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Cook County Recorder of Deeds
Date: 05/19/2006 02:16 PM Pg: 1 of 31

This Document was Prepared by:

DLA Piper Rudnick Gray Cary US LLP
203 North LaSalle Street
Suite 1900
Chicago, IL 60601
Attention: Alison N. Zirn, Esq.

When Recorded, Return to:

DLA Piper Rudnick Gray Cary US LLP
203 North LaSalle Street
Suite 1900
Chicago, IL 60601
Attention: Robert H. Goldman, Esq.

This space reserved for Recorder's use only.

AGREEMENT OF RESTRICTIVE COVENANTS

This Agreement of Restrictive Covenants ("Agreement"), is made and entered into this 30TH day of APRIL, 2006 (the "Effective Date") by and among UNIVERSITY CLUB OF CHICAGO, an Illinois not-for-profit corporation ("Club Property Owner"), UNIVERSITY CLUB PROFESSIONAL BUILDING LLC, an Illinois limited liability company and a wholly owned subsidiary of Club Property Owner ("30 South Michigan Owner," and collectively with Club Property Owner, "University Club Owner") and MONROE/WABASH DEVELOPMENT, LLC, a Delaware limited liability company ("Monroe/Wabash Owner") (individually Club Property Owner, 30 South Michigan Owner and Monroe/Wabash Owner, along with their respective successors and assigns, may at times be referred to as "Party" and collectively as "Parties").

RECITALS:

A. 30 South Michigan Owner owns the real estate ("30 South Michigan Land"), including all improvements thereon ("30 South Michigan Building") (the 30 South Michigan Land and 30 South Michigan Building shall be referred to as the "30 South Michigan Property") commonly known as 30 South Michigan Avenue, Chicago, Illinois and legally described in Exhibit A attached hereto and made a part hereof; and Club Property Owner is the ground lessee of the property at 76 East Monroe Street, Chicago, Illinois (said leasehold being herein referred to as the "Club Leasehold") pursuant to the terms of a long term ground lease ("Ground Lease") which expires on October 31, 2105, and is the owner of the building ("Club Building," and together with the Club Leasehold, the "Club Building Property") located on the Club Leasehold, which is legally described in Exhibit B attached hereto and made a part hereof (the 30 South Michigan Property and the Club Building Property are collectively referred to as the "Michigan Property"). A portion of the 30 South Michigan Property includes the eastern 9 feet from the center line of the alley which runs in a north-south direction along the west side of the 30 South Michigan Property (the "Alley Premises"), which is further described and depicted in Exhibit C attached hereto and made a part hereof.

Near North National Title
222 N. LaSalle
Chicago, IL 60601

NO 1051149 SL 1 OF 2

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B. Monroe/Wabash Owner owns that certain property commonly known as 21-39 South Wabash Avenue, Chicago, Illinois (the "Monroe/Wabash Property"), which is legally described in Exhibit D attached hereto and made a part hereof.

C. The Monroe/Wabash Property and other land are subject to the provisions of City of Chicago Planned Development No. 969 ("Planned Development Ordinance"), which sets forth the zoning of, and allocates floor area, dwelling units and parking spaces within the property governed by said Planned Development Ordinance.

D. Monroe/Wabash Owner intends to develop and improve the Monroe/Wabash Property with a mixed-use multi-story building which will include residential, parking, commercial and retail uses (the "Development").

E. Monroe/Wabash Owner desires to enhance certain views and light and air from the east exposure of the Development and, subject to the terms and conditions contained in this Agreement, University Club Owner is willing to agree to certain restrictions on the future development of improvements on the Michigan Property to so enhance such views and light and air.

F. University Club Owner and Monroe/Wabash Owner further desire that the restrictions and covenants set forth in this Agreement be binding upon each present and future owner of the Michigan Property or any portion thereof or interest or estate therein (excluding the lessor's interest under the Ground Lease and the fee interest of said lessor under said Ground Lease in the Club Building Property), and inure to the benefit of each present and future owner of the Monroe/Wabash Property, or any portion thereof or interest or estate therein, in all events subject to the terms and conditions contained herein.

G. Contemporaneously with the execution of this Agreement, University Club Owner and Monroe/Wabash Owner have executed a certain Agreement of even date herewith (the "General Agreement") providing certain other mutual agreements between University Club Owner and Monroe/Wabash Owner, including agreements relating to Monroe/Wabash Owner's construction for the benefit of University Club Owner of the "13th Floor Space" in the Development and the "Skybridge" connecting the Development and the Michigan Property and certain arrangements made by University Club Owner for the benefit of Monroe/Wabash Owner (and, following the construction of the Development, for the benefit of the condominium owners and occupants in the Development).

NOW, THEREFORE, in consideration of the compensation heretofore paid, and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency whereof are hereby acknowledged by the Parties, Monroe/Wabash Owner and University Club Owner agree as follows:

ARTICLE 1

GRANT OF RESTRICTIVE COVENANTS

1.1 **Alley View Restrictive Covenant.** Subject to the terms of this Agreement, 30 South Michigan Owner, for itself, its successors, beneficiaries, grantees and assigns, does hereby

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covenant and agree, for the non-exclusive, perpetual benefit of Monroe/Wabash Owner and Monroe/Wabash Owner's successors, beneficiaries, grantees and assigns now and in the future, and as an appurtenance to the Monroe/Wabash Property, that it shall not construct any improvements, fixtures or obstructions on the 30 South Michigan Property over and above the Alley Premises as further described and depicted in Exhibit E attached hereto and made a part hereof, from the grade level and extending upwards without limit (the "Alley Restricted Area") except as set forth in this Agreement; provided, however that the foregoing shall not prohibit construction to the east of the Alley Premises over the loading dock area up to one hundred fifty six feet and eight inches (156'8") above grade as further described in Exhibit E (the "Alley Restrictive Covenant").

1.2 **30 South Michigan Building View Restrictive Covenant.** Subject to the terms of this Agreement, 30 South Michigan Owner, for itself, its successors, beneficiaries, grantees and assigns, does hereby covenant and agree, for the non-exclusive, perpetual benefit of Monroe/Wabash Owner and Monroe/Wabash Owner's successors, beneficiaries, grantees and assigns now and in the future, and as an appurtenance to the Monroe/Wabash Property, that it shall not construct any improvements, fixtures or obstructions on the 30 South Michigan Building over and above the vertical elevation of one hundred fifty-six feet and eight inches (156'8") above grade (the "30 South Michigan Building View Restricted Area," which is further described and depicted in Exhibit F attached hereto and made a part hereof) except as set forth in this Agreement (the "30 South Michigan Building View Restrictive Covenant").

1.3 **Club Building View Restrictive Covenant.** Subject to the terms of this Agreement, Club Property Owner, for itself, its successors, beneficiaries, grantees and assigns, does hereby covenant and agree, for the non-exclusive, benefit of Monroe/Wabash Owner and Monroe/Wabash Owner's successors, beneficiaries, grantees and assigns now and in the future, and as an appurtenance to the Monroe/Wabash Property, that for the period during which the Ground Lease is in effect (acknowledging that the stated term of the Ground Lease expires October 31, 2105), that it shall not construct any improvements, fixtures or obstructions on the Club Building over and above the vertical elevation of two hundred sixteen feet and six inches (216'6") above grade except as set forth in this Agreement (the "Club Building View Restricted Area," which is further described and depicted in Exhibit G attached hereto and made a part hereof) except as set forth in this Agreement (the "Club Building View Restrictive Covenant") (the Alley Restricted Area, the 30 South Michigan Building View Restricted Area and the Club Building View Restricted Area are herein collectively referred to as the "Restricted Areas"; and the Alley Restrictive Covenant, the 30 South Michigan Building View Restrictive Covenant, and the Club Building View Restrictive Covenant are herein collectively referred to as the "Restrictive Covenants").

1.4 **Repair and Restoration.** Notwithstanding anything to the contrary contained herein, the Restrictive Covenants shall not prohibit or limit the right of 30 South Michigan Owner and/or Club Property Owner to construct and install temporary scaffolding, equipment, supports, and structures in the Restricted Areas as may be reasonably necessary in connection with any maintenance, repair, restoration or replacement of the roof or other components of, or additions to, the 30 South Michigan Building and/or the Club Building, which shall be removed as soon as such work is completed.

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1.5 **No Easement Right.** Notwithstanding anything to the contrary contained herein, nothing in the Restrictive Covenants shall be construed or deemed to convey to Monroe/Wabash Owner an easement or any other right to use or possess the Alley Restricted Area, the 30 South Michigan Building View Restricted Area or the Club Building View Restricted Area or any portion thereof (or any right to in any way inhibit, prevent or hinder University Club Owner's possession or use thereof), or any ownership or other interest in or to (or to do anything to) the 30 South Michigan Building or the Club Building.

ARTICLE 2

FAR DEVELOPMENT RIGHTS COVENANT

2.1 **FAR Development Rights.** Subject to terms of this Agreement, 30 South Michigan Owner, for itself, its successors, beneficiaries, grantees and assigns has agreed to allocate development rights totaling 50,000 square feet from the 30 South Michigan Property under the Chicago Zoning Ordinance (the "Development Rights") for exclusive use by the Monroe/Wabash Property, thereby reducing the available developable floor area for the 30 South Michigan Property. The Development Rights shall not be transferable to any other property or development other than a property adjacent to the Development, provided that the Development Rights may be transferred to a not-for-profit conservation or preservation organization. In order to effectuate the transfer of Development Rights, the Parties agree to cooperate at the request of the Monroe/Wabash Owner to amend the Planned Development Ordinance to include the Development Rights in the Monroe/Wabash Property. At the request of Monroe/Wabash Owner, 30 South Michigan Owner shall execute an application in connection with the modification of the Planned Development Ordinance and agrees to cooperate with Monroe/Wabash Owner in amending the Planned Development Ordinance by including the 30 South Michigan Property and allocating the Development Rights to the Monroe/Wabash Property. Notwithstanding the foregoing and as a condition to the foregoing agreement to amend the Planned Development Ordinance and to add the Development Rights to the Monroe/Wabash Property, it is agreed that any such amendment to the Planned Development Ordinance: (i) shall be subject in form and substance to the reasonable approval of 30 South Michigan Owner; (ii) shall not diminish or impair the development rights of, or restrict uses on, the 30 South Michigan Property, other than to reduce the total development rights thereon by 50,000 square feet; and (iii) if the 30 South Michigan Property is added to the Planned Development Ordinance, shall provide that the 30 South Michigan Property is a separate zone or sub-area under the exclusive control of the 30 South Michigan Owner (including, without limitation, exclusive control and approval rights as to any amendments to the Planned Development Ordinance in respect of the 30 South Michigan Property, any change in use of the 30 South Michigan Property, and any development or construction on the 30 South Michigan Property), subject at all times to the restrictions set forth in Article 1 hereof.

ARTICLE 3

COVENANTS AND AGREEMENTS

3.1 **Benefits of Restrictive Covenants to Run With Land.** The Restrictive Covenants and other agreements contained herein are covenants running with and in favor of the

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Monroe/Wabash Property and the Michigan Property (as applicable) and every portion thereof and shall run with the land (except as to the fee interest in the Club Building Property, which shall not be bound). The Restrictive Covenants and other agreements contained herein shall be binding upon any owner, purchaser, mortgagee or any person having an interest in the Michigan Property and the Monroe/Wabash Property (as applicable), or any part or portion thereof, except for the ground lessor under the Ground Lease and any successors or assigns of said ground lessor as fee owner of the Club Building Property.

3.2 **Priority of Restrictive Covenants.** This Agreement and the Restrictive Covenants shall be and remain superior to all matters and effects hereafter recorded and encumbering the fee interest of the 30 South Michigan Property, the Club Leasehold or the fee interest of the Monroe/Wabash Property (as applicable) and any deed of trust or other financing instrument encumbering said interests regardless of when recorded. This Agreement shall be recorded prior to and consequently shall be superior to the condominium declaration to be recorded by Monroe/Wabash Owner in respect of the Development.

ARTICLE 4

REMEDIES

4.1 **Injunctive Relief.** University Club Owner and Monroe/Wabash Owner hereby covenant and agree that the breach or violation ("Breach") of the covenants and agreements set forth in this Agreement by a Party may cause immediate and irreparable harm and injury to the other Party, for which money damages may not be an adequate remedy. Accordingly, without limiting any other right or remedy that may be available at law or in equity or specified in this Agreement as a consequence of the Breach, the Parties agree that a Breach may be enforced by injunctive relief. Notwithstanding the foregoing, each Party agrees that it will not seek injunctive or other relief for a Breach unless such Party shall first have notified the other Parties of the existence of such Breach by a written notice specifying the nature of such Breach in reasonable detail, and said Party shall have failed within thirty (30) days after delivery of such notice to cure and correct the condition causing the Breach.

4.2 **Club Property Owner and 30 South Michigan Owner Termination Rights.** In accordance with the terms of the General Agreement and as more fully set forth in Section 7 thereof, Club Property Owner and 30 South Michigan Owner shall have the right to terminate, effective immediately upon delivery of written notice to Monroe/Wabash Owner: (a) the rights of Monroe/Wabash Owner under Sections 1.1, 1.2, 1.3 and 2.1 hereof if (i) Monroe/Wabash Owner shall fail to commence construction of the Development within three (3) years from the date hereof (said three (3) year period being subject to extension for up to one year due to force majeure events as provided in the General Agreement), or (ii) prior to commencement of construction of the Development, Monroe/Wabash Owner fails to provide a certain guaranty, surety bond or letter of credit with respect to costs to construct the Skybridge; or (b) the rights of Monroe/Wabash Owner under Sections 1.2, 1.3 and 2.1 (but not Section 1.1) if the construction of the Development shall have been commenced within the required time period as provided in the General Agreement but Monroe/Wabash Owner shall have failed to complete construction of the Development (as generally defined as substantial completion of the shell and core including building systems) or to convey the completed 13th Floor Space (shell and core) and the

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completed Skybridge to the Club Property Owner within ten (10) years following commencement of construction of the Development. If Club Property Owner and 30 South Michigan Owner exercise their termination rights as described above, then Club Property Owner and 30 South Michigan Owner shall have the right, without the consent or further act of Monroe/Wabash Owner, to execute and record against the Club Building Property, the 30 South Michigan Property and the Monroe/Wabash Property an instrument confirming the termination of such rights in accordance with the foregoing, and all third parties dealing with the Club Building Property, the 30 South Michigan Property and the Monroe/Wabash Property shall be entitled to rely on such recorded instrument executed by the Club Property Owner and 30 South Michigan Owner. Subject to the preceding sentence, the Parties further agree that the provisions of Section 7 of the General Agreement are incorporated herein by this reference as if fully set forth herein and that the provisions of this Section 4.2 shall not override or modify the agreements set forth in Section 7 of the General Agreement.

ARTICLE 5

MISCELLANEOUS

5.1 **Amendments.** This Agreement may be amended in whole or in part only by, or with the written agreement of University Club Owner and Monroe/Wabash Owner; provided, however, the consent and agreement of 30 South Michigan Owner shall not be required for any amendment of Section 1.3, provided that such amendment does not affect or purport to affect the 30 South Michigan Property or the rights and obligations of 30 South Michigan Owner; and the consent and agreement of Club Building Owner shall not be required for any amendment of Section 1.1 or 1.2, provided that such amendment does not affect or purport to affect the Club Building Property or the rights and obligations of Club Property Owner. Agreement and consent shall be evidenced by a document in writing bearing each of their signatures, which shall be recorded in the Office of the County Clerk of Cook County, Illinois, or other place as may be required by law at the time such document is recorded. Even if not recorded, such agreement and consent shall be binding upon the signatories thereto. The consent of no other party shall be required.

5.2 **Approvals.** No approval, consent or waiver by a Party pursuant to the provisions hereof shall be effective unless in writing.

5.3 **Abandonment.** The Restrictive Covenants and other agreements described hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of portions of the improvements on either the Monroe/Wabash Property or the Michigan Property.

5.4 **No Third Party Beneficiary; No Partnership.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity, including the public, as a third party beneficiary or under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise, except as otherwise expressly stated herein. The Parties shall not be deemed to be partners or joint ventures of one another.

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5.5 **Transfer of Owner's Interest.** If a Party (or, in the case of University Club Owner, either or both of Club Property Owner or 30 South Michigan Owner who together are the constituent owners comprising University Club Owner) shall sell, assign, transfer, convey or otherwise dispose of its entire interest in the Monroe/Wabash Property, the 30 South Michigan Property or the Club Building Property, as applicable (other than as security for a loan to such Party or an affiliate), then (a) such Party (or such constituent owner) shall be entirely freed and relieved of any and all covenants and obligations arising under this Agreement which accrue under this Agreement from and after the date such Party (or such constituent owner) shall so sell, assign, transfer, convey or otherwise dispose of its interest in the Monroe/Wabash Property, the 30 South Michigan Property or the Club Building Property, and (b) the person or entity who succeeds to such Party's (or constituent owner's) interest in the Monroe/Wabash Property, the 30 South Michigan Property or the Club Building Property shall be deemed to have assumed any and all of the covenants and obligations and outstanding liabilities arising under this Agreement of such Party, whether accruing before or after such transfer.

5.6 **Exculpation.**

(a) The liability of a Party under this Agreement or any instrument or document executed in connection with this Agreement for damages shall be limited to and enforceable solely against the assets of such Party constituting an interest in the Monroe/Wabash Property, the 30 South Michigan Property or the Club Building Property (including, where a Party is the beneficiary of a land trust, the subject matter of the trust), the proceeds of sale of such interest in the Monroe/Wabash Property, the 30 South Michigan Property or the Club Building Property or any rental proceeds from the respective property and not other assets of such Party. Assets of a Party which is a partnership or a limited liability company do not include the assets of the partners or members nor any obligation of the partners or members, to the extent any such obligation may exist, to contribute to their negative capital accounts in such partnership or limited liability company. No directors, officers, managers, members, employees or shareholders of any corporation or limited liability company which is a Party shall have any personal liability arising from or in connection with this Agreement. The provisions of this Section shall not limit or otherwise affect the rights of a Party to obtain specific performance or other equitable relief to enforce performance of a Party's obligations under this Agreement.

(b) At any time during which a Party is trustee of a land trust, all of the representations, warranties, covenants and conditions to be performed by it under this Agreement or any documents or instruments executed in connection with this Agreement are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under said trust agreement by reason of any of the representations, warranties, covenants or conditions contained in this Agreement or any documents or instruments executed in connection with this Agreement.

(c) The obligations and liabilities of Club Property Owner and 30 South Michigan Owner under this Agreement shall be joint and several, provided, however, that at such time as the 30 South Michigan Owner shall no longer be owned or controlled by

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the Club Property Owner or its affiliates, the obligations and liabilities of said Parties shall be several and not joint. In such event, Club Property Owner shall not be responsible or liable for the performance by 30 South Michigan Owner of any of 30 South Michigan Owner's obligations hereunder, and 30 South Michigan Owner shall not be responsible or liable for the performance by Club Property Owner of any of Club Property Owner's obligations hereunder.

5.7 **Validity and Severability.** Invalidation of any one or more of such covenants, conditions and restrictions, or any portions thereof, by a judgment or court order shall not affect any of the other provisions herein contained, which shall remain in full force and effect. In the event any provision of this Agreement requires an act which would violate any federal, state or local law, ordinance or regulation, then the action so required hereunder shall be excused and such law, ordinance or regulation shall control.

5.8 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

5.9 **Notices.** Unless otherwise specified in this Agreement, all notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by or on behalf of the Party giving the same, and shall be deemed properly given and received (i) if delivered in person, then when actually delivered and received (or when delivery is refused), or (ii) if sent by registered or certified mail, postage prepaid, then three (3) business days after being mailed, or (iii) if sent by overnight courier service, receipt requested, then the next business day after being sent, or (iv) if delivered by facsimile, then when actually delivered (provided that such notice is confirmed by delivering a copy of such notice on the same day to a commercial overnight courier for delivery to the addressee on the next business day). The addresses of the Parties for the purpose of sending such notices and communications shall be as follows:

To Monroe/Wabash Owner:

c/o Mesa MW, LLC
445 West Erie Street
Suite 210
Chicago, Illinois 60610
Attn: James Hanson
Facsimile: (312) 266-1045

With a copy to:

Walsh Investors, LLC
929 West Adams Street
Chicago, Illinois 60607
Attn: Gregory Ciambrone
Facsimile: (312) 563-5442

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With an additional copy to: DLA Piper Rudnick Gray Cary US LLP
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601
Robert H. Goldman, Esq.
Facsimile: (312) 630-7358

To University Club Owner: University Club of Chicago
76 East Monroe Street
Chicago, Illinois 60603
Attn: President
Facsimile: (312) 726-0620

With a copy to: Gardner Carton & Douglas LLP
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606-1698
Attn: Michael F. Csar, Esq.
Facsimile: (312) 569-3223

Such addresses (or other or additional addresses) may be changed by notice to the other Parties given in the same manner provided above (such other or additional addresses become effective from and after the date of receipt of notice thereof by the other Parties). If a Party has not specified a name and address for notices, or a notice is returned refused or undeliverable, then notice may be given at the address of the Party for receipt of tax bills or to 30 South Michigan Owner at the address of the 30 South Michigan Building, if the 30 South Michigan Building exists, or to Club Building Owner at the address of the Club Building Property, if the Club Building exists, or to Monroe/Wabash Owner at the address of the Development, if the Development exists.

5.10 **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of Illinois, including without limitation matters affecting title to all real property described herein.

5.11 **Costs of Enforcement.** If either University Club Owner or Monroe/Wabash Owner employs the services of attorneys to enforce any of their respective rights under this Agreement, to collect any sums due under this Agreement or to remedy the breach of any covenant of this Agreement on the part of the other to be kept or performed, the non-prevailing Party shall pay to the prevailing Party such reasonable fees as shall be charged by the prevailing Party's attorneys for such services at all trial and appellate levels and post judgment proceedings and such prevailing Party shall also have and recover from the non-prevailing Party all other costs and expenses of such suit and any appeal thereof or with respect to any post judgment proceedings.

5.12 **Association Representative of Monroe/Wabash Owner.** As provided above, Monroe/Wabash Owner intends to develop Monroe/Wabash Property and upon substantial completion of the Development, Monroe/Wabash Owner intends to subject the substantial

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portion of the Monroe/Wabash Property to the terms and conditions of the Illinois Condominium Property Act, which may be carried out on a floor-by-floor basis. (It is agreed that neither the 13th Floor Space nor the Skybridge or the Skybridge Easement Area shall be included in the property subjected to the Illinois Condominium Property Act.) If Monroe/Wabash Owner so subjects such substantial portion of the Monroe/Wabash Property which is benefited by the Restrictive Covenants to the Illinois Condominium Property Act, for all periods during which such portion (or substantially such portion) of the Monroe/Wabash Property is subjected to such Act, the board of directors (or board of managers or comparable representative body) of the association for such condominium (such association being herein referred to as the "Association," and such board as the "Association Board") shall be the exclusive representative of Monroe/Wabash Owner in all matters regarding the Restrictive Covenants. The Association Board, acting on behalf of the Association, shall have all rights and obligations of Monroe/Wabash Owner under this Agreement with respect to the Restrictive Covenants. The individual condominium unit owners in the Development shall have no right to enforce any rights or obligations with respect to the Restrictive Covenants or this Agreement and shall have no liability or obligations to University Club Owner hereunder. University Club Owner shall be required solely to name the Association as defendant in any action to enforce the obligations of Monroe/Wabash Owner under this Agreement. Notwithstanding anything herein to the contrary, neither the Association Board, the Association nor the individual condominium unit owners in the Development shall have any rights with respect to the Development Rights.

5.13 **Consent of Lenders.** This Agreement is subject to the consent of the mortgage lenders of the 30 South Michigan Property, the Club Leasehold, and Monroe/Wabash Property, which consent shall be evidenced by such lenders' execution of the forms of Consent and Subordination by Lender attached hereto.

(SIGNATURES TO FOLLOW)

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IN WITNESS WHEREOF, the Parties named above have caused this instrument to be executed as of the date set forth above.

UNIVERSITY CLUB OF CHICAGO
an Illinois not-for-profit corporation

By: [Signature]
Name: DANIEL D. BAYSTON
Its: PRESIDENT

By: [Signature]
Name: JOHN L. SPIDALETTE
Its: GENERAL MANAGER

UNIVERSITY CLUB PROFESSIONAL BUILDING LLC, an Illinois limited liability company

By: University Club of Chicago
Its sole member
By: [Signature]
Name: DANIEL D. BAYSTON
Its: PRESIDENT

By: [Signature]
Name: JOHN L. SPIDALETTE
Its: GENERAL MANAGER

MONROE/WABASH DEVELOPMENT, LLC, a Delaware limited liability company

By: Mesa MW, LLC, a Delaware limited liability company, its manager
By: [Signature]
Name: Richard A. Hanson
Title: Manager

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STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that DANIEL D. BAYSTON and JOHN L. SPIDALETTE, whose names as PRESIDENT and GENERAL MANAGER, respectively, of University Club of Chicago, the sole member of University Club Professional Building LLC, an Illinois limited liability company, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such PRESIDENT and GENERAL MANAGER respectively, and with full authority, they executed the same voluntarily for and as the act of said sole member of said limited liability company.

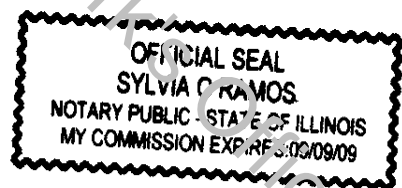
Given under my hand and official seal this 1ST day of May, 2006.

[SEAL]

Sylvia O. Ramos
 Notary Public

My Commission Expires: 9-09-09

Notary Public in and for the State of
 Illinois



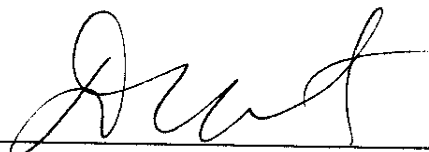
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STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that Richard A. Hanson, whose name as Manager of Mesa MW, LLC, the manager of Monroe/Wabash Development, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such officer and with full authority, he/she executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 4 day of May, 2006.

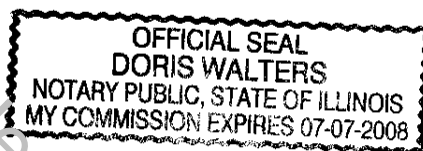
[SEAL]



 Notary Public

My Commission Expires: 7-7-08

Notary Public in and for the State of
 Illinois



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CONSENT AND SUBORDINATION BY LENDER (Michigan Property)

This Consent and Subordination by Lender dated as of APRIL 30, 2006 is attached to and forms a part of the foregoing Agreement of Restrictive Covenants (the "Restrictive Covenants Agreement").

The undersigned lender ("Lender") is holder of that certain Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing dated July 23, 2004 and recorded as Document No. 0420534090, encumbering the 30 South Michigan Property legally described in Exhibit A to this Restrictive Covenants Agreement (together with any other documents or instruments securing the loan secured by said mortgage, being herein referred to as the "30 South Michigan Security Instruments") and that certain Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing (Leasehold) dated July 23, 2004 and recorded as Document No. 04205340903, encumbering the Club Building Property legally described in Exhibit B to this Restrictive Covenants Agreement (together with any other documents or instruments securing the loan secured by said mortgage, being herein referred to as the "Club Property Security Instruments").

Lender hereby consents to the foregoing Restrictive Covenants Agreement and agrees that the 30 South Michigan Security Instruments and the Club Property Security Instruments are subject and subordinate to said Restrictive Covenants Agreement.

LENDER:

BANK OF AMERICA, N.A.

By: *Thomas Kanis*
Its: VICE PRESIDENT

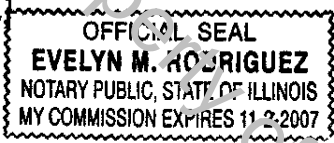
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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that THOMAS KANIA, whose name as VICE PRESIDENT of Bank of America, N.A., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such VICE PRESIDENT and with full authority, he/she executed the same voluntarily for and as the act of said bank.

Given under my hand and official seal this 30 day of APRIL, 2006.

[SEAL]



Evelyn M. Rodriguez
Notary Public

My Commission Expires: 11-2-2007

Notary Public in and for the State of
Illinois

Proprietor of Cook County Clerk's Office

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CONSENT AND SUBORDINATION BY LENDER (Monroe/Wabash Property)


This Consent and Subordination by Lender dated as of 5/17, 2006 is attached to and forms a part of the foregoing Agreement of Restrictive Covenants (the "Restrictive Covenants Agreement").

The undersigned lender ("Lender") is holder of that certain Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing dated September 9, 2005 and recorded as Document No. 0525232122, encumbering the Monroe/Wabash Property legally described in Exhibit D to this Restrictive Covenants Agreement (together with any other documents or instruments securing the loan secured by said mortgage, being herein referred to as the "Monroe/Wabash Security Instruments").

Lender hereby consents to the foregoing Restrictive Covenants Agreement and agrees that the Monroe/Wabash Security Instruments are subject and subordinate to said Restrictive Covenants Agreement.

LENDER:

Bank of America, N.A.

By: 
Its: SENIOR VICE
PRESIDENT

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EXHIBIT A

LEGAL DESCRIPTION

30 South Michigan Property

THE SOUTH ½ OF LOT 8 (EXCEPT THE NORTH 4.00 FEET THEREOF) AND THE NORTH 8.00 FEET OF LOT 9 IN BLOCK 1 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 30 South Michigan Avenue, Chicago, Illinois 60603

P.I.N.: 17-15-101-013-0000

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EXHIBIT B

LEGAL DESCRIPTION

Club Building Property (Leasehold)

THE LEASEHOLD ESTATE CREATED BY THE INSTRUMENT EXECUTED BY:

INTERNATIONAL HARVESTER COMPANY OF AMERICA, A CORPORATION OF WISCONSIN, AND INTERNATIONAL HARVESTER COMPANY, A CORPORATION OF NEW JERSEY, TO UNIVERSITY AUXILIARY ASSOCIATION, A CORPORATION OF ILLINOIS, DATED APRIL 15, 1907, AND RECORDED DECEMBER 17, 1914, AS DOCUMENT NUMBER 5549344 AND ASSIGNED TO UNIVERSITY CLUB OF CHICAGO BY ASSIGNMENT RECORDED OCTOBER 7, 1943, AS DOCUMENT NUMBER 13154548, DEMISING THE LAND DESCRIBED BELOW FOR A TERM OF 198 YEARS BEGINNING NOVEMBER 1, 1907, AND ENDING OCTOBER 31, 2105:

LOT 9 (EXCEPT THE NORTH 8 FEET THEREOF AND EXCEPT THAT PART THEREOF FALLING IN ALLEY, BEING THE WEST 9 FEET THEREOF) IN BLOCK 1 IN THE SUBDIVISION OF FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Address: 76 East Monroe Street, Chicago, Illinois 60603

P.I.N.: 17-15-101-014-0000
17-15-101-015-0000

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EXHIBIT C

LEGAL DESCRIPTION

Alley Premises

THE WEST 9 FEET OF THE FOLLOWING DESCRIBED PARCEL:

THE SOUTH ½ OF LOT 8 (EXCEPT THE NORTH 4.00 FEET THEREOF) AND THE NORTH 8.00 FEET OF LOT 9 IN BLOCK 1 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 30 South Michigan Avenue, Chicago, Illinois 60603

P.I.N.: 17-15-101-013-0000

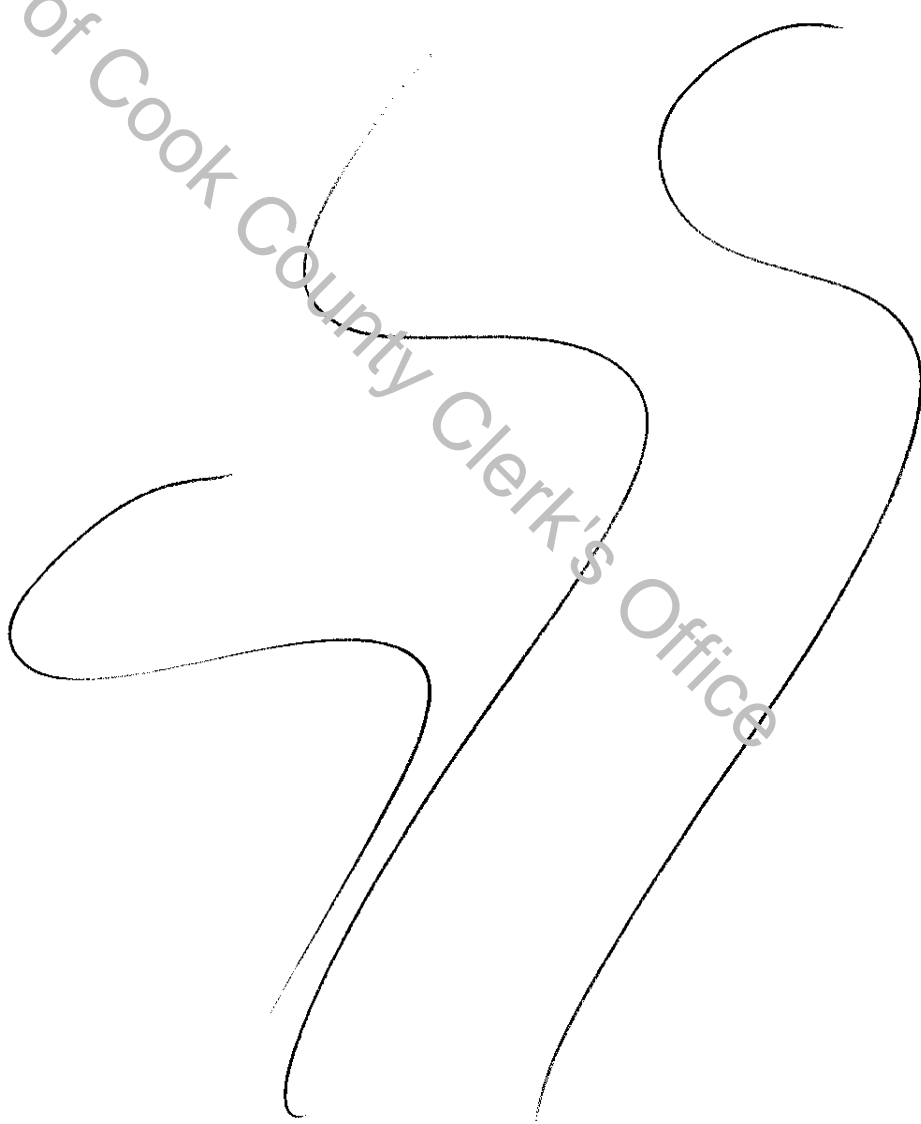
UNOFFICIAL COPY

EXHIBIT E

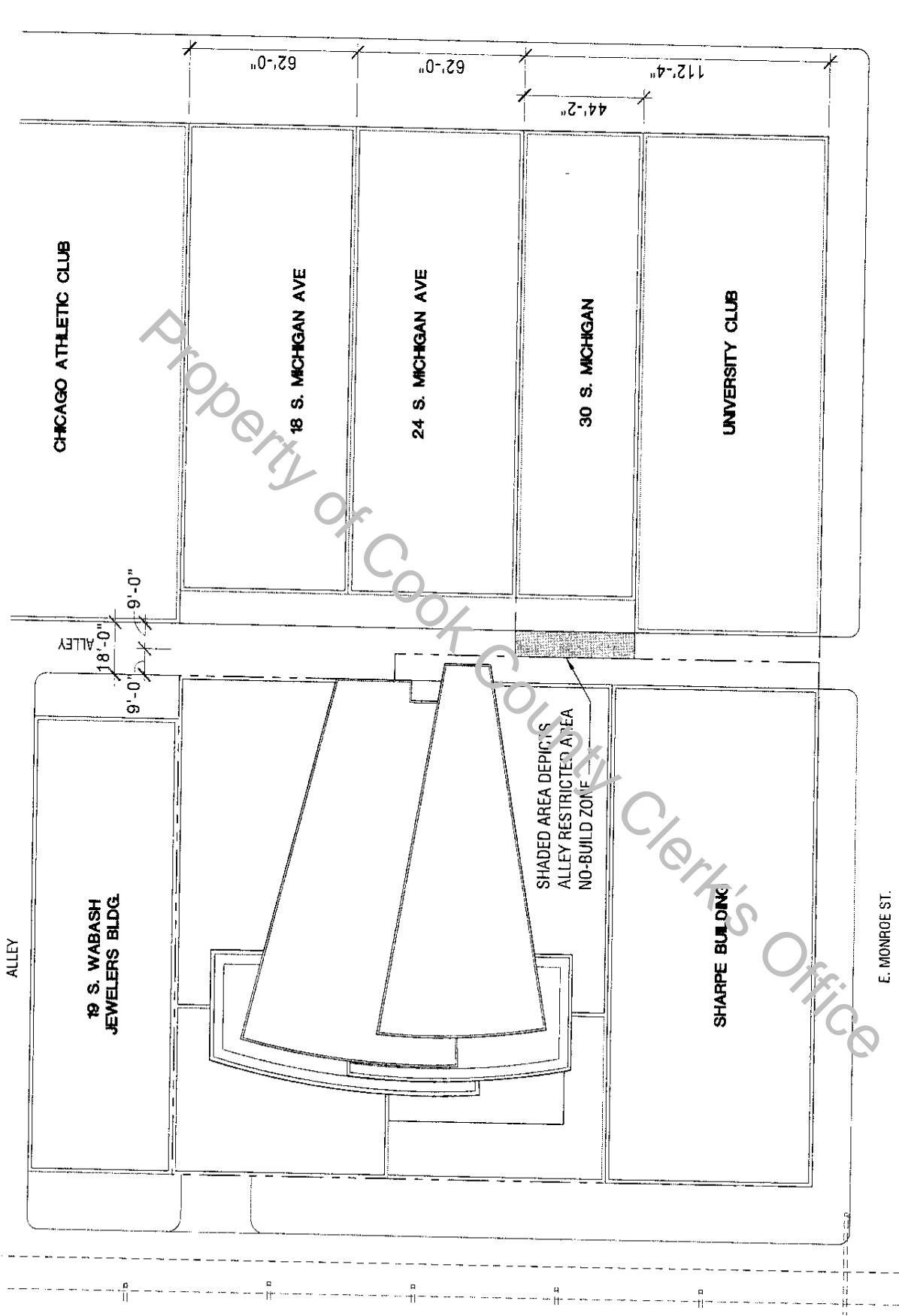
Alley Restricted Area

[See Attached]

Property of Cook County Clerk's Office



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Property of Cook County Clerk's Office

EXHIBIT E - ALLEY RESTRICTED AREA

LEGACY TOWER

Mesa Development

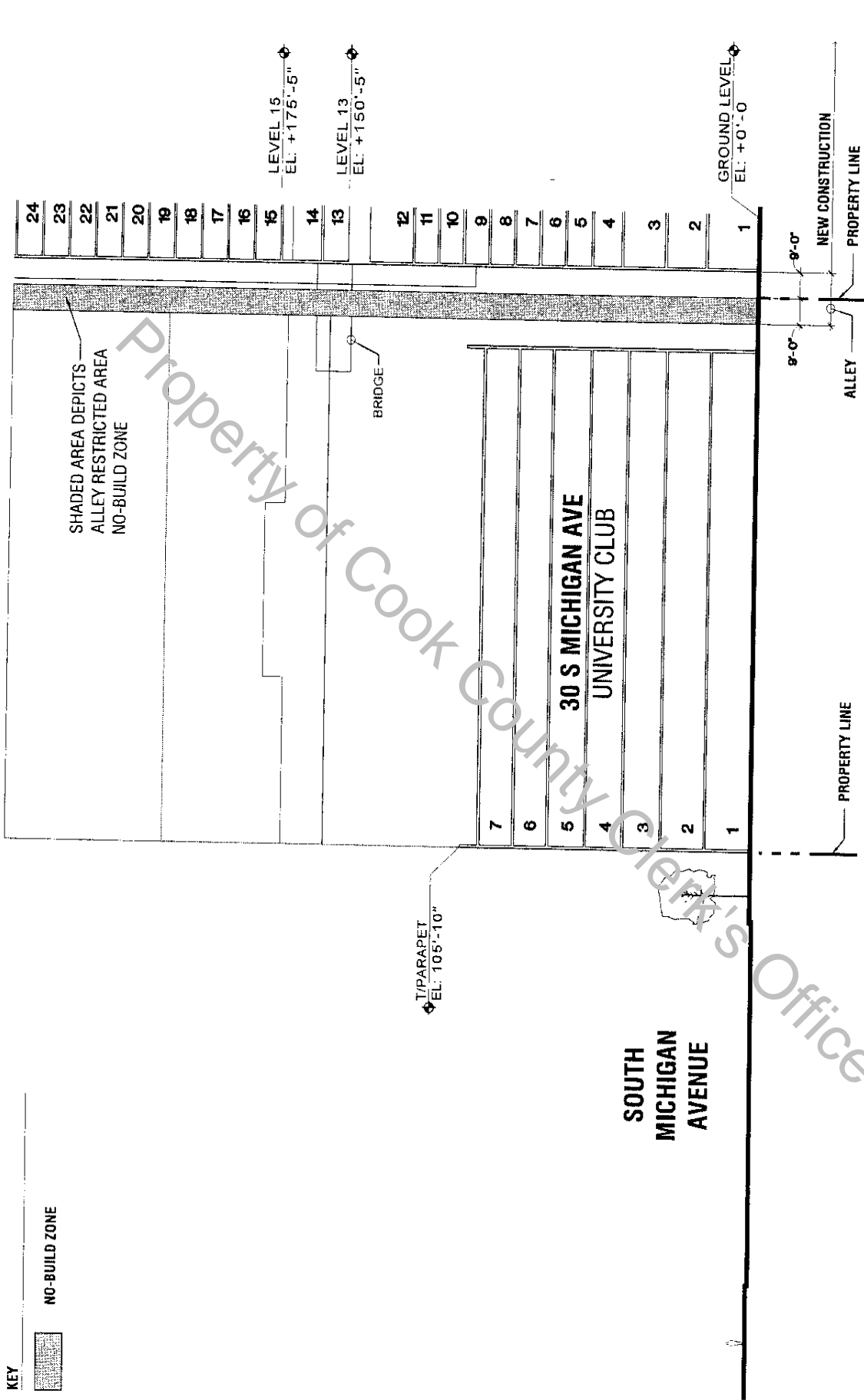
SCB

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04.26.2006

EXHIBIT E

UNOFFICIAL COPY



KEY

NO-BUILD ZONE

SCB

EXHIBIT E2 - ALLEY RESTRICTED AREA
LEGACY TOWER
 Mesa Development

04.26.2006

EXHIBIT E2

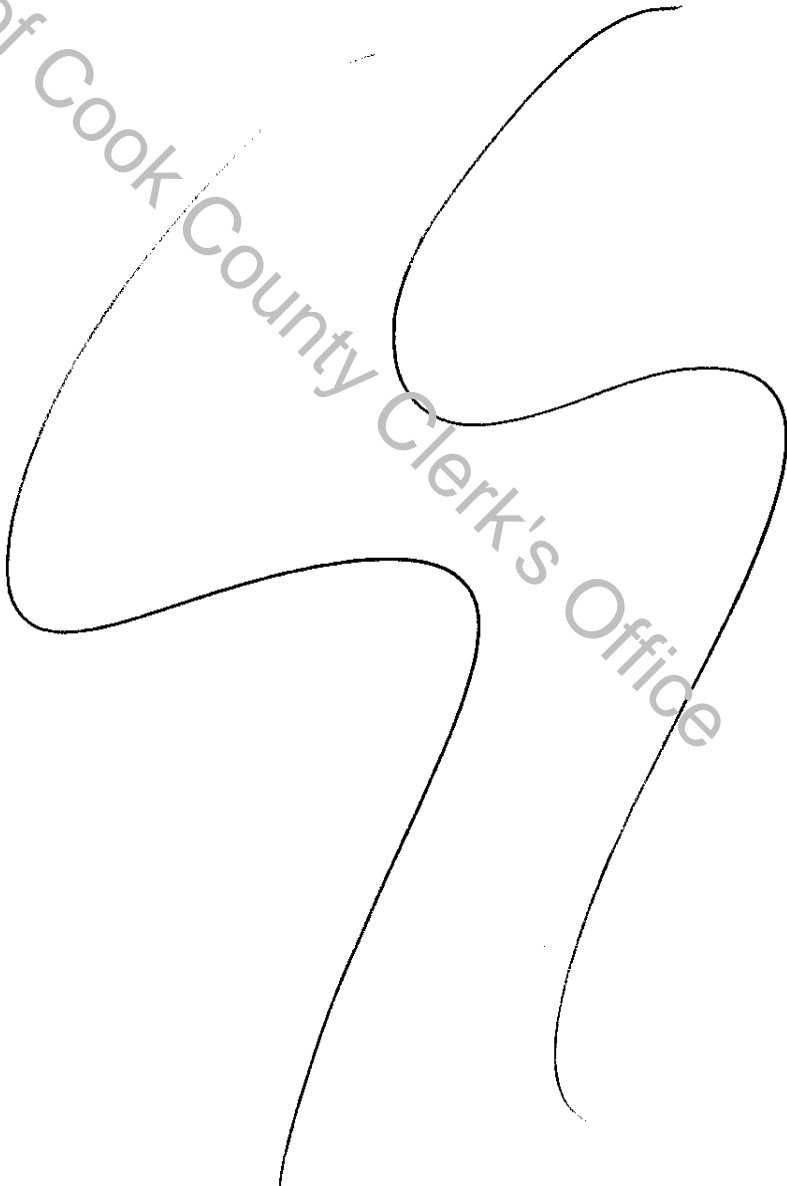
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EXHIBIT F

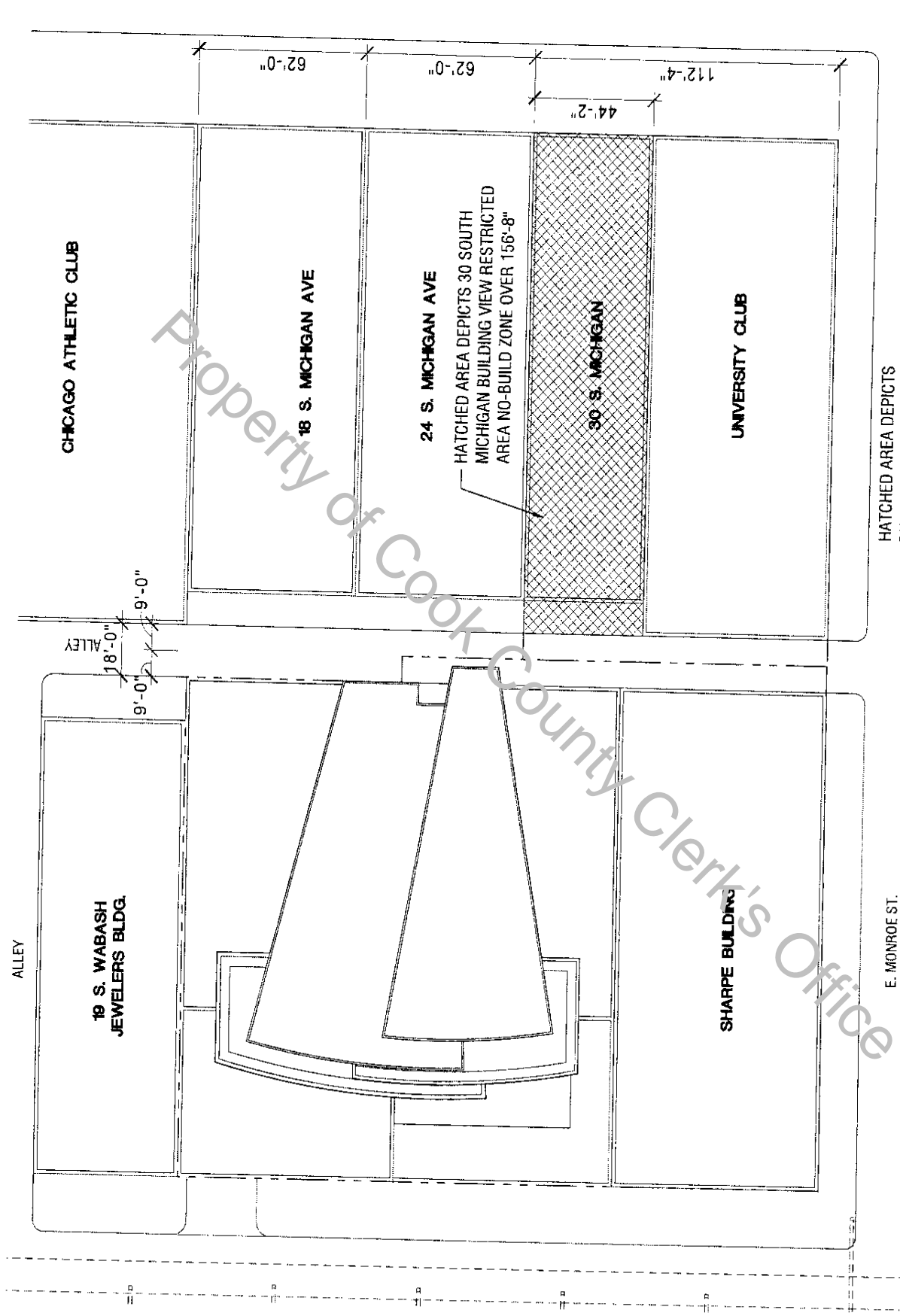
30 South Michigan Building View Restricted Area

[See Attached]

Property of Cook County Clerk's Office



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Property of Cook County Clerk's Office

SCB

EXHIBIT F - 30 S. MICHIGAN VIEW RESTRICTED AREA

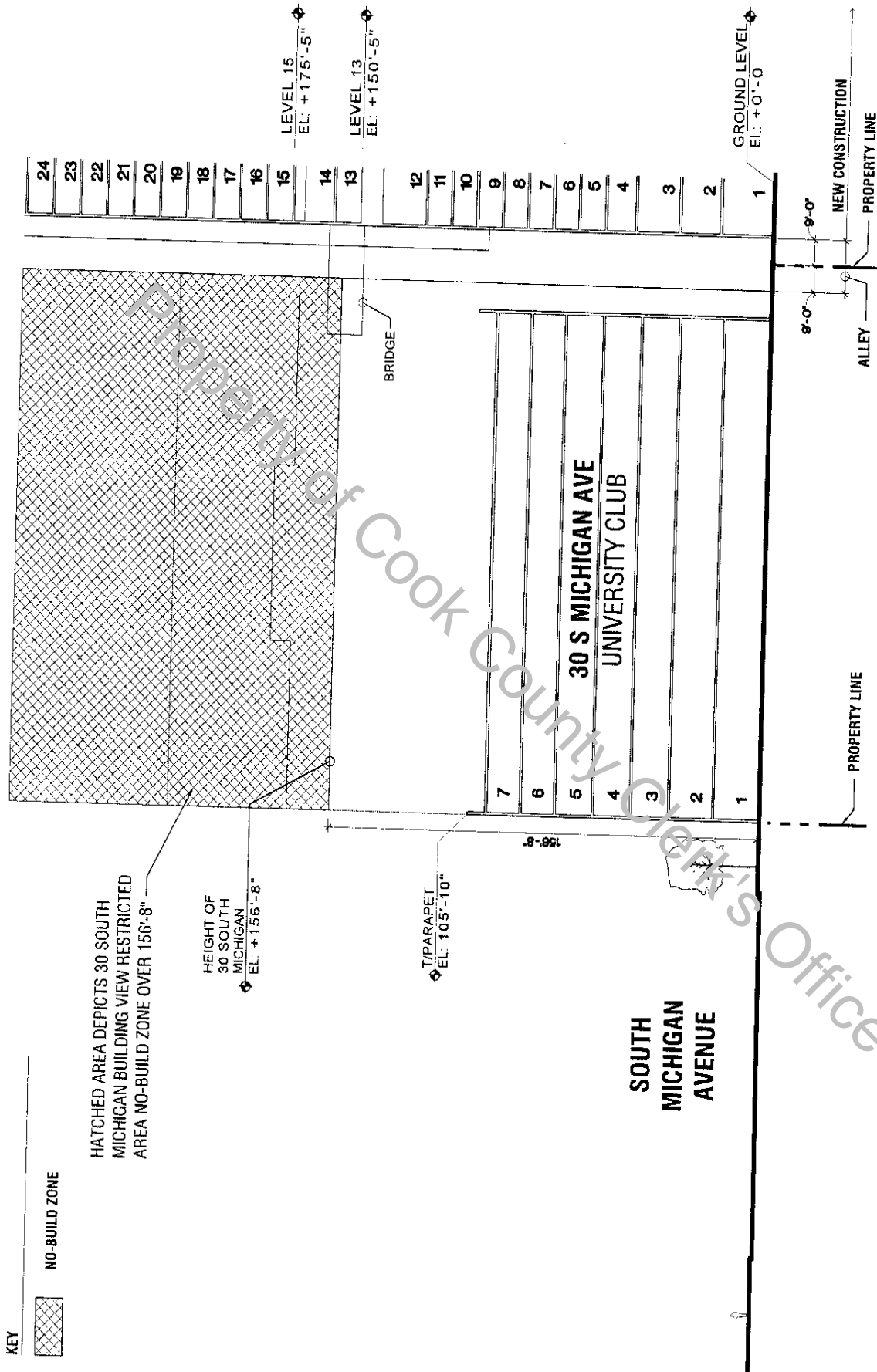
LEGACY TOWER

Mesa Development

04.26.2006

EXHIBIT F

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EXHIBIT F2 - 30 S. MICHIGAN VIEW RESTRICTED AREA
LEGACY TOWER
Mesa Development

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EXHIBIT G

Club Building View Restricted Area

[See Attached]

Property of Cook County Clerk's Office



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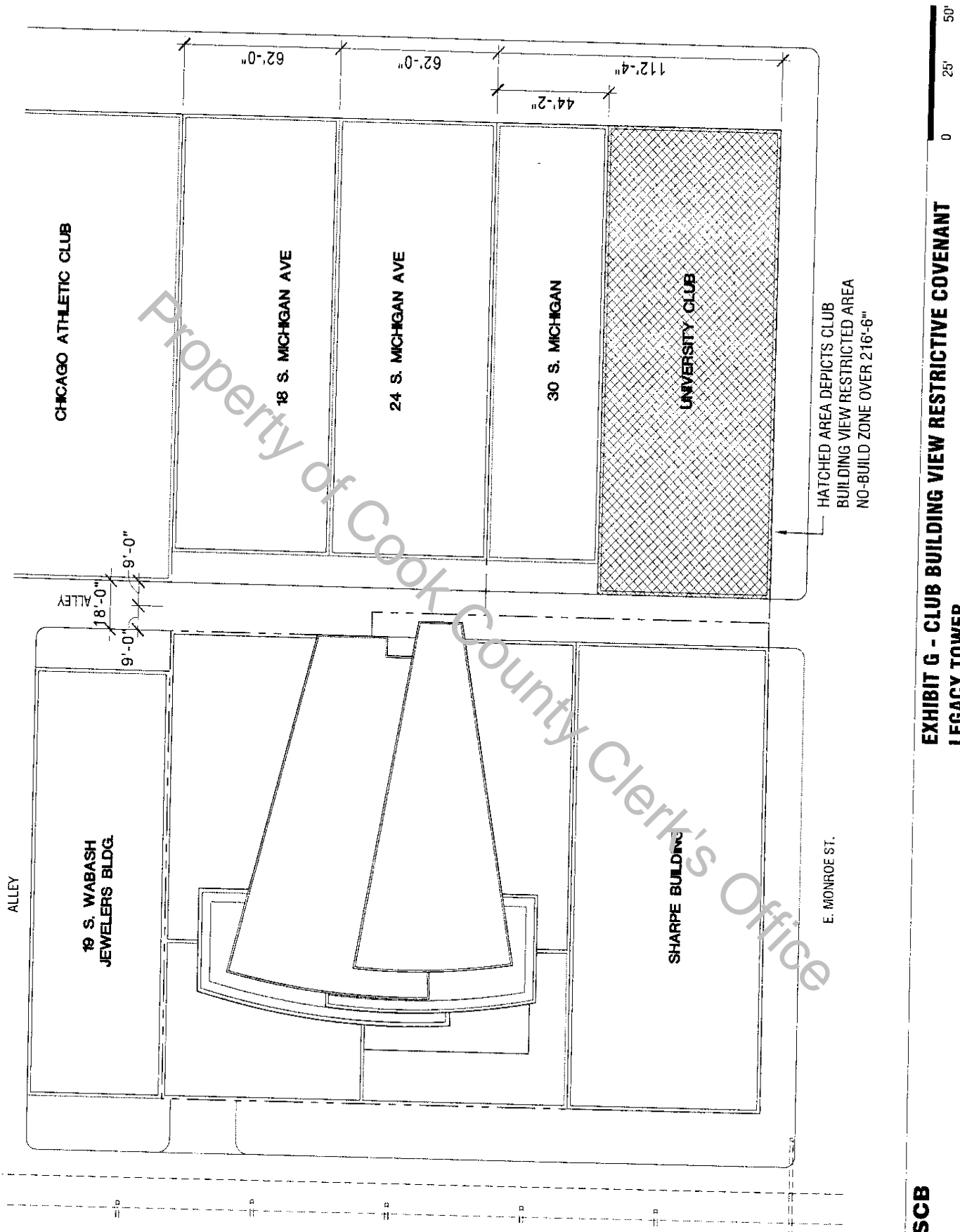


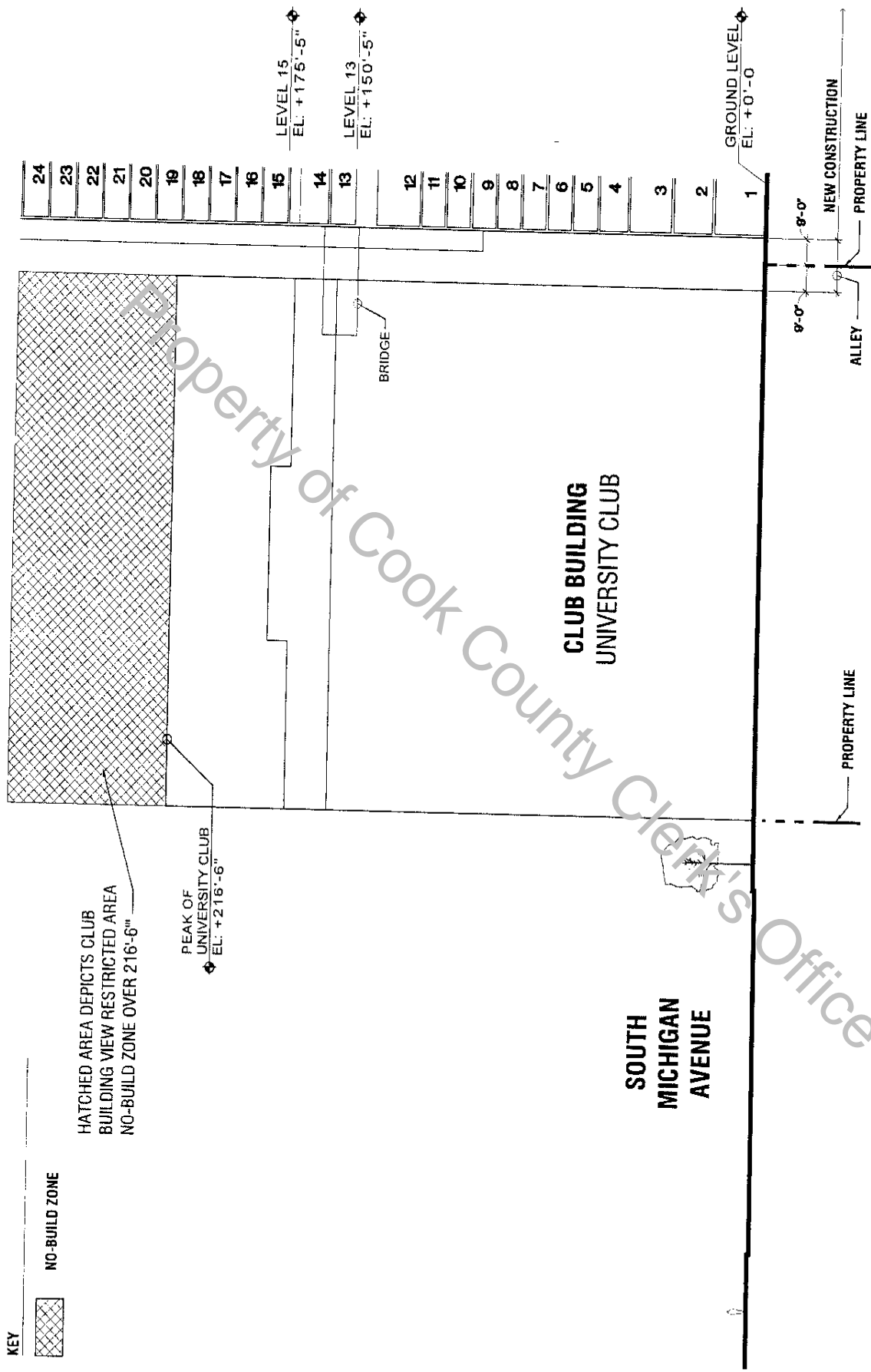
EXHIBIT G - CLUB BUILDING VIEW RESTRICTIVE COVENANT
LEGACY TOWER
 Mesa Development

04.26.2006


EXHIBIT G

SCB

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KEY

 **NO-BUILD ZONE**

HATCHED AREA DEPICTS CLUB BUILDING VIEW RESTRICTED AREA NO-BUILD ZONE OVER 216'-6"

PEAK OF UNIVERSITY CLUB
EL: +216'-6"

LEVEL 15
EL: +175'-5"

LEVEL 13
EL: +150'-5"

GROUND LEVEL
EL: +0'-0"

SCB

EXHIBIT G2 - CLUB BUILDING VIEW RESTRICTIVE COVENANT
LEGACY TOWER
Mesa Development

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04.26.2006

EXHIBIT G2

