the Garage Site or the suitability or fitness of the Garage Site for the operation of the Garage, and Lessee acknowledges and agrees that Lessee is not relying upon any such representations or warranties from the City. On the Commencement Date (as defined in Section 4 below), Lessee shall accept the Garage Site in “as is” condition.

(B) **Title Matters.** The rights herein granted to Lessee are subject and subordinate to the rights of utility providers and others to enter upon the Garage Site from time to time pursuant to recorded easements, and the like affecting, the Garage Site (if any). Lessee shall not take any actions that would violate any easements, covenants, restrictions or other matters of record affecting the Garage Site. Lessee shall not have the right to grant any easements or otherwise encumber the City’s title to the Garage Site without the City’s prior written consent, and Lessee acknowledges that any further encumbrances may require approval of City Council. The City shall have the right to grant easements to third parties affecting the Garage Site as may be deemed reasonably necessary by the City so long as (1) such actions do not unreasonably impair the rights granted to Lessee under this Lease or reduce the number of parking spaces by more than five (5) spaces in the aggregate over the Term (as hereinafter defined) or result in the Residential Parcel (as hereinafter defined) not being in

compliance with applicable zoning requirements or increase the cost of operating and maintaining the Garage Site, and (2) any damage to the Garage Site due to the exercise of such Right by the City shall be repaired by or on behalf of the City at no expense to Lessee and to a condition reasonably satisfactory to Lessee; however, the City shall not grant a mortgage on the Garage Site to any third party. The foregoing notwithstanding, the City represents to Lessee that (i) it owns the Garage Site in fee simple and that the same is free and clear of all liens, encumbrances and exceptions to title except those disclosed to Lessee on or prior to the date hereof or those created by Lessee, (ii) other than the Lease, the City has not leased the Garage Site to any other third party, and (iii) there is no litigation, pending or to the best of its knowledge threatened, that would affect the City's performance under this Lease or impair Lessee's rights hereunder.

3. REPAIRS OF GARAGE

Lessee is undertaking the Garage Repairs and shall diligently pursue the same until completion in conformance with applicable Codes.

4. TERM; RENEWAL OPTIONS

(A) Initial Term. The term ("Term") of this Lease shall commence on the Effective Date, as defined on the signature page hereof (also referred to herein as the "Commencement Date"), and, unless extended or sooner terminated in accordance with the provisions of this Lease, shall expire on the date that is seventy-five (75) years after the Commencement Date. All obligations of Lessee under this Lease that have accrued but have not been fully performed as of the end of the Term, including without limitation indemnity obligations, shall survive the expiration or termination of the Term until fully performed.

(B) Renewal Options. Provided that, at the time that Lessee exercises each renewal option and on the commencement date of the applicable renewal period Lessee is not in default under this Lease beyond any applicable notice or cure period provided for herein, Lessee shall have the right to renew the Term of this Lease for two (2) successive renewal periods of ten (10) years each (each, a "Renewal Period"), on the same terms and conditions as set forth in this Lease except that, after the second Renewal Period, Lessee shall have no further renewal options (unless otherwise agreed in writing by the parties at that time). To exercise each renewal option, Lessee must give the City written notice thereof no less than twelve (12) months (but no sooner than 18 months) prior to the date that the initial Term (or, if applicable, the first Renewal Period) would otherwise have expired. As used herein, the "Term" of this Lease means the initial Term and, if applicable, the first Renewal Period and second Renewal Period.

5. PERMITTED USE

(A) Legal Requirements. Lessee shall use the Garage Site solely for the operation of the Garage and uses incidental thereto. Lessee shall obtain and maintain all necessary permits and shall operate and maintain the Garage Site in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the Garage Site, including without limitation all environmental laws (collectively, "Legal Requirements"). Lessee's temporary closing of all or parts of the Garage for maintenance and repairs or due to Force Majeure (as

hereinafter defined) shall not constitute a violation of this Section. For purposes of this Lease, "Force Majeure" shall mean any event beyond the reasonable control of Lessee, including any one or more of the following events: (i) acts of God; (ii) unusually adverse weather conditions in the region where the Property is located which are abnormal for the time of year based on average weather patterns for the past five (5) years for such region; (iii) war and acts of terrorism; (iv) strikes; (v) fire or casualty; (vi) failure of governmental entities to timely act with regard to applications and with regard to issuance of permits; or (vii) shortage or unavailability of labor or materials.

(B) Parking Use. The Lessee recognizes the parking spaces in the Garage are necessary for Lessee to meet the Wheaton Towers PUD parking requirements; therefore, in compliance thereof, the Garage shall at all times contain a total of no less than 414 automobile parking stalls, subject to the exercise of the City's rights under Section 2(B) hereof. Lessee shall use reasonable efforts to create and enforce an operational plan that, in Lessee's reasonable discretion, maximizes utility for both residential tenants of the Residential Parcel and commuters of the Metra Rail System ("Commuters") at all times taking into consideration the needs of Commuters to have ample available parking during peak commuting hours (which as of the date hereof, the number of parking spaces needed to be available at peak commuter hours is 314, which number may be reduced should the City exercise its rights under Section 2(B) hereof), and, at Lessee's option, having up to 100 parking spaces located on the second level of the Garage being reserved at all times for residents of the Residential Parcel. The Garage shall be managed so as to continue to provide parking for the invitees and guests of tenants of the shopping center located at 535-571 West Liberty Drive, Wheaton IL (hereinafter "Shopping Center") which is adjacent to and immediately east of the Garage Site, as depicted on Exhibit C (Commercial Site Map) in conformance with Wheaton Towers PUD and consistent with past practices. Any dispute regarding parking in the Garage between the owner(s) of the Shopping Center and the Lessee shall, at the written request of either Lessee or the owner(s) of the Shopping Center after such dispute remains unresolved for more than ninety (90) days, be submitted to the Lessor for resolution and in such event, Lessor shall make such determination in its reasonable discretion taking into account the past practices with respect to the use of spaces in the Garage among Lessee, the Shopping Center Owner, their respective guests and invitees and Commuters. The Lessor's resolution of the issue shall be binding except that the Lessor shall not render a resolution which is contrary to the terms of the Wheaton Center PUD or in any manner that compromises the parking requirements set forth in this Section 5(B) or in any manner that is inconsistent with past practices without (in each of the foregoing instances) the written consent of the owners of the Residential Parcel and of the Shopping Center provided, however in addition, the resolution of this issue by Lessor may not impose on the Lessee, for the benefit of the Shopping Center, a number of parking spaces which exceeds twenty seven (27)¹ regardless of the circumstances, including any changes or proposed changes in the use of the Shopping Center at that time.

6. RENT

Beginning on the Commencement Date, Lessee shall owe the City base rent ("Base Rent") in the amount of One Dollar (\$1.00) per year. The City acknowledges receipt of \$75 from Lessee, being the Base Rent for the initial 75 year Term of this Lease. In lieu of additional rent beyond, the Base

¹ Twenty-Seven (27) is the number of additional parking spaces, excluding its current onsite parking, that would be required of the Shopping Center under the Zoning Ordinance if the Shopping Center was not part of the PUD.

Rent, the Lessee shall allocate funds necessary to meet Lessee financial obligations set forth in Section 8.

7. REAL ESTATE TAXES

Lessee shall pay all real estate taxes and assessments levied against the Garage Site that become due and payable during the Term. Upon request by the City, Lessee shall furnish the City with appropriate evidence of payment. If Lessee institutes proceedings to contest the validity or amount of such taxes, which Lessee shall have the right to do in its sole and absolute discretion, the City, at no cost to the City, shall cooperate with Lessee to the extent that the participation of the owner of the Lessor's interest under this Lease is required, but Lessee may not defer payment of such taxes during such contest unless permitted by applicable law provided however, the City shall not be obligated to cooperate in such contest, if after reviewing any such request, the City determines in its reasonable discretion that such cooperation would not be in the best interest of the City. Lessee shall be solely entitled to any and all amounts recovered which relate to tax payments previously made by Lessee.

8. OPERATION OF THE GARAGE

(A) Maintenance and Repairs; Services. Throughout the Term, Lessee shall keep the Garage Site in good, clean and safe condition and repair and for the good of the general public. Lessee shall provide all security and other services for the Garage consistent with services offered at other public parking facilities of similar age, size, quality and amenities in the western suburban Chicago metropolitan area. The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Garage Site under this Lease.

(B) Reporting of Accidents and Other Significant Occurrences. Lessee shall keep the City informed of all reported accidents and other significant, unanticipated occurrences at or otherwise affecting the Garage that involve public health or safety issues or that Lessee reasonably believes could lead to negative publicity.

(C) Parking Rates. Lessee shall set commercially reasonable parking rates for Commuters use of the Garage throughout the Term, which shall be subject to final approval by the City Manager: such approval not to be unreasonably withheld. A significant factor in determining parking rates for daily Commuters shall be the prevailing daily commuter parking fee charged by other communities on the Metra Rail System for similar parking. The proximity and convenience of the Garage to Metra's commuter facilities, its partially "covered" nature and other special amenities being offered shall also be taken into consideration. On the date of Lessee's execution of this Lease, Lessee's parking rates for Commuter's use of the Garage for the first year of operation are set forth on Exhibit D (Garage Parking Rates (First Year)) hereto. No less than thirty (30) days prior to each date on which Lessee intends to change the previously-approved parking rates, Lessee shall submit the same to the City Manager for approval.

(D) Parking Garage Operator. If Lessee hires an independent parking Operator to manage and operate the Garage, each such parking Operator shall be reputable, have prior experience in operating public parking garages, and be subject to final approval by the City Manager: such approval not to be unreasonably withheld. Lessee shall provide the City with a copy of each parking

management agreement no less than thirty (30) days prior to the date on which such agreement will go into effect. The hiring by Lessee of a parking Operator for the Garage shall not relieve Lessee from any obligations or liability under this Lease.

(E) Third Party Contracts. Lessee shall have authority to enter into contracts with third parties for all labor, materials and services required in connection with the operation of the Garage. Each such contract entered into by Lessee shall (i) be either in the name of Lessee or its designee as agent for Lessee, and (ii) require all contractors to provide evidence of sufficient insurance (e.g., worker's compensation, employer's liability covering all persons performing work, and commercial general liability insurance in an amount not less than Three Million Dollars (\$3,000,000) per occurrence, combined single limit (which coverage can consist of a combination of primary and umbrella coverage), naming the City as an additional insured. Upon the City's request, Lessee shall provide the City with copies of fully-executed contracts with third parties which call for payments in excess of \$100,000 so that the City can determine whether the requirements set forth herein have been satisfied. The amount of this insurance requirement may be increased by the City in its reasonable discretion to reflect insurance industry trends or unit of government insurance trends at the time of the increase. At the end of the Term, Lessee shall, upon the City's request, assign to the City all of Lessee's interests under such contracts or any one or more of them as designated by the City. If the City elects not to assume any one or more of such contracts, Lessee shall be solely responsible for terminating such contracts, including without limitation paying any and all termination fees or penalties associated therewith. Notwithstanding anything in this Lease to the contrary, Lessee shall not have the authority to enter into any contract in the name of, or to exercise any right or make any decision on behalf of, the City.

(F) Reporting Requirements. Throughout the Term, Lessee shall provide the City with the following information and reports:

(i) Capital Budget. Prior to the beginning of each calendar year during the Term, Lessee shall provide the City with a budget for anticipated capital expenditures for the Garage for the upcoming year.

(ii) Inspection Report. On an annual basis, Lessee shall provide the City with a copy of Lessee's internally-generated engineering and building system inspection report which details the physical condition of building systems and structural items, together with Lessee's proposed maintenance schedule pertaining thereto.

(iii) Structural Engineering Report. On the fifteenth (15th) anniversary of the Commencement Date (as defined in Section 4(A) above), and on each successive fifteenth (15th) anniversary thereafter, Lessee, at its expense, shall provide the City with a structural engineering report, prepared by a reputable licensed structural engineer, assessing the then current structural integrity of the Garage.

(iv) Garage Attendance Report. Within sixty (60) days after the end of each calendar year, Lessee shall provide the City with a paid attendance report for the year that just ended showing the number of commuter motor vehicles that were parked at the Garage during such year.

(G) City's Right to Inspect. The City shall have the right, in its sole discretion, to inspect the Garage as it deems appropriate.

(H) Name of Garage. Lessee shall refer to the Garage as the "Wheaton Center Commuter Garage" or such other name as may be agreed to by Lessee and the City Manager from time to time.

9. ALTERATIONS; SIGNS; NO LIENS

(A) Alterations. From and after substantial completion of the Garage Work, Lessee shall not make any material alterations, additions or other changes to the Garage Site without the prior written consent of the City, which consent shall not be unreasonably conditioned, withheld or delayed, including without limitation changes that (i) affect the structural portions of the Garage, the mechanical equipment serving the Garage, the utility systems serving the Garage, or the ingress, egress or traffic flow within the Garage, or (ii) would diminish the fair market value of the Garage Site. Lessee shall have the right to make emergency repairs and shall provide the City of Wheaton Building and Code Enforcement Department drawings or other documents as soon as reasonably practical detailing such repairs. Lessee shall have the right to make all minor and cosmetic-type alterations to the Garage Site without having to obtain the City's prior consent. All alterations made by Lessee shall be made in a good and workmanlike manner, in compliance with all Legal Requirements, shall not diminish the value of the Garage Site, and shall be consistent with the quality, design, functionality, and aesthetic appeal of the Garage Site. Once installed, Lessee shall not remove such alterations (unless such removal shall be in the ordinary course of operating the Garage or shall have been consented to in writing by the City), and Lessee shall surrender the same to the City at the end of the Term as described in Section 15 below.

(B) Signs. Lessee shall be permitted to install directional, informational, advertising and other signs at the Garage Site as Lessee deems appropriate provided that all such signs are professionally prepared, comply with all Legal Requirements, and have been reviewed and approved in writing by the City Manager. Lessee shall, at its expense, keep all signs in good condition and repair. City acknowledges that all such signs at the Garage on the date hereof have been approved by City.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Garage Site as a result of labor or material furnished at Lessee's request, Lessee shall cause the lien to be released or bonded off within thirty (30) days following the filing of such lien. If the Lessee fails to diligently secure release or bonding of a lien within a reasonable time the City, after providing no less than 180 days prior written notice to Lessee, may undertake legal action to accomplish the same and shall be entitled to reimbursement from the Lessee of its reasonable attorney's fees and costs for such undertaking.

10. PERMITTED LEASEHOLD MORTGAGES

(A) Lessee shall have the right, at any time and from time to time, to enter into and grant any Leasehold Mortgages (as such term is hereinafter defined), on such terms, conditions and maturity as Lessee shall determine so long as no Leasehold Mortgagee (as such term is hereinafter defined) requires Lessor to execute or join in such Leasehold Mortgage or otherwise subordinate its interest in

the Land and any and all buildings and improvements presently located or hereafter constructed on the Land (the "**Improvements**," the Land and the Improvements are hereinafter referred to as the "**Leased Premises**") to the lien of such Leasehold Mortgage. In addition, Lessee shall have the absolute right, at any time and from time to time, to grant to any Leasehold Mortgagee a security interest in the personal property owned by Lessee and located at the Leased Premises and/or a collateral assignment of subleases or licenses by Lessee of all or any portion of the Leased Premises and the rents, issues and profits therefrom, if any, and Lessor hereby agrees that any interest that Lessor may have in such personal property or subleases or licenses, as the case may be, whether granted pursuant to this Lease or by statute, shall be subordinate to the interest of any such Leasehold Mortgagee. Lessor agrees to execute and deliver, on demand, in recordable form, any instruments which may reasonably be requested by Lessee or any Leasehold Mortgagee to accomplish the aforesaid subordination of Lessor's rights in such personal property and subleases or licenses. Any and all Leasehold Mortgagees shall have the rights and powers set forth in this Section 10. As used in this Lease, (x) the term "**Leasehold Mortgage**" shall mean each and every recorded mortgage, deed of trust, deed to secure debt, collateral assignment of lease or other similar instrument creating a lien or other encumbrance on any portion of Lessee's interest in, to or under this Lease and the Leased Premises (the "**Leasehold Estate**") (regardless of the priority thereof) and any modification of any of the terms thereof, including, without limitation, any extension, renewal or refinancing of any indebtedness secured thereby or any additional advance secured by any Leasehold Mortgage or any additional Leasehold Mortgage given to secure the same and (y) the term "**Leasehold Mortgagee**" shall mean any person which makes or holds any Leasehold Mortgage, it being understood that Lessee may at any time and from time to time, concurrently or otherwise grant one or more Leasehold Mortgages and each such holder shall be deemed to be a "Leasehold Mortgagee."

(B) So long as any Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply, notwithstanding anything to the contrary contained in this Lease, and any pertinent provisions of this Lease shall be deemed to be amended and modified to the extent necessary so as to provide as follows:

(i) There shall be no cancellation (unless this Lease is terminated by Lessor in accordance with the terms of Section 10(B)(iv) or Section 10(B)(v) below), surrender, acceptance of surrender or modification of this Lease without the prior written consent of each Leasehold Mortgagee.

(ii) Lessor shall, at the time the same is served upon Lessee, give to each Leasehold Mortgagee of record of which Lessor has received written notice, a copy of each notice or demand which it gives to Lessee pursuant to this Lease or in connection with this Lease or the Leased Premises, including all notices of default by Lessee (which shall specify the default), and the same shall not be effective for any purpose unless and until a copy thereof has been so delivered.

(iii) Each Leasehold Mortgagee shall have the right, but not the obligation, to perform any covenant or agreement under this Lease to be performed by Lessee, and Lessor shall accept such performance by any Leasehold Mortgagee as if performed by Lessee. Lessee constitutes and appoints each Leasehold Mortgagee Lessee's attorney-in-fact with full power, in Lessee's name, place and stead, at Lessee's cost and expense, to enter upon the Leased

Premises to perform any of Lessee's obligations under this Lease. Each Leasehold Mortgagee shall have the right (but not the obligation) to cure Lessee's defaults at any time within sixty (60) days (which shall be reduced to thirty (30) days with respect any default by Lessee which is of such a nature that it would jeopardize Lessor's interest in the Leased Premises) (such period being referred to herein as the "**Mortgagee's Grace Period**") following the expiration of Lessee's grace period applicable to such default, subject to extension of Mortgagee's Grace Period as provided in subsection (iv) below.

(iv) If Lessor shall intend, by reason of any Lessee's default, to terminate this Lease prior to the stated expiration of the Lease Term, Lessor shall notify every Leasehold Mortgagee of record or which Lessor has received written notice of, such intention (and the reasons therefor) at least fifteen (15) business days in advance of the proposed effective date for such termination. Each Leasehold Mortgagee, in addition to any and all rights hereunder that it may have, shall have the right to postpone the date on which this Lease would so terminate for a period of not more than sixty (60) days, unless a longer period of time shall be needed to obtain possession from Lessee and cure such default, in which event the date of termination shall be postponed for such longer period, provided such Leasehold Mortgagee, prior to the expiration of such sixty (60) days following receipt of Lessor's notice of intention to terminate, shall have (1) given to Lessor written notice of its intention to cure all defaults by such Leasehold Mortgagee other than an Insolvency Event (as hereinafter defined), (2) cured all defaults, if any, then existing which may be cured by the payment of a sum of money (excepting obligations of Lessee to discharge liens, charges or encumbrances against Lessee's Leasehold Estate), and (3) initiated, and be diligently pursuing, steps to acquire the Leasehold Estate by foreclosure of its Leasehold Mortgage or otherwise. If (A) a Leasehold Mortgagee or other person shall obtain possession of the Leased Premises or shall have acquired Lessee's Leasehold Estate by foreclosure or other enforcement proceeding under any Leasehold Mortgage or by obtaining an assignment of the Leasehold Estate *in lieu* of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (any of the foregoing being referred to as an "**Enforcement Proceeding**"), (B) a lease assumption agreement shall be delivered to Lessor by such Leasehold Mortgagee in possession or its designee, regarding covenants and conditions contained in this Lease on Lessee's part to be performed, and (C) such Leasehold Mortgagee shall have complied with all obligations on Lessee's part to be performed under this Lease, including the curing of all defaults other than an Insolvency Event, then (x) a default related to an Insolvency Event shall be deemed waived and all rights of Lessee under this Lease shall be deemed reinstated, (y) such Leasehold Mortgagee or other person shall be deemed to be the Lessee under the Lease, and (z) notwithstanding any provision in this Lease to the contrary, such Leasehold Mortgagee or other person or any of their respective designees or nominees and their respective successors and assigns shall have the further right to assign, from time to time, the Leasehold Estate without Lessor's consent. No Leasehold Mortgagee shall be required to continue to proceed to obtain possession, continue in possession of the Leased Premises as Leasehold Mortgagee or to continue to prosecute any Enforcement Proceedings or other remedies, including, without limitation, at any time any such defaults which were the basis for the termination of this Lease shall be cured. If more than one Leasehold Mortgagee shall seek to exercise the rights provided for in this subsection, the Leasehold Mortgagee with the most senior lien priority shall be entitled, as against the others, to priority in the exercise of such rights.

(v) If this Lease shall be terminated or cancelled prior to the stated expiration of the Lease Term for any reason, including, without limitation, as a result of any Lessee's default or Lessee's rejection of this Lease in any bankruptcy proceeding, Lessor promptly will notify each Leasehold Mortgagee of such termination (including, without limitation, any such rejection) and Lessor shall, within sixty (60) days after request by the Leasehold Mortgagee having the most senior lien priority (or such other Leasehold Mortgagee, in order of lien priority, if the Leasehold Mortgagee having the most senior lien shall not have made such request), enter into a replacement lease for the Leased Premises with said Leasehold Mortgagee or its nominee or designee, which lease shall have the same priority as this Lease, be for the remainder of the Lease Term, have the same terms and conditions contained in this Lease (but shall exclude any Personal Covenant), and grant to or confirm in such Leasehold Mortgagee or its nominee or designee the same interest (as a tenant) in and to the improvements as previously held by Lessee under this Lease; provided, however, that the foregoing right to obtain a replacement lease is contingent upon a request therefor being made within sixty (60) days after receipt of Lessor's notice of termination (including, without limitation, any such rejection), and such Leasehold Mortgagee, at the time of execution and delivery of said replacement lease, paying to Lessor any and all sums then due under this Lease. In no event, however, shall such Leasehold Mortgagee or its nominee or designee be required to cure a default under this Lease due to an Insolvency Event in order to obtain a replacement lease.

(vi) Any Leasehold Mortgagee or equitable owner of Lessee's Leasehold Estate shall have the right, in the event of any default under its Leasehold Mortgage or any of the other documents executed in connection with such Leasehold Mortgage and if allowed by law or its agreements with Lessee, to take possession of the Leased Premises and manage the same and collect rents subject to paying the rent required pursuant to the terms of this Lease.

(vii) No Leasehold Mortgagee or other person succeeding to the Leasehold Estate through or subsequent to an Enforcement Proceeding shall be liable under this Lease, unless and until such time as it becomes the owner of the Leasehold Estate, and then only for such obligations of Lessee which accrue during the period while it remains the owner of the Leasehold Estate.

(viii) Notwithstanding any provision in this Lease to the contrary, in the event of any casualty to or condemnation of the Leased Premises or any portion thereof and if allowed by law or its agreements with Lessee, the most senior Leasehold Mortgagee (or such other Leasehold Mortgagee, in order of lien priority, if the Leasehold Mortgagee having the most senior lien shall not request or shall not be permitted by law or its agreements with Lessee to do so) shall be permitted to receive insurance proceeds and/or condemnation awards otherwise payable to Lessee and shall be permitted.

(ix) Lessor, upon the request of Lessee or any Leasehold Mortgagee, shall otherwise reasonably cooperate with Lessee in obtaining any Leasehold Mortgage from time to time if such modifications or amendments do not, taken as a whole, materially affect Lessee's obligations or materially affect Lessor's rights under this Lease.

(x) Any notices to be sent to any Leasehold Mortgagee shall be sent to the addressees and at the addresses designated by such Leasehold Mortgagee from time to time, by any method permitted for notices under Section 16 of this Lease.

11. INSURANCE; INDEMNITY

(A) Insurance. Lessee shall maintain, or cause to be maintained, not less than the following insurance coverages:

(i) special peril (formerly known as “all-risk”) full replacement cost insurance, including coverage for explosion and collapse, on the Garage, naming the City and Lessee as their interests may appear;

(ii) property insurance on any and all personal property of Lessee from time to time located at the Garage Site in the amount of the full replacement cost thereof;

(iii) commercial general liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at the Garage Site in an amount not less than One Million Dollars (\$1,000,000) per accident, combined single limit, and garage keepers insurance in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000) for loss in any one event, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary for similar-sized parking facilities in the Chicago metropolitan area, naming the City as an additional insured;

(iv) workers’ compensation insurance as required by law; and

(v) such other or additional amounts of insurance as may be required under any and all Permitted Mortgages.

(B) Policy Requirements. Lessee’s insurance policies shall: (i) be written in standard form by insurance companies authorized to do business in Illinois and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. Lessee shall annually provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(C) Waiver of Subrogation. Lessee hereby waives all claims and rights of recovery, and on behalf of Lessee’s insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) Indemnity. The City assumes no responsibility for any acts, errors or omissions of

Lessee or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("Indemnified Parties") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Garage Site or in connection with any breach by Lessee under this Lease; excluding, however, any of the foregoing caused by the negligence or willful misconduct of the Indemnified Parties.

(E) Insurance Escalator. The foregoing minimum insurance requirements may be increased by the City in its reasonable discretion to reflect insurance industry or unit of government insurance trends at the time of the increase.

12. DEFAULT; REMEDIES

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than thirty (30) days after Lessee receives written notice thereof from the City;

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than thirty (30) days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if Lessee commences to cure such failure within such thirty (30) day period and proceeds to remedy the cure with reasonable diligence. The foregoing notwithstanding, if the failure creates a threat of imminent harm to persons or property or otherwise constitutes an emergency as reasonably determined by the City, an event of default shall be deemed to have occurred if Lessee fails to address such condition immediately upon receipt of written notice from Lessor of such imminent harm or emergency (an "Emergency Situation Default"); and

(iii) The commencement of levy, execution or attachment proceedings against Lessee, or any of the assets of Lessee, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Lessee; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Lessee; or the commencement of a case by or against Lessee under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the

appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings with respect to any of the proceedings set forth in this subsection (iii), the same shall be dismissed within ninety (90) days after institution) (individually and collectively, “Insolvency Event”).

Notwithstanding the foregoing or anything to the contrary contained herein, Lessee shall not be in default of any obligation hereunder if and for so long as Lessee is unable to perform such obligation due to one or more events of Force Majeure.

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under Section 12(A) above, the City shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof except in connection with an Emergency Situation Default, (ii) take such actions in the way of “self help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Lessee under this Lease or the City’s enforcement or termination of this Lease. Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

(C) Rights of Leasehold Mortgagees. Notwithstanding the City’s termination rights provided or in Section 12(B) above, prior to exercising such termination rights the City shall provide each Leasehold Mortgagee with notice and an opportunity to cure as described in Section 10(B) above.

13. ASSIGNMENT AND SUBLetting

Lessee shall have the right, without the consent of the City, to sell, assign, convey or otherwise transfer its interest in the Lease to any person, corporation or other entity provided that the transferee shall assume all of the obligations and covenants to be performed by Lessee under this Lease and is also transferred ownership of the land legally described on Exhibit B attached hereto and made a part hereof (the “Residential Parcel”), at the time of the transfer of the Lease, and in the event of such transfer the transferor shall be relieved of its obligations hereunder from and after the date of such assignment and assumption. Any sale, assignment, conveyance or other transfer of Lessee’s interest in the Lease not done with a concurrent sale, assignment, conveyance or other transfer of the Residential Parcel shall require the consent of the City, which consent will not be unreasonably withheld, conditioned or delayed.

14. ESTOPPEL CERTIFICATES

Within fifteen (15) days after written request from the other party, each party shall execute and deliver to the requesting party an estoppel certificate (i) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Lease, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Lease as the requesting party may reasonably request.

15. SURRENDER; HOLDOVER

(A) Surrender. On the last day of the Term of this Lease, Lessee shall surrender the Garage Site, including the Garage, to the City in good condition and repair, reasonable wear and tear excepted, and free and clear of all mortgages and other monetary liens. From and after the date of surrender, the City shall be deemed to be the owner of the Garage for all purposes. On or before the last day of the Term, Lessee shall remove all of Lessee's personal property, and any property not so removed shall be deemed abandoned. Lessee shall not remove any signs, trade fixtures, ordinary fixtures or equipment used in connection with the Garage unless the City approves of such removal in writing. Lessee shall promptly repair any and all damage to the Garage Site caused by its removal of any items under this Section.

(B) Holdover. If Lessee fails to surrender possession of the Garage Site to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable by the City at any time by giving written notice thereof to Lessee. Lessee shall be liable for all costs and damages suffered or incurred by the City as a result of Lessee's holding over.

(C) Documents to be Delivered to City. At the end of the Term of this Lease, Lessee shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, contracts with third parties, warranty information, and all other written materials and documents that are in Lessee's possession or under Lessee's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Garage.

16. NOTICES

All notices required to be given to any party under this Lease shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

If intended for City:
City of Wheaton
303 West Wesley Street
Wheaton, IL 60187

If intended for Lessee:
c/o Draper and Kramer, Inc.
33 West Monroe Street, Suite 1900
Chicago, IL 60603

ATTN: City Manager

ATTN: General Counsel

with a copy to:

Edge Principal Advisors, LLC
1700 Broadway, 38th Floor
New York, New York 10019
Attention: Matthew Ross

17. CASUALTY.

If the Garage is damaged or destroyed by fire or other casualty, Lessee, at its own expense, shall repair or restore the Garage within a reasonable period of time. Any insurance proceeds payable by reason of such casualty or other occurrence (other than proceeds of business interruption insurance) shall be applied by Lessee to such repair or restoration.

18. COVENANT OF QUIET ENJOYMENT

The City covenants and agrees that Lessee shall, during the Term, peaceably and quietly have, hold and enjoy the Garage Site subject to the terms, covenants, conditions, provisions and agreements hereof.

19. GENERAL PROVISIONS

(A) Entire Agreement. This Lease constitutes an amendment and restatement of the Lease in its entirety from and after the Commencement Date, with the Original Lease, as amended, being in effect prior to the Commencement Date, including with respect to any hold harmless and indemnification provisions contained therein. This Lease (including the exhibits hereto and the other agreements referred to herein) contains the entire agreement between the parties with respect to the subject matter hereof and from and after the Commencement Date supersedes the Original Lease and any and all prior amendments discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof, and from and after the Commencement Date, the parties hereto need only refer to this Lease for their respective rights and obligations.

(B) Amendments. This Lease may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Illinois. All actions regarding this Lease shall be brought in the 18th Judicial Circuit Court, DuPage County, Illinois and Lessee agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various sections and Sections of this Lease are not part of the context hereof and are only guides to assist in locating such sections and Sections and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

(G) Recording. This Lease shall be recorded in the DuPage County Recorder's office.

(H) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Lease.

(I) No Third Party Beneficiaries. The parties hereby agree that, except for the rights of Leasehold Mortgagees under Section 10 hereof, no third party beneficiary rights are intended to be created by this Lease.

(J) No Brokers. The City and Lessee represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. The City and Lessee each represents to the other that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease have been duly authorized by all necessary actions on the part of the performing party.

(M) Good Faith, Fair Dealing and Reasonableness. Lessee and City acknowledge their duty to exercise their rights and remedies and perform their obligations reasonably and in good faith. Wherever a party's consent or approval is required, unless this Lease expressly provides, otherwise, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Whenever the provisions of this Lease allow City or Lessee to perform or not perform some act at its option, in its judgment, or to its satisfaction, the decision of City and Lessee to perform or not perform such act must be commercially reasonable unless this Lease expressly provides otherwise.

(N) Limitations on Liability.

(i) City's Liability. Notwithstanding anything contained in this Lease to the contrary, the liability of City (and its predecessors or successors) to Lessee (or any person or

entity claiming by, through or under Lessee) for any monetary damages arising from any default by City under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Project shall be limited to Lessee's actual direct, but not consequential, punitive or incidental, damages therefor.

(ii) Lessee's Liability. Notwithstanding anything contained in this Lease to the contrary, the liability of Lessee (and its predecessors or successors) to City (or any person or entity claiming by, through or under City) for any monetary damages arising from any default by Lessee under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Project shall be limited to City's actual direct, but not consequential, punitive or incidental damages therefor.

(O) City's Lien. City hereby forever waives and releases any and all landlord's liens and any and all other statutory or other rights of a landlord to encumber any property of Lessee on account of this Lease. Notwithstanding the foregoing, in no event shall City be deemed to have waived or released any judgment lien that may be hereafter obtained.

(P) Exhibits. The following Exhibits are attached hereto and made a part hereof:

Exhibit A – Legal Description of Land
Exhibit B – Legal Description of Residential Parcel
Exhibit C – Commercial Site Map
Exhibit D – Garage Parking Rates, First Year

SIGNATURES ON FOLLOWING PAGE

In Witness of the foregoing, the undersigned have executed this Amendment as of the date first written above.

CITY:

CITY OF WHEATON
DUPAGE COUNTY, ILLINOIS

By: Michael J. Gresk, Mayor

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2015.

My Commission Expires:

LESSEE:

WHEATON APARTMENTS OWNER LLC, a Delaware limited liability company

By: Wheaton Apartments LLC, a Delaware limited liability company, its Sole Member

By: DK Wheaton Apartments Member LLC, an Illinois limited liability company, its Managing Member

By: Draper and Kramer Investments Corp., a Delaware corporation, its Managing Member

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
COUNTY OF COOK)
) SS.
)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2015.

My Commission Expires:

EXHIBIT A

LAND

That part of Lot 6 of the County Clerk's Assessment Division in the South East 1/4 of Section 17, Township 39 North, Range 10, East of the Third Principal Meridian, bounded and described as follows: on the North by the South right of way line of the Chicago and North Western Railroad, on the South by the North line of Liberty Drive, on the East by a line drawn at right angles to the North line of Liberty Drive, 415 feet Easterly of the West line of said Lot 6, and on the West by a line parallel to and 66 feet East of the West line of said Lot 6, running from the North line of Liberty Drive, to the point of intersection with the East line of the former right of way of the Chicago, Aurora and Elgin Railroad and then Northwesterly along said right of way line to the point of intersection with the South right of way line of the Chicago and North Western Railroad, in the City of Wheaton, in DuPage County, Illinois.

Also known as:

That part of Lot 6 of the County Clerk's Assessment Division in the Southeast quarter of Section 17, Township 39 North, Range 10, East of the Third Principal Meridian, bounded as follows: on the North by the South right of way line of the Chicago and North Western Railroad, on the South by the North line of Liberty Drive, on the East by a line drawn at right angles to the North line of Liberty Drive, 415 feet Easterly of the West line of said Lot 6, and on the West by a line described by commencing at a point 66 feet East of the West line of said Lot 6, which point is on the North line of Liberty Drive; thence running North and parallel with the West line of said Lot 6, from the North line of Liberty Drive, to the point of intersection with the East line of the former right of way of the Chicago, Aurora and Elgin Railroad and then Northwesterly along said right of way line to the point of intersection with the South right of way line of the Chicago and North Western Railroad, in DuPage County, Illinois.

05-17-407-001

Property Address: 631 W. Liberty Drive, Wheaton, IL 60187

EXHIBIT B

LEGAL DESCRIPTION OF RESIDENTIAL PARCEL

PARCEL 2:

THAT PART OF THE LOT 6 OF THE COUNTY CLERK'S ASSESSMENT DIVISION OF THE SOUTH 1/2 OF THE NORTH EAST 1/4 AND THE SOUTH EAST 1/4 OF SECTION 17 AND THE NORTH 10 CHAINS OF THE NORTH EAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF CHILDS STREET IN THE CITY OF WHEATON WHICH IS 194.20 FEET WEST OF THE NORTH WEST CORNER OF THE INTERSECTION OF SAID CHILDS STREET AND WEST STREET; THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID WEST STREET A DISTANCE OF 160 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID CHILDS STREET A DISTANCE OF 250 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID WEST STREET A DISTANCE OF 160 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID CHILDS STREET; THENCE EAST ALONG THE NORTH LINE OF SAID CHILDS STREET A DISTANCE OF 250 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3:

A PART OF LOT 6 IN COUNTY CLERK'S ASSESSMENT DIVISION OF THE SOUTH 1/2 OF THE NORTH EAST 1/4 AND THE SOUTH EAST 1/4 OF SECTION 17 AND THE NORTH 10 CHAINS OF THE NORTH EAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF CHILDS STREET IN THE CITY OF WHEATON WHICH IS 444.2 FEET WEST OF THE NORTH WEST CORNER OF THE INTERSECTION OF SAID CHILDS STREET AND WEST STREET; THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID WEST STREET A DISTANCE OF 160 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID CHILDS STREET A DISTANCE OF 65 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID WEST STREET A DISTANCE OF 160 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID CHILDS STREET; THENCE EAST ALONG THE NORTHERLY LINE OF CHILDS STREET A DISTANCE OF 65 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 4:

THAT PART OF LOT 6 IN COUNTY CLERK'S ASSESSMENT DIVISION OF THE SOUTH 1/2 OF THE NORTH EAST 1/4 AND THE SOUTH EAST 1/4 OF SECTION 17 AND THE NORTH 10 CHAINS OF THE NORTH EAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: DESCRIBED BY COMMENCING AT THE SOUTH WEST CORNER OF THE NORTH EAST 1/4 OF SAID SOUTH EAST 1/4 OF SECTION 17 AND RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID NORTH EAST 1/4 OF THE SOUTH EAST 1/4 A DISTANCE OF 33.005 FEET TO THE NORTH LINE OF CHILDS STREET; THENCE EAST

ALONG SAID NORTH LINE 80.33 FEET TO THE EASTERLY LINE OF A TRACT OF LAND HERETOFORE CONVEYED TO DUPAGE COUNTY FOR A POINT OF BEGINNING; THENCE NORTH 2 DEGREES 54 MINUTES WEST ALONG SAID EASTERLY LINE 295.4 FEET TO AN ANGLE POINT IN SAID LINE; THENCE CONTINUING NORTH 00 DEGREES 05 MINUTES WEST ALONG THE EASTERLY LINE OF SAID DUPAGE COUNTY TRACT 252.32 FEET TO A LINE THAT IS PARALLEL WITH AND 66.0 FEET SOUTH OF THE SOUTH LINE OF LIBERTY DRIVE AS NOW OCCUPIED AND USED 45.0 FEET IN WIDTH; THENCE NORTH 89 DEGREES 53 MINUTES EAST ALONG SAID PARALLEL LINE, BEING ALONG THE SOUTHERLY LINE OF THE TRACT OF LAND HERETOFORE CONVEYED TO DUPAGE COUNTY 780.27 FEET TO AN IRON STAKE; THENCE NORTH 82 DEGREES 59 MINUTES EAST ALONG A SOUTHERLY LINE OF SAID DUPAGE COUNTY TRACT 200.0 FEET; THENCE NORTH 89 DEGREES 30 MINUTES EAST ALONG THE SOUTH LINE OF SAID LIBERTY DRIVE 92.50 FEET TO THE WEST LINE OF LOT 7 IN SAID COUNTY CLERK'S ASSESSMENT DIVISION; THENCE SOUTH 00 DEGREES 14 MINUTES EAST ALONG SAID WEST LINE AND ALONG THE WEST LINE OF LOT 8 AND SAID LINE EXTENDED 376.40 FEET TO THE NORTH LINE OF LOT 9 IN SAID ASSESSMENT DIVISION; THENCE SOUTH 88 DEGREES 54 MINUTES WEST ALONG SAID NORTH LINE 13.2 FEET TO THE NORTH WEST CORNER OF SAID LOT 9; THENCE SOUTH 00 DEGREES 14 MINUTES EAST ALONG THE WEST LINE OF SAID LOT 9 A DISTANCE OF 178.2 FEET TO A LINE THAT IS 66.0 FEET NORTH OF THE SOUTH LINE OF CHILDS STREET AS SAID LINE IS MONUMENTED AND OCCUPIED; THENCE SOUTH 88 DEGREES 54 MINUTES WEST ALONG SAID NORTH LINE 16.0 FEET TO THE EAST LINE OF A TRACT OF LAND HERETOFORE CONVEYED TO COMMONWEALTH EDISON COMPANY; THENCE NORTH 00 DEGREES 14 MINUTES WEST ALONG SAID EAST LINE 160.0 FEET TO THE NORTH EAST CORNER OF SAID COMMONWEALTH EDISON COMPANY TRACT; THENCE SOUTH 88 DEGREES 54 MINUTES WEST ALONG THE NORTH LINE OF SAID COMMONWEALTH EDISON COMPANY TRACT 315.0 FEET TO THE NORTH WEST CORNER THEREOF; THENCE SOUTH 00 DEGREES 14 MINUTES EAST ALONG THE WEST LINE OF SAID TRACT 160.0 FEET TO SAID NORTH LINE OF CHILDS STREET; THENCE SOUTH 88 DEGREES 54 MINUTES WEST ALONG SAID NORTH LINE 712.45 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 5:

EASEMENT FOR THE INGRESS AND EGRESS AS CREATED BY CROSS-EASEMENT BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 18, 1970 AND KNOWN AS TRUST NUMBER 29451 AND WEST LIBERTY ASSOCIATES LTD DATED AUGUST 5, 1998 AND RECORDED JULY 19, 1999 AS DOCUMENT NUMBER R1999-157390 OVER THE LAND DESCRIBED THEREIN, AS AMENDED BY FIRST AMENDMENT TO CROSS-EASEMENT AGREEMENT DATED AS OF OCTOBER 21, 2010 AND RECORDED NOVEMBER 4, 2010 AS DOCUMENT

NUMBER R2010-151251.

TAX PARCEL PERMANENT INDEX NUMBER

05-17-407-001 (AFFECTS PARCEL 1)
05-17-411-013 (AFFECTS PARCELS 2, 3 AND 4)
05-17-411-003 (AFFECTS PARCEL 5)

EXHIBIT D

ANTICIPATED GARAGE PARKING RATES (FIRST YEAR)

The parties acknowledge and agree that Lessee may charge different parking rates to persons who park in the Garage who are not Commuters.

As provided in Section 8(D) of this Lease, the actual initial parking rates for the Garage for Commuters, and any and all subsequent changes thereto, shall be subject to approval by the City Manager.

Commuter Parking Rates:

Lower Level Parking	\$2.50 per day
Upper Level	\$1.50 per day

CERTIFICATE AND NOTICE

CERTIFIED TO:

City of Wheaton (the "**Lessor**")
303 West Wesley Street
Wheaton, Illinois 60187

New York Life Insurance Company ("**Lender**")
c/o New York Life Investment Management LLC
51 Madison Avenue
New York, New York 10010-1603
Attention: Real Estate Group
Loan Administration Division-Senior Director

New York Life Insurance Company
51 Madison Avenue
New York, New York 10010-1603
Attention: Office of the General Counsel
Deputy General Counsel, Vice President
— Real Estate Section

THIS Certificate and Notice ("**Certificate and Notice**") is given by the Lessor and Lender for the benefit of the other.

WHEREAS, Lessor and Wheaton Apartments Owner LLC, a Delaware limited liability company ("**Lessee**"), have entered into that certain Amended and Restated Parking Garage Lease and Operating Agreement dated November __, 2015 (the "**Lease**"), which Lease amends and restates the Original Lease (as defined in the Lease).

WHEREAS, Lender has previously recorded that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of May 29, 2014, executed by Borrower for the benefit of Lender and recorded on May 30, 2014, with the DuPage County, Illinois Recorder as Document R2014-045314 (the "**Mortgage**") encumbering, among other things, Lessee's interest in the Original Lease.

WHEREAS, as condition to Lender consenting to Lessee entering into the Lease, Lessee and Lender have entered into that certain Second Modification of Loan Agreement, Mortgage and Other Loan Documents of even date herewith ("**Modification Agreement**"), which Modification Agreement shall spread the lien of the Mortgage so that it encumbers the Lease (rather than the Original Lease).

WHEREAS, as a further condition to Lender consenting to Lessee entering into the Lease, Lender is requiring that Lessor deliver this Certificate and Notice to Lender.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby certify and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct.

2. **Terms of Lease.** Based on information and belief, the Lease is valid, presently in full force and effect, and is enforceable against Lessor and Lessee in accordance with its terms. There has been no amendment, modification, supplement or notice of any kind or nature changing or varying the stated terms and conditions of the Lease.

3. **Events of Default under Lease.** All base rent, percentage rent, reimbursables, charges and other fees owed as of the date of this Certificate and Notice under the terms of the Lease have been paid in full through the date of this Certificate and Notice. Based on information and belief, no event of default currently exists under the terms of the Lease on the part of either Lessor or Lessee; and no act or omission has occurred nor does any condition exist that would constitute an event of default by Lessor or Lessee under the terms of the Lease after the passage of time or the giving of notice or both. Lessor has not given Lessee any notice of a default under the Lease that has not been cured.

4. **Assignment and Subletting.** Neither Lessor nor, to Lessor's knowledge, Lessee has assigned any rights under the Lease, as security or otherwise except by Lessee to Lender in accordance with the Modification Agreement.

5. **Authority.** Lessor has full right and authority to enter into and execute this Certificate and Notice.

6. **Consent and Duty.** Lessor's consent to the assignment of the Lease by Lessee or the mortgage by Lessee of its interest in the Lease is not required. The Lessor has no legal obligation or duty under the Lease to provide this Certificate and Notice.

7. **Reliance.** In rendering this Certificate and Notice, Lessor's staff has examined the records of the Lessor and, to the best of the Lessor's knowledge and belief, the information contained herein is true and accurate. Lender may rely upon the information contained in this Certificate and Notice; provided, however, that this Certificate and Notice shall not be construed to constitute a covenant, guarantee, warranty, promise or representation of the Lessor upon which a claim of any nature may be asserted against the Lessor by any person or entity based on the representations made herein and is provided by the Lessor as a courtesy based on its best knowledge. Nothing in this Certificate and Notice shall constitute or be interpreted to constitute a waiver or release of any and all rights of the Lessor under the Lease which are specifically reserved by the Lessor in every respect.

8. **Notice to Lender.** This Certificate and Notice shall serve as (i) confirmation that Lender is a "Leasehold Mortgage" and the Mortgage is a "Leasehold Mortgage" under the Lease and (ii) notice to Lessor of the identity of Lender and of Lender's notice address. Pursuant to the terms of the Lease, Lessor shall hereafter send copies of all notices sent to Lessee to Lender as follows:

New York Life Insurance Company ("Lender")
c/o New York Life Investment Management LLC
51 Madison Avenue
New York, New York 10010-1603
Attention: Real Estate Group
Loan Administration Division-Senior
Director

with a copy to: New York Life Insurance Company
51 Madison Avenue
New York, New York 10010-1603
Attention: Office of the General Counsel
Deputy General Counsel, Vice President —
Real Estate Section

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, Lessor and Lender have executed this Certificate and Notice
as of the day of October, 2015.

ATTEST:

CITY OF WHEATON, DU PAGE COUNTY,
ILLINOIS

Name: _____
Title: City Clerk

By: _____
Name: _____
Title: City Manager

NEW YORK LIFE INSURANCE COMPANY

By: _____
Name: _____
Title: _____