

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Steve Holler  
Staff Attorney  
Office of General Counsel  
Loyola University of Chicago  
820 N. Michigan Avenue, Suite 750  
Chicago, Illinois 60611



Doc#: 1324919123 Fee: \$80.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/06/2013 03:09 PM Pg: 1 of 22

This space reserved for Recorder.

## ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "**Agreement**") is made and entered into by and between LOYOLA UNIVERSITY OF CHICAGO, an Illinois not-for-profit corporation with an address of 820 N. Michigan Avenue, Chicago, Illinois 60611 (hereinafter referred to, together with its successors and assigns, as "**Grantor**") and TOWER 10 GLADES LLC, a Delaware limited liability company with an address of c/o Newcastle Limited, 150 N. Michigan Avenue, Suite 3610, Chicago, Illinois 60601 (hereinafter referred to, together with its successors and assigns, as "**Grantee**") as of this 5<sup>th</sup> day of September, 2013 (the "**Effective Date**"), as follows:

### RECITALS:

WHEREAS, Grantor is the owner of fee title to certain real property in the City of Chicago, Illinois, legally described in Exhibit A, attached hereto and made part hereof (the "**Easement Parcel**");

WHEREAS, Grantee is the owner of fee title to certain real property in the City of Chicago, Illinois adjacent to the Easement Parcel, legally described in Exhibit B attached hereto and made part hereof (the "**Benefited Parcel**"); and

WHEREAS, Grantee desires to obtain ingress and egress rights for the Benefited Parcel by means of the Easement Parcel, from and to East Chestnut Street in the City of Chicago, and Grantor has agreed to grant such easement rights on the terms and conditions contained herein;

### PROVISIONS:

NOW, THEREFORE, for Ten Dollars (\$10.00), in consideration of the covenants herein made, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and Grantee agree as follows:

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1. **Recitals**. The Recitals above, including the defined terms set forth therein, are incorporated herein by reference as if fully restated herein in this **Section 1**.

2. **Grant of Ingress and Egress Easement**. Grantor hereby grants and conveys to the Grantee, its successors and assigns, the following perpetual, non-exclusive easement appurtenant to the Benefited Parcel, over, upon, and across the Easement Parcel as described in **Exhibit A** for ingress and egress appurtenant to the Benefited Parcel to provide reasonable access for motor vehicle (including garbage, emergency vehicles and delivery truck traffic) and pedestrian traffic for deliveries, loading and trash disposal and pick up to and from the Benefited Parcel from and to the public street commonly known as East Chestnut Street, and for the installation, operation, maintenance and repair of the subsurface improvements specified and defined in **Section 2** and Exhibit C-1, Exhibit C-2 and Exhibit C-3 of that certain Easement Agreement for Encroachment of Subsurface Improvements by and between Grantor and Grantee dated as of the date hereof and recorded simultaneously herewith (such subsurface improvements, the "**Subsurface Improvements**," and such agreement, the "**Encroachment Easement Agreement**"). Grantee's right to utilize the Easement Parcel for such Subsurface Improvements is subject to the condition that Grantee first obtains the prior written consent of Grantor to Grantee's final plans and specifications for the same (and for any proposed changes or deviations from the prior final plans and specifications previously approved by Grantor, it being the agreement of Grantee that it shall only construct Subsurface Improvements which are consistent with final plans and specifications approved or deemed approved by Grantor under this Agreement), which Grantor's consent shall not be unreasonably withheld or unduly delayed beyond thirty (30) days from the date of a Grantee request accompanied by complete final plans and specifications for the Subsurface Improvements, and in the event Grantor's consent or refusal to consent is not given within the aforesaid thirty (30) day period, the consent of Grantor shall be deemed given. Grantee acknowledges and agrees, however, that: (A) the east five (5) feet of the Easement Parcel is subject to the pre-existing rights of lot owners in the Larson's Subdivision to the east of the Easement Parcel; (B) Grantee's rights are subject to that certain pre-existing "Access Easement with Right of First Offer" dated as of March 8, 2006 by and between Grantor and Ronald Krueck and Anstiss Drake Krueck (collectively, "**Krueck**") as recorded with the Cook County Recorder of Deeds on June 8, 2006 as Document No. 0615734086 (the "**Krueck Easement**"), including Krueck's right to place a moveable trash container on the Easement Parcel in a location reasonably convenient to Grantor and to Krueck; and (C) consistent with the terms of the Krueck Easement, Grantee under this Agreement covenants and agrees to comply with the upper height limit of the Easement Parcel (having a horizontal plane of elevation of +31 feet (Chicago City Datum)).

Notwithstanding anything to the contrary contained in this Agreement, including without limitation **Section 3** below, Grantor reserves the right to: (i) the priority use of the Easement Parcel for the benefit of Grantor (and the properties adjacent to or in close proximity to the Easement Parcel that are currently owned by Grantor, and, as to the 18 East Pearson property currently owned by Krueck, which may in the future be owned by Grantor), which priority use shall also be for the benefit of Grantor's successors and assigns in and to such properties), including, without limitation, the right to use the Easement Parcel and any subsurface areas thereunder for utilities and subsurface improvements; (ii) vehicular and pedestrian ingress to, egress from, and access, including, without limitation, over that portion of the Easement Parcel constituting Lot 6 in Loyola Resubdivision (said resubdivision being more particularly described in **Exhibit B**) including, if applicable, after such time as Grantee acquires fee simple title to such

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Lot 6 pursuant to and in accordance with that certain Option Agreement by and between Grantor and Grantee dated as of the date hereof and being recorded simultaneously herewith; (iii) construct, utilize, maintain, repair and reconstruct (A) the First Floor Connecting Corridor Improvements, and, (B) at an elevation at or above a height of 31 feet above Chicago City Datum, the Pedestrian Bridge, and Second Floor Connecting Corridor Improvements, all as defined and described in that certain Easement Agreement for Connecting Corridors and Support for Pedestrian Bridge by and between Grantor and Grantee dated as of the date hereof and being recorded simultaneously herewith (the “**Connecting Corridors Easement Agreement**”), together with necessary appurtenances and the ground level structural support provided by Grantor’s Shell, Core and Structural Support Work (as also defined in such Connecting Corridors Easement Agreement), and to utilize the Easement Parcel as necessary for such construction, maintenance, repair and reconstruction from time to time. Nothing contained herein comprises or shall be deemed to provide Grantee any rights, title or interest in the Right of First Offer conveyed to Grantor under the Krueck Easement.

This Agreement, including without limitation **Section 3**, below, is subject to the prior and continuing right of Grantor, its successors and assigns, to utilize the Easement Parcel for the benefit of properties adjacent to the Easement Parcel currently owned by Grantor (and, as the 18 East Pearson property currently owned by Krueck, which may in the future be owned by Grantor), and by Grantor’s successor and assigns in and to such properties, which Grantee acknowledges are currently utilized for college and university purposes, including college and university residential purposes and accessory delivery and loading. Grantee acknowledges and agrees that Grantor’s use of the Easement Parcel for Grantor’s campus and building operations, limited to move-in and move-out during periods of student arrival and student departures from Grantor’s properties adjacent to the Easement Area, shall enjoy priority over Grantee’s rights under this Agreement, unless any emergency event or condition exists requiring access by emergency vehicles, equipment and personnel. Grantor’s priority use periods for move-in and move-out periods of student arrivals and departures shall not in the aggregate exceed six (6) days per calendar year. Grantor shall use commercially reasonable efforts to give Grantee 120 days’ notice before such anticipated move-in and move-out periods. Grantor shall advise Grantee in advance before major periods of student arrival and student departures begin including the period(s) of times of such usage, and in the event Grantee needs to utilize the Easement Parcel during such periods, representatives of Grantor and Grantee shall communicate to determine how to accommodate any conflicts.

3. **Maintenance**. Grantee accepts the current state of the Easement Parcel in its “as-is” condition. Grantor shall maintain, and repair the Easement Parcel to keep the same in a reasonably usable condition, provided that Grantor and Grantee shall share equally in the costs and expenses, subject to the terms of **Section 6** below, necessary to maintain and repair the Easement Parcel to keep the same in a reasonably usable condition.

4. **Prohibited Acts**. Subject to the terms of **Section 2** above, neither Grantor or Grantee shall materially obstruct, impede or interfere with the use of the Easement Parcel by means of acts (collectively “**Prohibited Acts**”) which would include, but not be limited to: (i) use of the Easement Parcel for construction traffic (*i.e.*, for use by trucks used in construction, by construction vehicles, and by construction equipment) or for construction staging, provided, however, that temporary use of the Easement Parcel for such purposes is permitted provided such construction traffic and vehicles can be immediately relocated to facilitate other vehicles

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utilizing the Easement Parcel and provided such use does not violate the terms of the Krueck Easement; (ii) the placement of any buildings or improvements on the Easement Parcel, except for (A) the Subsurface Improvements in accordance with the Encroachment Easement Agreement, and (B) improvements constructed pursuant to Grantor's retained rights under Section 2 above; (iii) the installation of any scaffolding or other barrier on or across the Easement Parcel which would prevent use of or obstruct the Easement Parcel, except for (A) the protective scaffolding and barriers specified in the Scaffolding and Construction Staging Plan attached as Exhibit C and made a part hereof, which may be maintained by Grantee subject to the requirements of such Scaffolding and Construction Staging Plan, this Agreement, and the Encroachment Easement Agreement, (B) such similar protective scaffolding and barriers as Grantor (or its successors or assigns) may from time to time find it necessary or appropriate to erect and maintain in connection with the construction of Grantor's multi-story building on East Pearson Street, provided that a scaffolding and construction staging plan similar to Exhibit C is implemented with respect to such work, and (C) after Grantee's construction of its residential building is complete, and after Grantor's construction of its multi-story building on East Pearson Street is complete, such future, temporary scaffolding and barriers as may be from time to time necessary or appropriate to enable Grantor and Grantee to perform necessary maintenance or repair work on such party's respective property; (iv) violations of the terms of the Krueck Easement by or through Grantee; (v) material obstruction, impediment or interference of the Easement Parcel by idling or parked vehicles; and (vi) storage or placement of dumpsters, tractors, sweepers, snow removal or other equipment on the Easement Parcel, except on a temporary basis (e.g., on garbage pick-up days, or when cleaning or snow removal work is being done on the Easement Parcel). In exercising any of Grantee's rights to install, operate, maintain or repair Subsurface Improvements pursuant to the terms of Section 2, above, Grantee at all times shall assure a continuous means of both ingress and egress across the Easement Parcel notwithstanding Grantee's construction in order to permit continuous access across the Easement Parcel for the benefit of Grantor and those parties with rights of shared possession and/or use, including, without limitation, Grantor, the owner of 18 East Pearson Street, and the property owner(s) located at 21 East Chestnut Street. Grantor shall, as necessary or appropriate, coordinate the uses permitted under this Section 4 with (x) the Grantee's use of Easement Parcel in connection with Grantor's operation of Raymond C. Baumhart, S.J. Residence Hall and the construction and operation of Grantor's multi-story building on East Pearson Street, (y) the lawful use of the ten foot (10') private alley (the western five (5) feet of which is included in the Easement Parcel and the eastern five (5) feet of which is located to the east of the Easement Parcel) by Grantor and the adjoining property owner(s) located at 21 East Chestnut Street, and (c) the use of the Easement Parcel by the owner of 18 East Pearson Street pursuant to the Krueck Easement. Grantee shall timely comply with the directives given by Grantor from time to time and deemed by Grantor to be reasonably necessary or appropriate to coordinate such shared use.

5. **Mechanic's Liens.** Grantee shall not cause or permit any mechanic's lien or supplier's lien arising from Grantee's exercise of its construction rights and work under this Agreement to be filed against the Easement Parcel or any parcel owned by Grantor. Grantee shall, at its expense, procure the satisfaction or discharge of record of all such mechanic's liens within thirty (30) days after notice of the filing thereof; or, if acceptable to Grantor, within such thirty (30) day period, Grantee shall procure for Grantor, at Grantee's sole expense, a bond or other protection against any such lien or encumbrance acceptable to Grantor. In the event Grantee has not so performed within such thirty (30) day period, Grantor may, at its option, pay and discharge such liens and Grantee shall reimburse Grantor, on demand, for all actual, out-of-



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pocket costs and expenses incurred in connection therewith. Grantee agrees to indemnify, defend and hold harmless Grantor from and against all losses, damages (excluding punitive damages), injuries, claims, demands and expenses, of any nature, including reasonable legal expenses, which may arise out of any such mechanic's lien.

## 6. Enforcement.

(a) If either Grantor or Grantee permits a condition to exist on the Easement Parcel which is in violation or breach of any agreement, provision, covenant, condition, restriction or easement herein contained or granted or of public record or otherwise defaults in its obligations under this Agreement (including without limitation a violation or breach comprising Prohibited Acts pursuant to the terms of **Section 4**, above), and such violation, breach, or default remains uncured for ten (10) days after written notice from the complaining party (provided, however, that no notice or cure period shall be required in the event of an emergency or a violation, breach or failure that would constitute a danger to life, safety or property, or cause a lapse in insurance coverage required under this Agreement, or a material obstruction, impediment or interference with the passage of either pedestrian or vehicular traffic on the Easement Parcel), then the complaining party shall have the right, but not the obligation, to summarily abate and/or remove such condition (including resort to towing), or to prosecute a proceeding, at law or in equity, against the entity or entities, person or persons who are violating or attempting to violate this Agreement, to enjoin or prevent them from doing so, to cause the violation, breach or other default to be remedied and to recover damages for said violation. In addition, and without waiving any of the foregoing rights, the complaining party, if so injured by such violation, shall also be entitled to reimbursement from the party in violation for the complaining party's out-of-pocket expenses reasonably incurred in remedying, abating or removing such condition as aforesaid or curing such violation, breach or default, including without limitation towing costs and fees and any repairs and replacements to the Easement Parcel. Notwithstanding the ten (10) day cure period described above (but subject to the no notice or cure period proviso contained therein), if the violation, breach or default is not reasonably susceptible to cure within a ten (10) day period, and if within such initial ten (10) day cure period Grantee has commenced curing such violation, breach or default and thereafter diligently pursues such cure to completion, then Grantee shall have additional time to effect such cure, but in no event more than sixty (60) days.

(b) Grantor and/or Grantee may enforce this Agreement by an action at law or in equity. All remedies provided for herein or at law or in equity shall be cumulative and not exclusive. Notwithstanding the preceding sentence, after the construction of the Subsurface Improvements, no breach or violation of this Agreement by Grantee shall cause the reversion

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or forfeiture of Grantee's easement interest in any portion of the Easement Areas to Grantor.

(c) The failure of either Grantor or Grantee to enforce any covenant, condition, restriction or easement herein contained shall in no event be deemed a waiver of the right to do so thereafter or the right to enforce any other covenant, condition, restriction or easement contained herein.

(d) In the event that the party in violation fails to reimburse the complaining party for any amounts due under this Agreement within thirty (30) days after receipt of said invoice and supporting documentation, the unpaid amount shall accrue interest at a rate equal to the lesser of (i) 3% per annum plus the prime rate (or corporate base rate) from time to time published in the *Wall Street Journal* (or, if such paper is no longer published or made available on-line, another nationally-recognized publication selected by Grantor), or (ii) the maximum rate permitted by law (as applicable, whichever is less, the "**Default Rate**"), and the unpaid amount together with such interest at the Default Rate shall constitute a lien on the party in violation's parcel (i.e., either the Benefited Parcel, if the Grantee is the violator, or the Easement Parcel, if the Grantor is the violator). As evidence and notice of such lien, the complaining party may prepare a written notice of such lien setting forth the amount of delinquent indebtedness. Said lien shall be subordinate to any bona fide mortgage held by the lender unaffiliated to either Grantor or Grantee, as the case may be, prior to the filing of such lien. Such notice of lien shall be signed by the complaining party and shall be recorded in the Office of the Recorder of Cook County, Illinois or such other place as may be required by law for the recording of liens affecting real property at the time such notice is recorded. Such lien shall attach to the party in violation's parcel adjacent as of the date payment becomes delinquent and may be enforced after recording said notice by foreclosure of such lien on the party in violation's parcel and any improvements thereon in like manner as a mortgage on real property, or by suit against the party in violation.

7. **Benefited Parties/Owners.** The easements granted herein shall benefit Grantee and all future owners of all or any portion of the Benefited Parcel. If fee title to any portion of the Easement Parcel or the Benefited Parcel (hereinafter, a "**Parcel**" or "**Parcels**" as the context requires) is hereinafter transferred to one or more persons or entities, then all of the fee owners of the Easement Parcel and the Benefited Parcel (or any portion thereof) (hereinafter individually referred to as an "**Owner**" and collectively as the "**Owners**"), as applicable, shall be entitled to the benefits of and burdened by the easements, rights, privileges, covenants, indemnities, conditions and restrictions granted or contained hereunder, provided that in the event that the Benefited Parcel becomes subject to the Illinois Condominium Property Act, the rights of Grantee shall be exercised solely through lawful authorized act of the resulting condominium association rather than through individual unit owners. The term "**Owners**" as used herein shall be deemed to include any and all successors, grantees, and assigns of such parties and their respective successors, grantees, and assigns.

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8. **Covenants Run with the Land; Successors and Assigns.** Subject to the termination provision in **Section 20** below, the easements granted herein and all other rights, privileges, covenants, conditions, and restrictions contained herein shall be deemed to be covenants running with the land. An Owner who conveys its interest in its Parcel (the “**Transferring Owner**”) shall be released from all obligations arising or accruing under this Agreement after the date of such conveyance, but shall remain liable under this Agreement for all obligations arising or accruing under this Agreement prior to the date of such conveyance, and the party to whom such Transferring Owner conveys its interest in its Parcel shall be automatically liable for the obligations of the Owner of such Parcel accruing hereunder from and after the date of such conveyance.

9. **Compliance with Laws.** This Agreement does not abrogate, supersede or otherwise limit the obligations of Grantee under any applicable Governmental Requirements requiring such party to obtain ordinances, permits, licenses, inspections or approvals in order to construct, install, operate, maintain, repair, replace or use the Subsurface Improvements on the Grantor’s Property pursuant to the easements granted herein.

10. **Notices.** Unless otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be served on the parties at the following addresses:

If to Grantee: Tower 10 Glades LLC  
c/o Newcastle Limited  
150 North Michigan Avenue, Suite 3610  
Chicago, Illinois 60601  
Attention: Michael Haney

With a Copy to: DLA Piper LLP (US)  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601  
Attention: Kimberlie Pearlman

If to Grantor: Loyola University of Chicago  
820 North Michigan Avenue, 15th Floor  
Chicago, Illinois 60611  
Attention: Wayne Magdziarz  
Senior Vice President for Capital Planning  
and Campus Management

With a copy to: Loyola University of Chicago  
Office of the General Counsel  
820 N. Michigan Avenue, Suite 750  
Chicago, Illinois 60611  
Attention: General Counsel

Any such notices shall be either (i) sent by certified mail return receipt requested and postage pre-paid, in the United States Mail, (ii) sent by overnight delivery using a nationally recognized courier, or (iii) by personal hand delivery, in which case notice shall be deemed delivered at the

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time of the personal hand delivery or refusal. Notices shall be deemed effective and received by Grantor on the date of actual receipt or refusal by a member of the office of the Grantor representative who is addressed, and shall be deemed effective and received by Grantee on the date of actual receipt or refusal by a member of the office of the Grantee representative who is addressed.

11. **Related Agreements; Amendment.** This Agreement, including any exhibits attached hereto (which exhibits form a material part of this Agreement and are incorporated herein by reference), has been executed pursuant to that certain Purchase and Sale Agreement between Grantor (as Seller) and Grantee (as Buyer) made as of February 8, 2013, as amended, and shall be construed consistently with (a) such Purchase and Sale Agreement, (b) the Encroachment Easement Agreement (including, without limitation, the insurance and indemnity provisions set forth therein), and (c) Connecting Corridors Easement Agreement. This Agreement may not be amended or modified except in writing executed by both parties hereto.

12. **Interpretation.** Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, and the term "Grantee" shall include Grantee herein named and any and all assignees or successors of Grantee and their assignees and successors. The section headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Time is of the essence of this Agreement.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

14. **Invalidity of Provision.** If any provisions of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction or other qualified tribunal to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permitted by applicable law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

15. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois, and the parties hereto (i) agree that any action or proceeding that is brought to enforce or interpret this Agreement or that concerns or is in any way related to this Agreement shall be brought in the federal or state courts located in Cook County, Illinois and (ii) consent to venue and personal jurisdiction in the courts specified in the foregoing subpart (i) of this subsection.

16. **Waiver of Trial by Jury.** To the extent permitted by law, each party hereby waives, irrevocably and unconditionally, trial by jury in any action brought on, under or by virtue of or relating in any way to this Agreement or any of the documents executed in connection therewith, the property, or any claims, defenses, rights of set-off or other actions pertaining hereto or to any of the foregoing.



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17. **Insurance.** Grantee shall carry the insurance required under Section 5 of the Encroachment Easement Agreement and comply with the other requirements of such Section 5. In addition, the owners of each of the Easement Parcel and the Benefited Parcel, or any portion thereof, shall at all times maintain liability and casualty insurance in force with respect to the Parcels, in amounts and with coverages as are commercially reasonable for properties of similar types in the Chicago, Illinois area, naming one another as additional insureds on liability policies, and shall annually, upon policy renewals, provide certificates of insurance to each other evidencing compliance with this Section. Without limiting the generality of the foregoing, the liability insurance carried by Grantee shall include coverage with respect to the Easement Parcel and shall name Grantor as an additional insured with respect to such coverage.

18. **Excusable Delays.** Whenever performance is required by any Owner hereunder, such Owner shall use reasonable due diligence to perform, and take all necessary measures in good faith to perform, its obligations; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, terrorism, civil commotion, riots, strikes, picketing or other labor disputes of third parties, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, inclement weather which delays or precludes construction, action or non-action of public utilities or of local, state or federal governments, condemnation, or other conditions similar to those listed above which are beyond the reasonable control of such Owner, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Owner from the prompt payment of any monies required by this Agreement.

19. **Real Estate Taxation.** The Easement Parcel is currently exempt from general real estate taxation, and is not subject to any special assessments. In the event the Easement Parcel becomes subject to general real estate taxation or becomes subject to a special assessment, Grantor shall have the right from time to time to bill Grantee for the amounts due the taxing authorities, in which case Grantee shall be obligated to pay Grantor said amounts within fifteen (15) business days of Grantor's invoice for the same. Grantee's failure to make the aforesaid payment in a timely manner shall comprise a violation and breach of this Agreement. In the event the Easement Parcel becomes subject to general real estate taxation, Grantor shall use reasonable efforts to seek a partial exemption as to such taxes, and/or reduced assessment as to such taxes, so that such taxes reflect only Grantee's use of the Easement Parcel, provided, however, that (a) if such efforts are unsuccessful, Grantee shall pay the full amounts due, and (b) in any event, Grantee shall reimburse Grantor for any third party costs reasonably incurred by Grantor in seeking such partial exemption and/or reduction.

20. **Termination of the Easement Due to Non-Use or Demolition of Grantee's Improvements.** Notwithstanding anything in this Agreement to the contrary, Grantor or Grantee may terminate this Agreement if, subject to excusable delays as described in **Section 18** above, the Subsurface Improvements are not substantially completed on or before the tenth (10<sup>th</sup>) anniversary date of the Effective Date by sending written notice to the other party. In such event, the Easement and this Agreement shall be deemed terminated and released. Grantee shall then peaceably vacate, yield and surrender to Grantor full possession of the Grantor's Property and execute any and all instruments reasonably required by Grantor to release the Easement. If such Subsurface Improvements are constructed, and the Grantee's building is subsequently demolished, Grantee shall not be obligated to remove such Subsurface Improvements, which

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shall be deemed abandoned in place, and this Agreement shall be deemed terminated and released.

[SIGNATURE PAGE FOLLOWS]

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A large, thick, black scribble consisting of several vertical, wavy lines, completely obscuring the text of the signature page.

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**IN WITNESS WHEREOF**, Grantor and Grantee have executed this Agreement as of the date first above written.

GRANTOR:

LOYOLA UNIVERSITY OF CHICAGO,  
an Illinois not-for-profit corporation

By: Wayne Magdziarz  
Wayne Magdziarz  
Senior Vice President  
Capital Planning and Campus  
Management

GRANTEE:

TOWER 10 GLADES LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Michael R. Haney  
President and CEO

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IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written.

GRANTOR:

LOYOLA UNIVERSITY OF CHICAGO,  
an Illinois not-for-profit corporation

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

Wayne Magdziarz  
Senior Vice President  
Capital Planning and Campus  
Management

GRANTEE:

TOWER 10 GLADES LLC,  
a Delaware limited liability company

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

Michael R. Haney  
President and CEO

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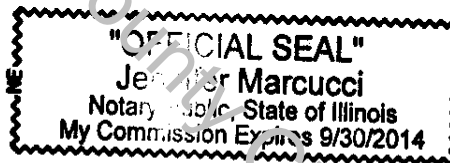
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STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

I, Jennifer Marcucci a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Wayne Magdziarz, not personally but in his capacity as the Senior Vice President for Capital Planning and Campus Management for LOYOLA UNIVERSITY OF CHICAGO, an Illinois not-for-profit corporation (the "University"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said University, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30<sup>th</sup> day of August, 2013.

Jennifer Marcucci  
Notary Public

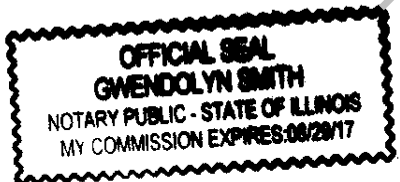


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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, Gwendolyn Smith a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael R. Haney, not personally, but in his capacity as the President and CEO of TOWER 10 GLADES LLC, a Delaware limited liability company (the "Company"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he signed and delivered the said instrument pursuant to authority granted by the Company, as his free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29 day of August, 2013.



Gwendolyn Smith  
Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION OF EASEMENT PARCEL

THAT PART OF LOTS 3 AND 4 INCLUSIVE OF PARTS OF THE NORTH-SOUTH AND EAST-WEST PRIVATE ALLEY IN LARSON'S SUBDIVISION OF LOT 1 IN THE SUBDIVISION OF BLOCK 18 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 4 IN LARSON'S SUBDIVISION AFORESAID; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG THE NORTH LINE OF SAID LOT 4, 10.00 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 10.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 4; THENCE SOUTH 0 DEGREES 21 MINUTES 27 SECONDS EAST, ALONG SAID PARALLEL LINE, 60.12 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 40.03 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 58 MINUTES 34 SECONDS WEST, ALONG SAID PARALLEL LINE, 20.00 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 4 AFORESAID; THENCE SOUTH 0 DEGREES 21 MINUTES 27 SECONDS EAST, ALONG SAID PARALLEL LINE, 46.53 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 6.50 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF LOTS 3 AND 4 IN LARSON'S SUBDIVISION AFORESAID; THENCE NORTH 89 DEGREES 58 MINUTES 34 SECONDS WEST, ALONG SAID PARALLEL LINE, 14.65 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 44.65 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 4 AFORESAID; THENCE SOUTH 0 DEGREES 21 MINUTES 27 SECONDS EAST, ALONG SAID PARALLEL LINE, 7.50 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE EAST-WEST PRIVATE ALLEY, SAID LINE BEING ALSO THE NORTH LINE OF LOT 6 IN THE SUBDIVISION OF BLOCK 18 IN CANAL TRUSTEES' SUBDIVISION AFORESAID; THENCE SOUTH 89 DEGREES 58 MINUTES 34 SECONDS EAST, ALONG THE NORTH LINE OF LOT 6 AFORESAID, 34.30 FEET TO THE NORTHEAST CORNER THEREOF, SAID CORNER BEING ALSO THE NORTHWEST CORNER OF LOT 1 IN THE SUBDIVISION OF LOT 7 IN THE SUBDIVISION OF BLOCK 18 IN CANAL TRUSTEES' SUBDIVISION AFORESAID; THENCE NORTH 0 DEGREES 27 MINUTES 21 SECONDS WEST, ALONG THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 1 AFORESAID, 24.03 FEET TO THE POINT OF INTERSECTION WITH THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 9 IN LARSON'S SUBDIVISION AFORESAID; THENCE SOUTH 89 DEGREES 58 MINUTES 52 SECONDS EAST, ALONG SAID WESTERLY EXTENSION, 15.39 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 5.00 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 4 IN LARSON'S SUBDIVISION, SAID LINE BEING ALSO THE CENTERLINE OF THE NORTH-SOUTH PRIVATE ALLEY IN LARSON'S SUBDIVISION; THENCE NORTH 0 DEGREES 21 MINUTES 27 SECONDS WEST, ALONG SAID CENTERLINE OF THE ALLEY, 90.13 FEET TO THE NORTH LINE THEREOF; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG SAID NORTH LINE, 5.00 FEET TO THE HEREINABOVE POINT OF BEGINNING, HAVING AS AN UPPER LIMIT A HORIZONTAL PLANE OF ELEVATION +31.00 FEET (CHICAGO, CITY DATUM), IN COOK COUNTY, ILLINOIS.

**AREA – 2,533.5 SQUARE FEET OR 0.0582 ACRES**

Address: a portion of 17--19 E. Chestnut, Chicago, Illinois 60611

PIN: 17-03-223-007 and 17-03-223-008

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## EXHIBIT B

### LEGAL DESCRIPTION OF BENEFITED PARCEL

Lots 4, 5 and 7 in Loyola Resubdivision, being a resubdivision of Lots 2, 3, 4, 5, "A" and Part of Lot 6 in the subdivision of Block 18 in Canal Trustees' Subdivision (ante-fire), together with Lots 1, 2, 3, 4, 9 and parts of the private alleys in Andrew Larson's Subdivision of Lot 1 in the Subdivision of Block 18 aforesaid (ante-fire), and Lots 1, 2, 3 and 4 in the subdivision of Lot 7 of Block 18 in the Canal Trustees' Subdivision aforesaid (ante-fire) of the south fractional ¼ of fractional Section 3, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, such plat having been approved by the City Council of the City of Chicago on July 24, 2013, recorded in the Recorder's Office of Cook County on August 6, 2013 as document no. 1321816010, and re-recorded in the Recorder's Office of Cook County on August 26, 2013 as document no. 1323839038.

17-03-223-001-0000

17-03-223-002-0000

17-03-223-003-0000

17-03-223-006-0000

17-03-223-007-0000

17-03-223-008-0000

NOTE: The above PINs are the PINS applicable to the Benefited Parcel as of the date of this Agreement. Such PINs are subject to change as a result of recordation of the Plat of Subdivision, which will result in the assignment of separate PINs for each Lot depicted therein.




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## EXHIBIT C

### SCAFFOLDING AND CONSTRUCTION STAGING PLAN

[See Attachment]

Property of Cook County Clerk's Office

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POWER  
CONSTRUCTION  
COMPANY, LLC

## SCAFFOLDING NARRATIVE (FINAL EXHIBIT - 8/26/2013)

**Overview:** The following is a brief description of the planning and strategies that will be required to erect and maintain the proposed scaffolding system for the State and Chestnut Residential Tower Project.

Due to the proximity of the new Residential Tower to existing buildings, structures, and active pedestrian walkways, Power Construction Company has proposed the erection of a scaffolding system within the private alleyway located West of the existing 21 East Chestnut Condominium and Loyola Student Residence Center. The aforementioned alleyway is an active pathway for neighboring residents and employees, and at times distribution companies performing scheduled deliveries to the existing buildings. The primary function of the scaffolding system will be to maintain public safety by protecting any pedestrians and alleyway users from potential debris or falling objects that could occur during the erection of the State and Chestnut Tower.

In order to prevent any disruptions to neighboring residents and alleyway users, the design, erection, and maintenance of the scaffolding system and alleyway will be fully coordinated with Loyola and 21 East Chestnut.

**Design:** The attached "Canopy Plan" provides a detailed schematic of the proposed scaffolding design and layout. The steel and wood plank scaffolding system will span across the alleyway at an open elevation of +3' CCD in order to maintain access for vehicle traffic and deliveries to the neighboring buildings. As detailed in the plan, the structure will be located between the existing buildings and the new State and Chestnut property line, and will shield the entire alleyway. Once use of the scaffolding is no longer required, the structure will be dismantled and the alleyway will be repaved to repair any possible damage that may have occurred during the use of the scaffolding system.

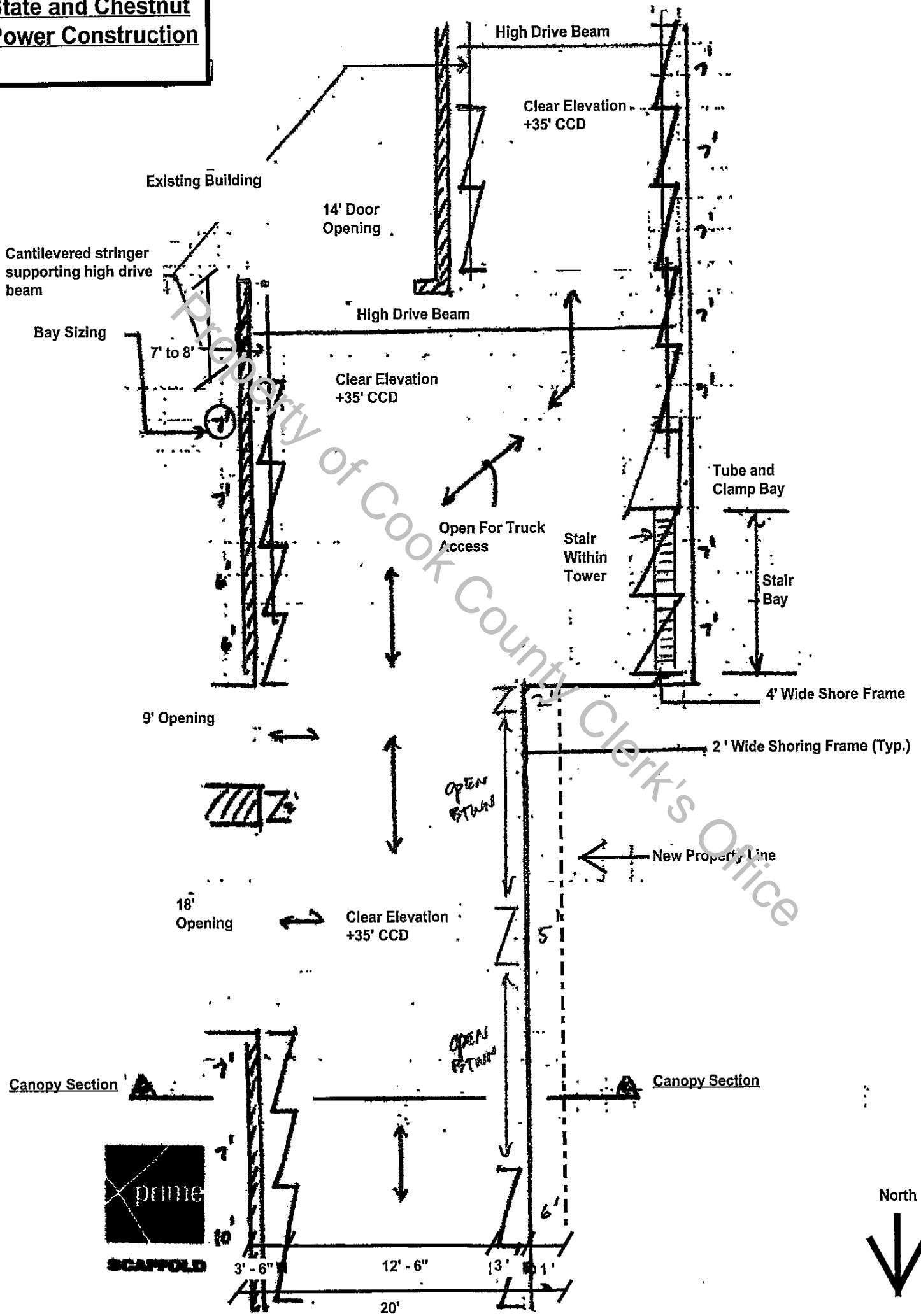
**Schedule:** As displayed in the attached "State and Chestnut Alley Schedule," the proposed date for the erection of the scaffolding will begin following the completion of the Residential Tower's substructure—approximately December 16<sup>th</sup>, 2013. Once constructed, the system will remain in place until the State and Chestnut superstructure is enclosed and caulked—anticipated to be complete around April 15<sup>th</sup>, 2015—while the scaffold at the South side of the alley will be dismantled to accommodate the Loyola Bridge connecting Baumhart with the new QSOB. Following this work, the scaffolding will be dismantled and hauled away.

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Utilities and Trench Box: All required utility work will be conducted in such a manner to prevent any interruptions to the neighboring buildings delivery and pick up services and will be fully coordinated with Loyola, 21 East Chestnut, and the neighboring residents. To maintain daytime alleyway access, this scope of work can be completed during off hours and could utilize temporary means of protection so the alleyway can remain open during the day. As currently planned, the work will begin on the North end of the alley and will continue South. We plan to begin by excavating down 4' - 5' to set the storm basin (ST-2), where we will then continue to trench North in order to set storm basin (ST-3). While installing pipe between the storm sewers, a trench box will be used to minimize over dig. At the end of each night the trench box will be removed and the open trench will then be covered with steel plating so the alleyway can be reopened to the public each day. This activity is currently scheduled to take 8 working days to complete, as shown on the attached Alley Schedule dated August 5<sup>th</sup>, 2013.

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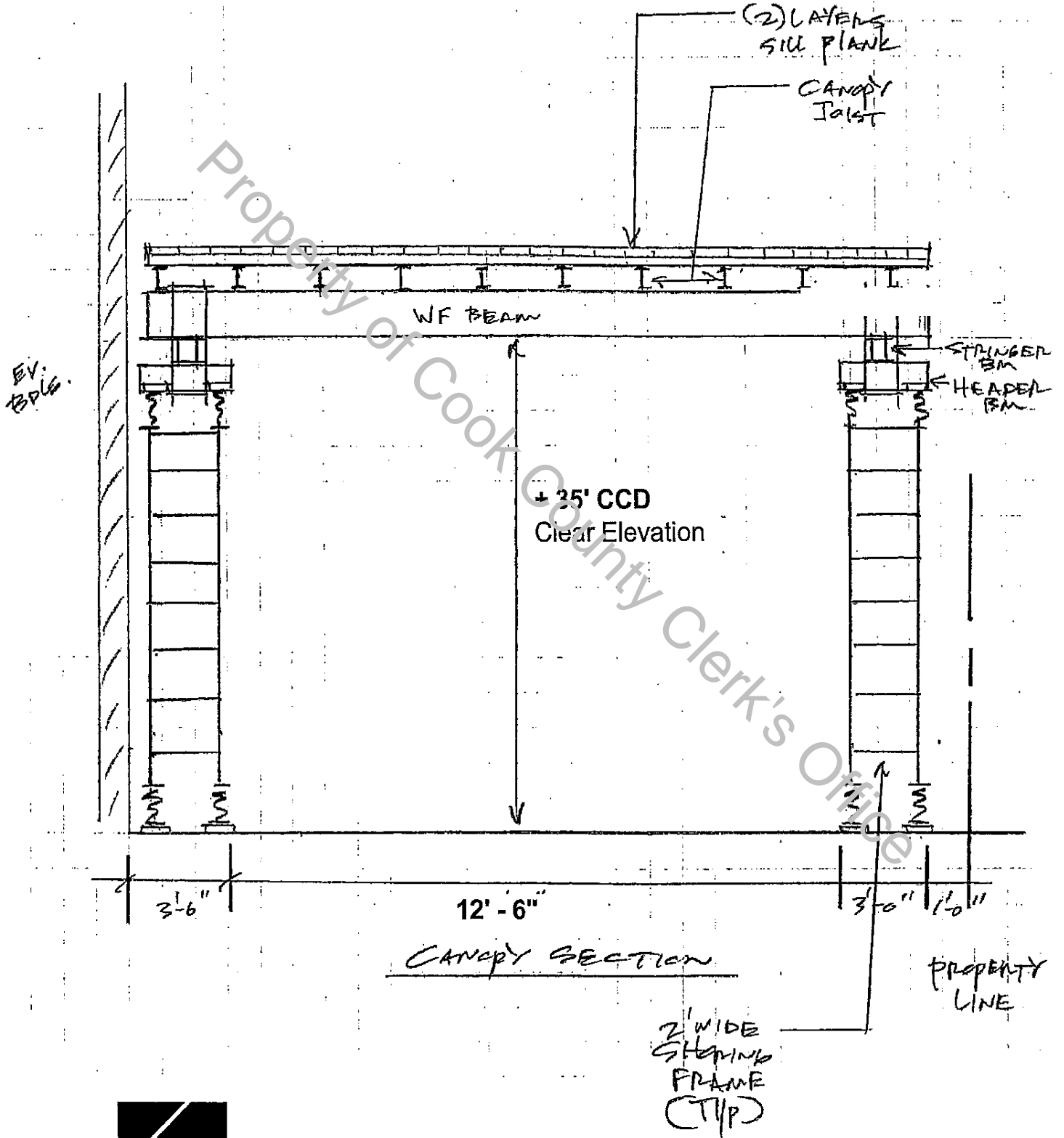
**State and Chestnut  
Power Construction**





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POWER CONSTRUCTION  
STATE AND CHESTNUT



SCAFFOLD

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Act ID	Description	Orig Dur	Rem Dur	Early Start	Early Finish	2013 J A S O N D J F M A M J J A S O N D	2014 J A S O N D J F M A M J J A S O N D	2015 J A S O N D J F M A M J J A S O N D	2016 J A S O N D J F M A M J J A S O N D
1000	Project Start	3d	3d	12AUG13	14AUG13				
1060	Mobilization & Fencing	3d	3d	15AUG13	19AUG13				
1150	Demolition of existing foundations	5d	5d	20AUG13	26AUG13				
1050	Pothole for Caissons	4d	4d	27AUG13	30AUG13				
1060	Install Caissons	27d	27d	02SEP13	08OCT13				
1110	Install Earth Retention Sheeting	12d	12d	09OCT13	24OCT13				
1010	Excavate Storm Detention	3d	3d	25OCT13	29OCT13				
1020	Install Storm Detention West	10d	10d	30OCT13	12NOV13				
1030	Install Storm Detention East	5d	5d	13NOV13	19NOV13				
1070	Install Alley Storm Basin & Underground	8d	8d	13NOV13	22NOV13				
1040	Backfill Storm Detention	3d	3d	20NOV13	22NOV13				
1080	Install Gas Main	10d	10d	25NOV13	06DEC13				
1120	Install caisson caps, grade beams	25d	25d	25NOV13	30DEC13				
1100	Temporary repave alley	5d	5d	09DEC13	13DEC13				
1090	Install Alley Canopy	10d	10d	16DEC13	30DEC13				
1140	Scaffold off subgrade for Level 2 concrete	8d	8d	31DEC13	10JAN14				
1160	Concrete columns from 1-2	5d	5d	13JAN14	17JAN14				
1180	Build structure, enclose, caulk exterior	315d	315d	20JAN14	08APR15				
1200	Remove Canopy @ alley	10d	10d	09APR15*	22APR15				

**Power Construction Company LLC  
State & Chestnut Alley**

Start date	12AUG13
Finish date	22APR15
Data date	12AUG13
Run date	05AUG13
Page number	1A
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	Early bar
	Progress bar
	Critical bar
	Summary bar
	Start milestone point
	Finish milestone point