



# City of Chicago



O2013-9545

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	12/11/2013
<b>Sponsor(s):</b>	Emanuel (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Lease agreement with Chicago Park District for use of property at 5440 S Racine Ave by Chicago Public Library
<b>Committee(s) Assignment:</b>	Committee on Housing and Real Estate



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

December 11, 2013

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Fleet and Facility Management, I transmit herewith ordinances authorizing the execution of lease and use agreements.

Your favorable consideration of these ordinances will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

## ORDINANCE

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

**SECTION 1:** On behalf of the City of Chicago, the Commissioner of the Department of Fleet and Facility Management is authorized to execute a Lease with the Chicago Park District, governing the City's use of property located at 5440 South Racine Avenue by the Chicago Public Library; such Lease to be approved by the Commissioner of the Chicago Public Library and approved as to form and legality by the Corporation Counsel in substantially the following form:

**LEASE**

**THIS LEASE** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between, **THE CHICAGO PARK DISTRICT**, a body politic and corporate and unit of local government (hereinafter referred to as the "the District") and, **THE CITY OF CHICAGO**, a municipal corporation and home rule unit of government (hereinafter referred to as "the City").

**RECITALS**

**WHEREAS**, the District is the owner of Sherman Park which is comprised of approximately 60.60 acres and which is located at 1301 West 52<sup>nd</sup> Street, Chicago, Cook County, Illinois (the "Park"); and

**WHEREASE**, since 1937 the City has operated the Sherman Park Branch of the Chicago Public Library on approximately 8,000 square feet of Park land located at 5440 South Racine Avenue as depicted on **Exhibit A** attached hereto and made a part hereof; and

**WHEREASE**, the 5440 South Racine Avenue building (the "Building") was constructed and is maintained by the City; and

**WHEREAS**, the District has agreed to formally lease to the City, and the City has agreed to formally lease from the District, approximately 8,000 square feet of vacant land within the Park for continued use as the location of the Sherman Park Branch of the Chicago Public Library with said leasehold comprising the physical Building footprint only; and

**WHEREAS**, the Illinois Intergovernmental Cooperation Act (5 ILCS 220 *et. seq.*) authorizes municipalities and other branches of government to collaborate jointly in the effective delivery of public services.

**NOW THEREFORE**, in consideration of the covenants, terms and conditions set forth herein, the parties hereto agree and covenant as follows:

**SECTION 1. GRANT**

The District hereby leases to the City the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

Approximately 8,000 square feet of vacant land located at 5440 South Racine Avenue, Chicago, Cook County, Illinois (part of PIN # 20-08-320-001; the "Premises").

**SECTION 2. TERM**

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The term of this Lease ("Term") shall commence on the Effective Date and shall end on December 31, 2038 unless sooner terminated as set forth in this Lease.

### SECTION 3. RENT, TAXES, AND UTILITIES

3.1 Rent. The City shall pay the District rent for use of the Premises in the amount of:

One Dollar (\$1.00) for the entire Term, the receipt and sufficiency of said sum being herewith acknowledged by both parties.

3.2 Utilities and Other Services. The City shall provide and pay for water, electricity, and gas for the Premises. The City shall pay when due all charges for telephone, cable, alarm systems, and all other communication systems that may be charged to the Premises during, or as a result of, the City's use of the Premises.

3.3 Leasehold Taxes. To the extent that the City is not exempt from taxes or fees, the City shall pay when due any and all leasehold taxes or other taxes assessed or levied on the Premises assessed in connection with this Lease or the City's use of the Premises. The City shall cooperate with the District in resolving any leasehold or other tax issues that may arise from the City's occupancy. The City shall not be responsible for any taxes assessed against third parties or the District's use or ownership of the Park or any other portion thereof.

### SECTION 4. ENJOYMENT OF PREMISES, ALTERATIONS AND ADDITIONS, SURRENDER

4.1 Covenant of Quiet Enjoyment. The District covenants and agrees that the City, upon observing and keeping the covenants, agreements and conditions of the Lease on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the Premises (subject to the provisions of the Lease) during the Term without hindrance or molestation by the District or by any person or persons claiming under the District.

4.2 The City's Duty to Maintain Premises and Right of Access. The City shall take reasonable efforts to maintain the Premises in a condition of good repair and good order and in compliance with all applicable provisions of the Municipal Code of Chicago. The District shall have the right of access to the Premises for the purpose of inspecting the Premises. The District will schedule the District's entry so as to minimize any interference with the City's use of Premises.

4.3 Use of the Premises. The City shall not use the Premises in a manner that would violate any law. The City further covenants not to do or suffer any waste or damage, comply in

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all respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments which may be applicable to the Premises or to the use or manner of use of the Premises. Any activities on the Premises must be limited to use as public library branch. The promotion and operation of a public library branch does not include direct or indirect participation or intervention in political campaigns on behalf of, or in opposition to, any candidate for public office. The City shall not use the Premises for political or religious activities. The City agrees that in providing programming on the Premises the City shall not discriminate against any member of the public because of race, creed, religion, color, sexual orientation, or national origin.

4.4 Alterations and Additions. The City may make alterations, repairs, and improvements to the Premises. Any expansion of the Building, however, shall only be undertaken by the City with the prior written approval of the District. The District shall not unreasonably withhold such consent. Any such alterations, repairs, improvements, and additions shall be made in full compliance with any applicable codes, laws, or standards. Any such alterations, repairs, improvements, and additions shall become the City's property.

4.5 Ownership of Building Structure. The City shall continue to own the Building and all of the trade fixtures, books, furniture, and all other equipment located within the Building.

### **SECTION 5. ASSIGNMENT AND LIENS**

5.1 Assignment. The City shall not assign the Lease in whole or in part, or sublet the Premises or any part thereof without the prior written consent of the District in each instance. The District shall not unreasonably withhold consent.

5.2 The City's Covenant against Liens. The City shall not cause or permit any lien or encumbrance, whether created by act of the City, operation of law or otherwise, to attach to or be placed upon the District's fee title or fee interest.

### **SECTION 6. INSURANCE AND INDEMNIFICATION**

6.1 Indemnification. Subject to allocation of adequate appropriations and other applicable legislative procedures, approvals, and requirements, the City shall indemnify, defend, and hold the District harmless against all liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, costs, damages, and expenses (including reasonable attorney's fees, expenses, and court costs), whether such claim is related to or arises from personal injury or property damage which may be expended by or accrue against, be charged to, or be recovered from the District by reason of the City's performance of or failure to perform any of the City's obligations under this Lease or the City's negligent acts or failure to act, or resulting from the

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acts or failure to act of the City's contractors, respective officers, directors, agents, employees, or invitees or any liabilities, judgments or settlements that may arise from any access to the Premises by the City's invitees or any third parties.

6.2 Self-Insurance. The City is self-insured and will provide the District with a letter executed by an authorized official indicating that the City is self-insured. This letter shall be provided to the District on an annual basis.

### **SECTION 7. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS**

7.1 Conflict of Interest. No official or employee of the City of Chicago, nor any member of any board, commission or agency of the City of Chicago, shall have any financial interest (as defined in Chapter 2-156 of the Municipal Code), either direct or indirect, in the Premises. Nor shall any such official, employee, or member participate in making or in any way attempt to use his/her position to influence any governmental decision or action with respect to this Lease.

7.2 Duty to Comply with Governmental Ethics Ordinance. The City and the District shall comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to section 2-156-120, which states that no payment, gratuity, or offer of employment shall be made in connection with any City of Chicago contract, as an inducement for the award of that contract or order. Any contract or lease negotiated, entered into, or performed in violation of any of the provisions of Chapter 2-156 shall be voidable as to the City.

### **SECTION 8. HOLDING OVER**

8.1 Holding Over. Any holding over by the City shall be construed to be a tenancy from month to month beginning on January 1, 2039 and the rent shall be the same as listed in Section 3.1 of this Lease. During such holding over all other provisions of this Lease shall remain in full force and effect.

### **SECTION 9. MISCELLANEOUS**

9.1 Notice. All notices, demands or requests which may be or are required to be given, demanded or requested by either party or to the other shall be in writing. All notices, demands and requests to the City shall be delivered by national overnight courier or shall be by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the City as follows:

City of Chicago

Chicago Public Library  
Attn: Commissioner's Office  
400 South State Street, 10<sup>th</sup> Floor  
Chicago, Illinois 60605

With a copy to:

City of Chicago  
Department of Fleet and Facility Management  
Office of Real Estate Management  
30 North LaSalle - Suite 300  
Chicago, Illinois 60602

or at such other places as the City may from time to time designate by written notice. All notices, demands and requests to the District shall be delivered by national overnight courier or shall be by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the District as follows:

Chicago Park District  
Attention: General Counsel  
541 North Fairbanks Court, 7<sup>th</sup> Floor  
Chicago, Illinois 60611

or at such other place as the District may from time to time designate by written notice. Any notice, demand or request which shall be served upon to any party, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed.

9.2 Partial Invalidity. If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.

9.3 Governing Law. This Lease shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Lease, each party agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States the District Court for the Northern the District of Illinois.



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9.4 Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this Lease. This Lease contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

9.5 Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way affect this Lease.

9.6 Binding Effect of Lease. The covenants, agreements, and obligations contained in this Lease, shall extend to, bind, and insure to the benefit of the parties and their representatives, heirs, successors, and assigns.

9.7 Time is of the Essence. Time is of the essence of this Lease and of each and every provision hereof.

9.8 No Principal/Agent or Partnership Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

9.9 Authorization to Execute Lease. The parties executing this Lease hereby represent and warrant that they are the duly authorized and acting representatives of the City and the District respectively and that by their execution of this Lease, it became the binding obligation of the City and the District respectively, subject to no contingencies or conditions except as specifically provided herein.

9.10 Termination of Lease. The City and the District shall have the right to terminate this Lease without penalty by providing each other with at least one-hundred eighty (180) days' prior written notice after the Effective Date.

9.11 Force Majeure. When a period of time is provided in this Lease for either Party to do or perform any act or thing, the Party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, governmental regulation or control, and other causes beyond the reasonable control of the Party, and in such event the time period shall be extended for the amount of time the Party is so delayed.

9.12 Amendments. From time to time, the Parties hereto may administratively amend this Lease with respect to any provisions reasonably related to the City's use of the Premises and/or the District's administration of this Lease. Provided, however, that such amendment(s)

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shall not serve to extend the Term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both the City and the District. Such amendment(s) shall only take effect upon execution by both Parties. Upon execution, such amendment(s) shall become a part of this Lease and all other provisions of this Lease shall otherwise remain in full force and effect.

9.13 No Personal Liability. No elected or appointed official or member or employee or agent of the City or the District shall be individually or personally liable in connection with this Lease because of their execution or attempted execution or because of any breach hereof. This limitation on liability survives any termination or expiration of this Lease.

9.14 No Construction against Preparer. This Lease shall not be interpreted in favor of either the City or the District. The City and the District acknowledge that both parties participated fully in the mutual drafting of this Lease.

9.15 District Responsibilities for the Park. As part of the District's standard responsibilities, the District shall perform snow and ice removal from the Park sidewalks including the sidewalks at the front of the Building. As part of the District's standard responsibilities, the District shall perform landscaping for the Park including the areas that immediately abut the Building.

## SECTION 10. ADDITIONAL CITY RESPONSIBILITIES

10.1 Satisfaction with Condition. The City has inspected the Premises and all related areas and grounds and the City is satisfied with the physical condition thereof. The City agrees to accept the Premises "as is," "where is," and "with all faults."

10.2 Building Maintenance. The City shall provide, at the City's expense, any and all engineering service for maintenance of the exterior and interior of the Premises, including all structural, mechanical and electrical components.

10.3 Custodial Services. The City shall maintain the Premises in a clean, orderly, and presentable condition.

10.4 Security. The City shall provide security for the Premises at the City's discretion.

10.5 Repairs for Negligence, Vandalism, or Misuse. The City shall assume all responsibility for any repairs to any portion of the Premises necessitated by the negligence,

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vandalism, misuse, or other acts on any portion of the Premises by the City's employees, clients, invitees, agents, contractors, invitees, or third parties.

10.6 Illegal Activity. The City, or any of its agents or employees, shall not perform or permit any practice that is injurious to the Premises or the Park, is illegal, or increases the rate of insurance on the Premises or the Park.

10.7 Hazardous Materials. The City shall keep out of the Premises materials which cause a fire hazard or safety hazard and shall comply with reasonable requirements of the District's fire insurance carrier. The City shall not destroy, deface damage, impair, nor remove any part of the Premises or facilities, equipment or appurtenances thereto.

10.8 No Alcohol or Drugs. The City shall ensure that no alcoholic beverages or illegal drugs of any kind or nature shall be sold, given away, or consumed on the Premises.

10.9 Snow Removal. The City shall perform snow and ice removal to the side handicapped walkways leading into and from the Building. The City shall not be obligated to perform snow and ice removal from the front sidewalk (such sidewalk being part of the greater Park space).

10.10 Fire Extinguishers. The City shall provide fire extinguishers for the Premises as required by any applicable laws.

10.11 No Substitute for Required Permitting. For any activity which the City desires to conduct on the Premises and for which a license or permit is required, said license or permit must be obtained by the City prior to using the Premises for such activity. The District must be notified of any such license or permit. The City understands that this Lease shall not act as a substitute for any other permitting or approvals that may be required to undertake activities on the Premises.

10.12 Condition upon Termination. Upon termination of this Lease in the event that the City and the District are unable to renew or extend this Lease, the City shall surrender the Premises to the District in a comparable condition to the condition of the Premises at the beginning of the City's occupancy, with normal wear and tear taken into consideration.

10.13 Trade Fixtures. Upon the termination of this Lease in the event that the City and the District are unable to renew or extend this Lease, the City shall remove or demolish the City's property, equipment, and trade fixtures from the Premises. Provided, however, that the City shall repair any injury or damage to the Premises which may result from such removal or demolition. If the City does not remove the City's property, equipment, and trade fixtures and all

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other items of property from the Premises upon termination, the District may, at its option, remove the same and deliver them to any other place of business of the District or warehouse the same. In such event, the City shall pay to the District the cost of removal, including the repair for such removal, delivery and warehousing. In the alternative, the District may treat such property as being conveyed to the District with this Lease acting as a bill of sale, without further payment or credit by the District to the City.

10.14 No Other Rights. This Lease does not give the City any other right with respect to the Park. Any rights not specifically granted to the City by and through this Lease are reserved exclusively to the District. Execution of this Lease does not obligate the District in any manner and the District shall not undertake any additional duties or services.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

**CITY OF CHICAGO,**

an Illinois municipal corporation and home rule unit of government:

**DEPARTMENT OF FLEET AND FACILITY MANAGEMENT**

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

**CHICAGO PUBLIC LIBRARY**

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

**CHICAGO PUBLIC LIBRARY BOARD OF DIRECTORS**

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

*APPROVED AS TO FORM AND LEGALITY:*

BY: THE DEPARTMENT OF LAW

By: \_\_\_\_\_  
Deputy Corporation Counsel - Real Estate Division

**CHICAGO PARK DISTRICT,**

a body politic and corporate and unit of local government

BY: CHICAGO PARK DISTRICT

By: \_\_\_\_\_  
General Superintendent

Approved as to legal form:

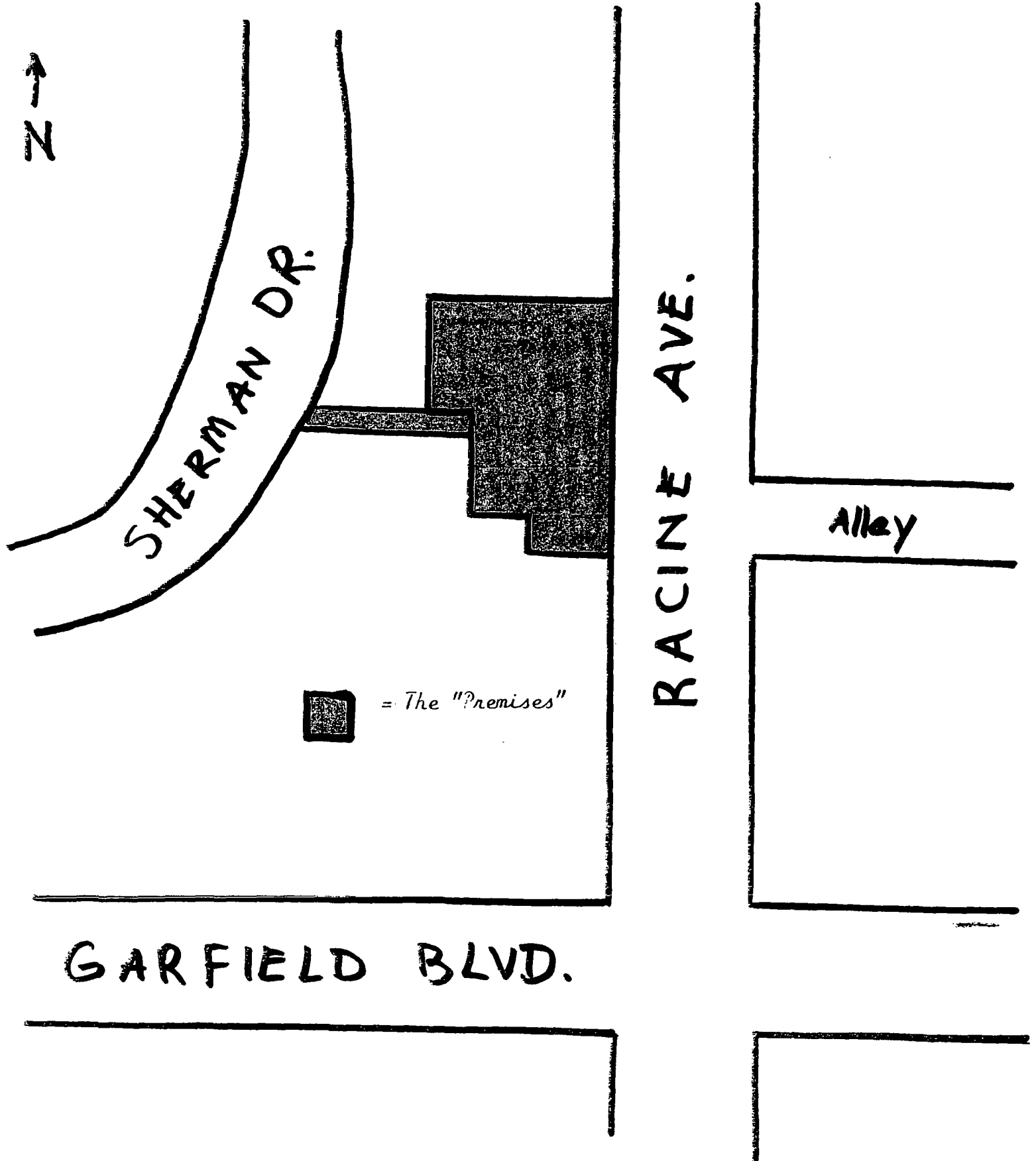
\_\_\_\_\_  
General Counsel  
Chicago Park District

**EXHIBIT A**

**Depiction of Premises**

*Subject to further corrections*

# EXHIBIT A



5440 South Racine Avenue  
Chicago Public Library  
Lease No. 19053

**SECTION 2:** This Ordinance shall be effective from and after the date of its passage and approval.