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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

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## DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "**D**eclaration") is made and entered into effective this 2nd day of November, 2018 (the "**E**ffective Date"), by WOODFIELD HOSPITALITY, LLC, an Illinois limited liability company (the "**D**eclarant").

### RECITALS

A. The Declarant is the owner of that certain real property situated in the Village of Schaumburg, County of Cook, State of Illinois, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**D**evelopment"), including, without limitation, Parcels 1, 2, 3, 4 and 5, as legally described in Exhibit A.

B. Parcel 1 is improved with a hotel (the "**H**otel").

C. Declarant intends to develop or cause to be developed Parcel 2 with a restaurant to be operated by Bottleneck (as hereinafter defined).

D. Declarant intends to develop or cause to be developed Parcels 3, 4 and 5 with retail/commercial buildings.

E. To effectuate the common development, use and operation of the Development, Declarant desires to grant and impose certain easements upon the Parcels, as hereafter defined, and to establish certain covenants, conditions and restrictions with respect to the Parcels, for the mutual and reciprocal benefit and complement of the Parcels and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the above premises and of the covenants herein contained, the Declarant hereby declares, grants, establishes, covenants and agrees that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration, as follows:

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## DECLARATIONS

1. **Definitions.** For purposes hereof:

(a) The term “**Bottleneck**” shall mean Bottleneck Schaumburg LLC, a Delaware limited liability company, and its affiliates, subsidiaries, successors or assigns.

(b) The term “**Bottleneck Lease**” shall mean that certain Amended and Restated Lease Agreement dated November \_\_\_\_, 2018 for Parcel 2, by and between Declarant, as landlord, and Bottleneck, as tenant, and any amendments, extensions or replacements thereof.

(c) The term “**Common Area**” shall mean those portions of Parcel 1 that are outside of exterior walls of the buildings from time to time located on Parcel 1 and are either unimproved or improved as (without limitation) parking areas, landscaped areas, access drives, entrances, exits, driveways, drive aisles, roadways, service roads, curbing, curb cuts, sidewalks, walkways, paving, light standards, and other similar exterior site improvements, but shall exclude those sidewalks immediately adjacent to the buildings from time to time located on Parcel 1.

(d) The term “**Drainage Easement Area**” shall mean the areas of the Parcels shown as “Drainage Easement Area” on the Site Plan.

(e) The term “**Drainage Facilities**” shall mean all stormwater pipes, lines, catch basins, conduits, connections, drains and any other structures and improvements for stormwater management.

(f) The term “**Driveways**” shall mean the driveways and related driveway improvements, paving, curbing, curb cuts, entrances and exits that now exist or hereafter may exist (i) at the northeast corner of Parcel 1 which provide access to and from McConnor Parkway, and (ii) on the southern border of Parcel 1 which provide access to and from Walter Payton Drive, which Driveways are identified on Exhibit B hereto.

(g) The term “**Owner**” or “**Owners**” shall mean the owner or owners of fee simple title to all or any portion of the real property covered hereby, and any and all successors or assigns of such persons, whether by sale, ground lease, assignment, inheritance, operation of law, trustee’s sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property. For purposes of this Declaration where the term Owner of Parcel 2 is used or with respect to any reference to an Owner is it relates to Parcel 2, including, without limitation, notice obligations or rights of an Owner, such term or reference shall include in all instances within its application the term Bottleneck, during such time as the Bottleneck Lease remains in full force and effect.

(h) The term “**Parcel**” or “**Parcels**” shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Declaration as described on Exhibit A, that is, Parcels 1, 2, 3, 4 and 5, and any future subdivisions thereof.

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(i) The term “**Parking Area**” shall mean those portions of Parcel 1 used for the parking of motor vehicles that are or may be from time to time hereafter, improved with paved and striped parking spaces, which spaces shall be of such size as complies with all requirements of all applicable laws; provided that the Parking Area shall not include the Driveways or any interior drive aisles, roadways, sidewalks, walkways, light standards, curbing, curb cuts, roadways, drive aisles pedestrian stairways, walkways, curbs, landscaped areas, access drives, entrances, exits, access points or truck and/or loading dock areas or the concrete aprons or ramps leading to such areas.

(j) The term “**Permittees**” shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s) and (iii) any mortgagee(s) of the Owner with an interest in a Parcel.

(k) The terms “**Sign Easement Area**” and “**Alternate Sign Easement Area**” shall mean the areas of the Parcels shown as “Sign Easement” and “Alternate Sign Easement” on the Site Plan.

(l) The term “**Site Plan**” shall mean that site plan for the Development attached hereto as Exhibit B and by reference made a part hereof. Except as may be otherwise provided in this Declaration, the Site Plan is for identification purposes only.

(m) The term “**Utility Easement Area**” shall mean those portions depicted on the Site Plan as “Utility Easement”.

(n) The term “**Utility Facilities**” shall mean, without limitation, all lines, pipes, conduits, and all appurtenances thereto in connection with all utilities, including, without limitation, electricity, water, gas, sewer, telephone, cable television, and storm water detention and retention facilities, including, without limitation, underground retention or detention facilities.

## 2. Easements.

2.1 Grant of Easements. Subject to any express conditions, limitations or reservations contained herein, the Declarant hereby declares, grants, establishes, covenants and agrees that the Parcels (or those Parcels as designated below), and Owners and Permittees of the Parcels as designated below, shall be benefited and burdened by the following nonexclusive and perpetual easements which are hereby imposed upon the Parcels as designated below and all present and future Owner’s and Permittees of the Parcels as designated below:

(a) Cross-Access. An easement for reasonable access, ingress and egress over and across all parts of the Common Area located on Parcel 1 as well as all parking areas, landscaped areas, access drives, entrances, exits, driveways, drive aisles, roadways, service roads, curbing, curb cuts, sidewalks, walkways, paving and other similar exterior site improvements located on any of the other Parcels, including, without limitation, the Driveways,

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so as to provide for the passage of motor vehicles and pedestrians between all the Parcels, and to and from all abutting streets or rights of way furnishing access to any of Parcels, and to allow the Owners to perform maintenance and repairs on their respective Parcels. Provided however, each Owner shall be permitted to reasonably regulate the flow of traffic on its Parcel. The Driveways shall not be modified, altered or relocated without the express prior written consent of all of the Owners, which consent shall be in the respective sole discretion of the Owners. Further, no Owner or Permittees shall be permitted to obstruct or impair the use of the Driveways without the express prior written consent of all of the Owners, which consent shall be in the respective sole discretion of the Owners.

(b) **Utilities.** An easement under and across the Utility Easement Area for the installation, maintenance, repair and replacement of the Utility Facilities necessary for the orderly development and operation of all the Parcels and each building from time to time located within a Parcel. All such Utility Facilities shall be installed and maintained below the ground level or surface of the Parcels (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Parcel. Once the initial construction of the building on Parcel 2 shall be completed pursuant to the Bottleneck Lease, thereafter, during such time as the Bottleneck Lease remains in full force and effect, no additional utilities shall be installed in that portion of the Utility Easement Area located on Parcel 2 without the prior written consent of Bottleneck, which shall not be unreasonably withheld, conditioned or delayed.

(c) **Drainage Easement.** An easement in, upon, over, through, and across the Drainage Easement Area for the installation, maintenance, repair and replacement of the Drainage Facilities necessary for the orderly development and operation of all the Parcels and each building from time to time located within a Parcel and for purposes of draining stormwater from the Parcels. During any development activities upon any Parcel, the Owner performing such development activities shall ensure that storm water drainage remains adequate and uninterrupted as to the other Parcels. All such Drainage Facilities shall be installed and maintained below the ground level or surface of the Parcels.

(d) **Common Sign.** Subject to Declarant obtaining all applicable governmental approvals, which Declarant shall use its best efforts to obtain Declarant shall construct a multi-tenant monument sign in the location depicted on the Site Plan as the Sign Easement Area in accordance with applicable law and governmental approvals (the "**Common Sign**"). In the event that Declarant cannot obtain all applicable governmental approvals for the construction of the Common Sign in the Sign Easement Area, Declarant shall use its best efforts to obtain all applicable governmental approvals for the construction of the Common Sign in the location depicted on the Site Plan as the Alternate Sign Easement Area and, if said approvals are obtained, Declarant shall construct the Common Sign in the Alternate Sign Easement Area in accordance with applicable law and governmental approvals. Unless and until the Common Sign is approved and constructed, the Owners shall be prohibited from obtaining approval for or constructing any monument signs on their respective Parcels. The Owner of Parcel 1, at its sole cost and expense, without right of reimbursement from any other Owner, shall have the obligation to provide electricity to illuminate and maintain, repair and replace, if necessary, the Common Sign. Bottleneck, during such time as the Bottleneck Lease remains in full force and

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effect, and Parcel 2 Owner thereafter, and each other Parcel Owner or its Permittees shall have the right to install, at their respective sole cost and expense, a sign panel on each side of the Common Sign, which sign panels shall be of such size and dimension as are consistent with signage afforded to the Hotel and are in compliance with all applicable laws. The Hotel shall have the right to place its sign panels in the top and most prominent positions on the Common Sign and Bottleneck, during such time as the Bottleneck Lease remains in full force and effect, and Parcel 2 Owner thereafter, shall have the right to place its sign panels in the second from the top positions on the Common Sign. The Owners and Bottleneck, during such time as the Bottleneck Lease remains in full force and effect, shall have the right to review and approve any changes to the Common Sign, exclusive of any changes to the content of other Owner's sign panels, which approval shall not be unreasonably withheld, conditioned or delayed.

(e) **Temporary Construction Easements.**

(i) **Utilities and Drainage.** Each Owner (and its contractors, agents, employees, material suppliers and laborers) performing construction work in the Utility Easement Area or the Drainage Easement Area shall have a irrevocable, temporary non-exclusive easement over those portions of the Utility Easement Area and the Drainage Easement Area located on the other Parcels as may be necessary to construct the required Easement Facilities and/or Drainage Facilities; provided that such construction work be expeditiously pursued and conducted in a good and workmanlike manner and in accordance with all applicable laws; provided further that in no event shall this irrevocable, temporary non-exclusive easement extend more than five (5) feet from the boundary of the Utility Easement Area and the Drainage Easement Area; provided further that, in addition to insurance required to be carried by other provisions of this Declaration, customary insurance is maintained protecting the other Owners from the risks involved; and provided further that the use of such irrevocable, temporary non-exclusive easement shall not unreasonably interfere with the use, operation and enjoyment of another Parcel. Except as provided below, in no event shall an Owner stage any construction or store any materials or vehicles on a Parcel of another Owner without the written approval of the burdened Owner, which such approval shall be at the reasonable discretion of the burdened Owner. Notwithstanding the foregoing, all rights granted under this Section 2.1(e)(i) shall terminate automatically upon material completion of the construction in the Utility Easement Area and the Drainage Easement Area.

(ii) **Temporary Construction Easement for the Benefit of Parcel 2.**

There is hereby declared for the use and benefit of Bottleneck a temporary non-exclusive easement which is fifteen (15) feet in width on Parcel 1 along its common boundary with Parcel 2 (the "**Parcel 2 Construction Easement Area**") for the purposes of: (i) performing the initial construction of the buildings, structures and other improvements to be completed on Parcel 2; and (ii) placing and maintaining on the Parcel 2 Construction Easement Area such materials and equipment as shall be necessary or desirable for the prompt and expeditious performance of such construction, but only if it is not reasonably possible for Bottleneck to maintain such materials and equipment on Parcel 2. In addition to any insurance required to be carried by other provisions of this Declaration,

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during such initial construction period, customary insurance shall be maintained by Bottleneck protecting the Owner of Parcel 1 from the risks involved with such construction activities and placement of equipment and materials on Parcel 1. Notwithstanding the foregoing, all rights granted under this Section 2.1(e)(ii) shall terminate automatically upon material completion of the initial construction of the buildings, structures and other improvements on Parcel 2.

(iii) **Temporary Construction Easement for the Benefit of Parcel 3.**

There is hereby declared for the use and benefit of Parcel 3 Owner a temporary non-exclusive easement which is fifteen (15) feet in width on Parcel 1 along its common boundary with Parcel 3 (the "**Parcel 3 Construction Easement Area**") for the purposes of: (i) performing the initial construction of the buildings, structures and other improvements to be completed on Parcel 3; and (ii) placing and maintaining on the Parcel 4 Construction Easement Area such materials and equipment as shall be necessary or desirable for the prompt and expeditious performance of such construction, but only if it is not reasonably possible for Parcel 3 Owner to maintain such materials and equipment on Parcel 3. In addition to any insurance required to be carried by other provisions of this Declaration, during such initial construction period, customary insurance shall be maintained by Parcel 3 Owner protecting the Owner of Parcel 1, Bottleneck and the Owner of Parcel 2 from the risks involved with such construction activities and placement of equipment and materials on Parcels 1 and 3. Notwithstanding the foregoing, all rights granted under this Section 2.1(e)(iii) shall terminate automatically upon material completion of the initial construction of the buildings, structures and other improvements on Parcel 3.

(f) **Parking Easement.** The Owners and Permittees of Parcels 2, 3, 4 and 5 shall have a nonexclusive easement in, to, over and across the Parking Areas on Parcel 1 for the purpose of parking vehicles of said Owners and Permittees thereon (the "**Parking Easement**"). Notwithstanding the foregoing, the Parking Easement shall not apply to that portion of Parcel 1 designated on the Site Plan as the Parcel 1 Exclusive Parking Areas (the "**Parcel 1 Exclusive Parking Areas**"). Nothing in this Declaration shall be construed or deemed to convey any rights to an Owner or its Permittees that would permit parking on the Parcel 1 Exclusive Parking Areas. Notwithstanding the foregoing, in no event shall the Owner of Parcel 1 reduce the number of parking spaces on Parcel 1 which are available for use by the Owners and Permittees of Parcels 2 and 3 (excluding those parking spaces in the Parcel 1 Exclusive Parking Area) to less than the total number of parking spaces required under applicable governmental parking ratio requirements for the use of Parcels 1, 2 and 3, collectively. Notwithstanding the foregoing, in no event shall the Owners and Permittees of Parcels 2, 3, 4 and 5 utilize those portions of the Parking Areas designated on the Site Plan as the "**No Valet Parking Area**" for the parking of motorized vehicles by a valet service, whether operated by said the Owners and Permittees or third party contractors. All areas of the Parking Areas other than the Parcel 1 Exclusive Parking Area and the No Valet Parking Area may be utilized by the Owners and Permittees of Parcels 2, 3, 4 and 5 for the parking of motorized vehicles by a valet service.

(g) **Parcel 1 Loading and Trash Enclosure Easement.** The Owner and Permittees of Parcel 2, including without limitation Bottleneck, shall have a nonexclusive

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easement in, to, over and across that portion of Parcel 1 designated on the Site Plan as the Loading/Trash Area for the use of all loading docks, loading areas and trash enclosure areas for accepting deliveries of goods, loading and unloading of goods and disposing of trash, garbage and refuse, including, without limitation, maintaining, at their own expense, not more than two (2) covered trash dumpsters or compactors therein. Owner and Permittees of Parcel 2, at their sole cost and expense, shall cause such trash and refuse to be removed from the Loading/Trash Area at regular intervals, not less than weekly, and shall ensure that no trash, garbage and refuse accumulate in the Loading/Trash Area, other than in said covered trash receptacles.

(h) **Signage Easement in Favor of Parcel 2.**

(i) The Owner and Permittees of Parcel 2, including without limitation Bottleneck, shall have an exclusive easement in the interior of the Hotel for the purpose of constructing, operating and maintaining, at its sole cost and expense, without right of reimbursement from any other Owner, a sign relating to the name of the business operating within Parcel 2 and its business activities. All such signage shall require the prior written approval of the Owner of Parcel 1 as to size, appearance and location, which approval shall not be unreasonably withheld, conditioned or delayed.

(ii) The Owner and Permittees of Parcel 2, including without limitation Bottleneck, shall have a non-exclusive easement over the interior ground floor hallways of the Hotel for the purpose of constructing, operating and maintaining, at its sole cost and expense, without right of reimbursement from any other Owner, non-illuminated directional signage guiding Permittees of Parcel 2 from the Parking Area to Parcel 2, including the right to reasonable access, ingress and egress over and across the interior hallways of the Hotel for the purpose of constructing, repairing, replacing and/or maintaining any such directional signage. All such directional signage shall require the approval of the Owner of Parcel 1 as to size, appearance and location, which approval shall not be unreasonably withheld, conditioned or delayed. Said easement shall not apply to any guest rooms, offices, restaurants, bars, banquet rooms, meeting rooms or other facilities of the Hotel.

(i) **Parcel 2 Access Easement Over Interior of Buildings on Parcel 1.** The Owner and Permittees of Parcel 2, including without limitation Bottleneck, shall have a non-exclusive easement for reasonable access, ingress and egress over and across the Common Areas of Parcel 1 as well as the interior ground floor hallways of the Hotel, for the purpose of providing pedestrian access to and from the Common Areas of Parcel 1 from and to Parcel 2. Said easement shall not apply to any guest rooms, offices, restaurants, bars, banquet rooms, meeting rooms or other facilities of the Hotel. Notwithstanding the foregoing, said easement may be used only by the employees and customers of the business in operation on Parcel 2 and shall not be used for deliveries, vendors of the business being operated on Parcel 2 or by construction workers and deliveries and construction traffic shall be prohibited. Said easement shall be effective only during the hours that the business on Parcel 2 is open for business and after (or before) said hours of operation, the Owner of Parcel 1 may restrict access to the Hotel, or certain portions thereof, to the Permittees of Parcel 1.

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## 2.2 Reasonable Use of Easements.

(a) **No Interference.** The easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to materially interfere with, obstruct or delay the normal operation of a Parcel or the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith. Except in an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to such easements shall further be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry.

(b) **Construction.** Once commenced, any construction undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Parcel of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Parcel if the same interferes with easements of ingress, egress or access to or in favor of another Owner's Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and its Permittees. In such case, no affirmative monetary obligation shall be imposed upon the other Owner, and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall (i) demonstrate to the other Owner(s) that it has procured insurance coverage in commercially reasonable limits to cover potential personal injury and property loss claims that could result from or during the performance of such work, and (ii) pay all costs and expenses associated with such work and shall indemnify and hold harmless the other Owner(s) and its Permittees from all damages, losses, liens or claims attributable to the performance of such work.

## 3. Maintenance of the Parcels.

3.1 **General.** Each Owner shall be responsible for maintenance, at its own cost and expense, of its own respective Parcel in accordance with applicable laws and otherwise in a good, clean and sanitary order, free from infestation from insects, rodents, vermin and other pests and otherwise in a condition comparable to other "first-class" commercial/retail properties located in the Village of Schaumburg, Illinois, including, without limitation: (a) maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and re-striping, when necessary, including without limitation painting and striping of parking areas, repair and replacement of paving as necessary; (b) removing all ice and snow from driveways, drive aisles, roadways, entrances, exits, parking areas, sidewalks and walkways; (c) removal of trash, papers, litter, debris, filth and refuse and thoroughly sweeping the Parcels to the extent reasonably necessary to keep the Parcels in a clean and orderly condition; (d) maintaining, repairing and



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replacing, when necessary, all traffic directional signs, markers and lines; (e) maintaining all landscaped areas, including, without limitation, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines, and replacing shrubs and other landscaping as is necessary; (f) repair and replacement of utilities and drainage exclusively serving such Parcel; and (g) maintenance and repair of lighting, fixtures and signage. Garbage, trash, rubbish and other refuse, will be stored in covered containers or compactors and removed at regular intervals, not less than weekly, at such Owner's expense. Notwithstanding the foregoing, the Owner of Parcel 1 shall, at its sole cost and expense, without right of reimbursement from any other Owner, maintain, repair, replace and resurface, if necessary, the driveways, curbs, gutters and sidewalks located on Parcel 2, but expressly excluding any outdoor patio located on Parcel 2 which is used by the restaurant or other business operating on Lot 2, in accordance with the foregoing provisions of this Section 3.1, including, without limitation, removal of snow and ice therefrom. The Owner of Parcel 1 shall have a nonexclusive easement in, to, over and across the driveways, curbs, gutters and sidewalks located on Parcel 2, but expressly excluding any outdoor patio located on Parcel 2 which is used by the restaurant or other business operating on Lot 2, for the purpose of performing such maintenance, repairs, replacements and resurfacing.

3.2 **Buildings and Appurtenances Thereto.** Each Owner covenants to keep and maintain, at its sole cost and expense the building(s) located from time to time on its respective Parcel in good order, condition and repair and in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests. Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Declaration), or (b) demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition. Nothing contained herein shall be deemed to allow an Owner to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and such Owner's Permittee.

3.3 **Utilities.** Each Owner shall at all times during the term hereof construct, operate, maintain and replace, when necessary, or cause to be constructed, operated and maintained, in good order, condition and repair, and replaced, when necessary, at its sole expense, any Utility Facilities or other installations which are located on its Parcel and are not dedicated to the public or conveyed to any public or private utility, regardless of whether such Utility Facilities provide or facilitate utility service for just that Owner's Parcel or another Owner's Parcel.

3.4 **Lighting.** Each Owner, at its sole expense and without right of reimbursement from the other Owners, shall maintain, repair and replace, when necessary, all exterior artificial lighting facilities located on its Parcel, including providing electricity thereto. Each Owner shall cause the exterior of its Parcel to be adequately lit for at least the hours during which the business on such Parcel is open for business and for one (1) hour after closing.

3.5 **Failure in Performing Maintenance Responsibilities.** In the event that an Owner fails or defaults in its maintenance obligations as set forth in this Section 3, which failure

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continues for a period of thirty (30) days after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a breach under this Declaration and any of the other Owners may thereafter perform such maintenance obligations, in addition to such Owner's other remedies. Anything to the contrary herein notwithstanding, in the event that an Emergency Condition (as hereafter defined) should exist because of the failure of an Owner to perform any of its maintenance obligations in accordance with this Declaration, such Owner shall not be entitled to such notice and the other Owners may immediately assume all or any portion of such obligations. For the purpose of the preceding sentence, the phrase "**Emergency Condition**" means any condition constituting an immediate risk of injury to person or serious damage to property. In the event a curing Owner assumes all or any portion of the obligations of a defaulting Owner as provided in this Section 3, the curing Owner may, in its sole discretion, perform such obligations itself or contract with third parties to perform such assumed obligations. In the event another Owner assumes all or any portion of the obligations of an Owner as set forth in this Section 3, the defaulting Owner shall, within thirty (30) days after being invoiced therefor, reimburse the curing Owner for all costs of every kind or nature incurred by the curing Owner in performing such assumed obligations, including all expenses incurred for labor (including the reasonable cost of salaries and other costs or fringe benefits of persons actually employed by the curing Owner), services, equipment, supplies and materials used in performing such obligations and an administrative fee of ten percent (10%) of all the costs incurred. If the defaulting Owner does not so pay, the curing Owner shall have the right to seek a judgment and judicial lien on the Parcel of the defaulting Owner for the amount of the invoice, in accordance with the provisions of Section 10.3 below, which amount shall bear interest at the Default Rate (as hereafter defined) from the date of expiration of said thirty (30) day period until paid.

3.6 **Eminent Domain.** If any portion of the Common Area is condemned or taken over under the power of eminent domain, the Owner of Parcel 1 shall, insofar as its is practicable to do so (subject to obtaining the necessary approvals, including all applicable governmental and lender's approvals and consents), promptly upon receipt of the award therefor, apply the proceeds of any such award to the construction of equivalent improvements on the Common Area and the restoration of any improvements on the Common Area partially taken or so sold, as may be appropriate. Nothing in this paragraph shall be construed to give the Owner of any Parcel any interest in any award or payment made to the Owner of Parcel 1 in connection with any exercise of eminent domain or transfer in lieu thereof affecting the Common Area. In the event of any exercise of eminent domain with respect to the Common Area, the award attributable thereto shall be payable only to the Owner of Parcel 1 and no claim thereon shall be made by other Owners. Any restoration or construction performed pursuant to this paragraph shall be performed with at least the same quality of workmanship and materials used with respect to the original construction and shall be architecturally and aesthetically harmonious with the original construction. Any area restored pursuant to this paragraph and, subject to any easements applicable to the Common Area as provided in this Declaration shall remain subject to the same and to the extent necessary for the continuous use and enjoyment of other Owners shall be promptly placed and maintained in a condition so that there is minimal interruption with necessary easement and services.

#### 4. **Insurance for Common Areas.**

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4.1 **Insurance for Common Area.** The Owner of Parcel 1 shall procure and maintain in full force and effect a policy or policies of commercial general liability insurance against any liability or claim for bodily injury, wrongful death, property damage occurring on, in or about the Common Area, with financially responsible insurers authorized to transact business in the State of Illinois with a commercially reasonable combined single limit of not less than two million dollars (\$2,000,000.00) per occurrence, such amount to be increased over time so as to maintain comparable coverage amounts as dollar values erode with inflation or if reasonably required under then-prevailing industry standards for retail shopping centers (the “**Common Area Insurance**”). The policies of insurance required under this paragraph shall name the other Owners and Bottleneck, during such time as the Bottleneck Lease remains in full force and effect (and their mortgagees and/or lessors, if required) as additional named insureds. The Owner of Parcel 1 shall provide the other Owners with certificates of such Common Area Insurance from time to time upon written request to evidence that such insurance is in force. Such insurance policies shall provide an obligation requiring the insurer to provide thirty (30) days written notice to the other Owners and additional named insureds prior to cancellation or termination of the policy (10 days in the case of non-payment).

4.2 **Reimbursement of Common Area Insurance Costs to Parcel 1 Owner.** Beginning on the earlier of the date that a certificate of occupancy is issued for or a business is opened in a building constructed on Parcels 2, 3, 4 and 5, the Owners of Parcels 2, 3, 4 and 5 shall reimburse the Owner of Parcel 1 a pro rata share of the cost of the Common Area Insurance incurred by the Owner of Parcel 1 (“**Common Area Insurance Costs**”). The pro rata share of said Owners shall be calculated based on the percentage of the rentable square feet of the building on the Parcel of each such Owner to the total rentable square footage of all buildings in the Development for which certificates of occupancy have been issued or in which a business is open. The Owner of Parcel 1 shall send invoices to said Owners for reimbursement of Common Area Insurance Costs not more than once per quarter. All reimbursements required under this Section 4.2 must be made within thirty (30) days after receipt of an invoice. If any Owner does not so pay, the Owner of Parcel 1 shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, in accordance with the provisions of Section 10.3 below, which amount shall bear interest at the Default Rate (as hereafter defined) from the date of expiration of said thirty (30) day period until paid. After the end of each calendar year, Parcel 1 Owner shall supply the Owners of Parcels 2, 3, 4 and 5 with a summary of the actual amount of all Common Area Insurance Costs for said calendar year and a determination of each Owner’s respective proportionate share thereof. In the event the amount billed to any Owner is less than the actual share of Common Area Insurance Costs of such Owner, the deficiency shall be paid by such Owner within thirty (30) days after its receipt of such determination. In the event the amount billed to any Owner exceeds the actual share of Common Area Insurance Costs of such Owner, then such excess shall be applied to the next payment of Common Area Insurance Costs coming due, until fully exhausted. Said summary shall also contain a determination by Parcel 1 Owner of the quarterly sum of Common Area Insurance Costs to be paid by said Owners during the current calendar year, which determination shall be based on the Common Area Insurance Costs for the preceding year modified by any known or anticipated increases. Failure of Parcel 1 Owner to provide notice of under or overpayment shall not constitute a waiver of any of Parcel 1 Owner’s rights to collect such payments or any Owner’s obligation to pay its proportionate share

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of Common Area Insurance Costs, but will extend each party's rights until the date notice is given.

5. **Real Estate Taxes.** Each Owner shall pay all real estate taxes, assessments, levies and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever levied or made by any governmental body or agency (collectively, "**Taxes**") with respect to its Parcel. As of the Effective Date, Parcels 1, 2, 3 and 4 are assessed as part of Permanent Index Numbers 07-12-400-010-0000 and 07-12-402-016-0000 (the "**Current PINs**"). Parcel 5 is assessed under its own separate PIN (07-12-400-011-0000). Declarant anticipates that Parcels 1, 2, 3 and 4 will be assigned their own, separate Permanent Index Numbers (the "**New PINs**") for the 2019, payable 2020 Taxes. Until such time as Taxes are billed under the New PINs, the Owner of Parcel 1 shall pay the Taxes for the Current PINs on or before the due dates thereof and the Owners of Parcels 2, 3 and 4 shall reimburse the Owner of Parcel 1 a pro rata share of the cost of the Taxes incurred by the Owner of Parcel 1. The pro rata share of said Owners shall be calculated as follows: (i) for the portion of the Taxes attributable to the assessment of the improvements on Parcels 1, 2, 3 and 4, based on the percentage of the rentable square feet of the building on the Parcel of such Owner to the total rentable square footage of all buildings located on Parcels 1, 2, 3 and 4 at the time such Taxes are assessed; and (ii) for the portion of the Taxes attributable to the assessment of the land value of the Parcels, based on the percentage of the square feet of the land on the Parcel of such Owner to the total square footage of all land located on Parcels 1, 2, 3 and 4 at the time such Taxes are assessed. For clarity, the portion of the Taxes attributable to the assessment of the land value of Parcel 2 shall be 3.7518% and the portion of the Taxes attributable to the assessment of the improvements on Parcel 2 shall be 2.2729%. Notwithstanding the foregoing, the amount of the Taxes attributable to the assessment of the improvements on Parcel 2 shall be further reduced by 80%, to account for the demolition of the existing building in 2018; provided that the amount of the Taxes attributable to the assessment of the improvements on Parcel 2 for 2018 shall be not less than \$5,000. The Owner of Parcel 1 shall send invoices to the Owners of Parcels 2, 3 and 4 for reimbursement of such Taxes, which shall include copies of the bills for such Taxes issued by the applicable governmental body or agency. All reimbursements required under this Section 4 must be made within thirty (30) days after receipt of an invoice. If any Owner does not so pay, the Owner of Parcel 1 shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, in accordance with the provisions of Section 10.3 below, which amount shall bear interest at the Default Rate (as hereafter defined) from the date of expiration of said thirty (30) day period until paid. Notwithstanding anything herein to the contrary, for tax year 2018, payable in 2019, if the Owner of Parcel 1 receives real estate tax relief from Cook County which the County's records reflect is attributable to the vacancy and/or demolition of the improvements on Parcel 2 during 2018, Parcel 2's share of the Taxes attributable to the assessment of the improvements shall be reduced accordingly and shall not be subject to the \$5,000 cap provided above.

## 6. **Construction of Improvements.**

6.1 **Compliance with Laws.** Every building (including its appurtenant Common Area improvements), now or in the future constructed on a Parcel shall be constructed, operated

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and maintained so that the same is in compliance with all applicable laws and governmental requirements.

6.2 **No Interference.** Construction activities performed on the Development, or any portions thereof:

(a) shall be performed in a good and workmanlike manner so as not to unreasonably disturb the operation of any business conducted upon any Parcel, or interfere with the Owner or Permittees of any Owner, and once commenced, such work will be diligently pursued to completion; and

(b) any grading which materially alters the flow of surface water or materially modifies the grading or drainage of any of the Easement Areas or an adjoining Parcel (as currently constructed) shall be repaired and restored as nearly as practicable to its prior existing condition in a prompt and workmanlike manner; and

(c) once constructed, the Easement Areas, Easement Facilities, and any portion(s) thereof shall not be materially obstructed during the normal business hours of any Owner except as may be reasonably necessary to perform maintenance, repair and replacement or as may be reasonably necessary to prevent the dedication of the Easement Areas or Easement Facilities to public use.

## 7. **Restrictions.**

7.1 **General.** Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition to the foregoing, throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of a Parcel shall be used, directly or indirectly, for purposes of a pinball, video game, or any form of entertainment arcade; a gambling or betting office, other than for the sale of lottery tickets; a massage parlor; a cinema, video store or bookstore selling, renting, or exhibiting primarily material of a pornographic or adult nature; an adult entertainment bar or club; a bowling alley; a roller skating or ice skating rink; a billiards parlor or pool hall; a firearms shooting range or any other use which creates or causes excessive noise; a theater; a health club or exercise salon; any type of educational or vocational institution; a flea market; a warehouse; a facility which performs on-site dry cleaning; a gas station; a facility which performs on-site auto repair; or an office except as incidental to a permitted retail use; or any use which creates a nuisance.

7.2 **Parcel 2 Exclusive Right.** Throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of Parcels 1, 3, 4 or 5 shall be used, directly or indirectly, for any one or more of the following purposes: an upscale restaurant or tavern that has more than six (6) large screen televisions within the premises (not including any televisions located in any private dining or event rooms) or sells beer from more than fifteen (15) draft beer tap handles (collectively, the "**Parcel 2 Exclusive Right**"). The Parcel 2 Exclusive Right shall (a) only limit competing uses that are the primary business of the Owners or Permittees of

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Parcels 1, 3, 4 or 5 and shall not be construed as prohibiting ancillary uses of such Owners or Permittees; (b) only be effective so long as Bottleneck continuously operates its exclusive business on Parcel 2; (c) automatically terminate and be of no further force or effect upon the termination of the Bottleneck Lease; and (d) not apply to the Hotel as it currently exists on Parcel 1, together with any attached and contiguous expansions thereof which may be constructed after the Effective Date. In the event that any Owner or Permittee of Parcels 1, 3, 4 or 5 violates the Parcel 2 Exclusive Right, Bottleneck or the Owner of Parcel 2 may provide written notice of such violation to said Owner or Permittee (a “**Violation Notice**”) and if such violation is not ceased, remedied or otherwise cured within five (5) business days after the date of delivery of such Violation Notice, Bottleneck or the Owner of Parcel 2 may commence an action against such Owner or Permittee to enforce the Parcel 2 Exclusive Right and obtain Judicial Relief. For purposes of this Section 7.2, “**Judicial Relief**” shall mean a temporary restraining order, preliminary injunction, order of eviction or other court order enjoining such violation of the Parcel 2 Exclusive Right. In addition to the Judicial Relief, Bottleneck or the Owner of Parcel 2 shall be entitled to recover all reasonable attorney’s fees, court costs and litigation expenses incurred in enforcing the Parcel 2 Exclusive Right from any such violating Owner or Permittee.

7.3 **No-Build Area.** No Owner or its Permittees shall construct and building or other structure in the area of Parcels 4 and 5 designated on Exhibit B-1 attached hereto as the “**No-Build Area**.” Notwithstanding the foregoing, the No-Build Area may be improved with typical parking lot improvements, including, without limitation, paving, curbs and gutters, drive aisles, driveways, light standards and other lighting fixtures, directional signage, the Common Sign, landscape islands and landscaping, including trees and shrubbery. In the event that any Owner or Permittee violates the foregoing No-Build Area restriction, any non-violating Owner or Permittee may provide a Violation Notice to said violating Owner or Permittee and if such violation is not ceased, remedied or otherwise cured within three (3) days after the date of delivery of such Violation Notice, any non-violating Owner or Permittee may commence an action against such violating Owner or Permittee to enforce the No-Build Area restriction and obtain Judicial Relief. For purposes of this Section 7.3, “**Judicial Relief**” shall mean a temporary restraining order, preliminary injunction, order of eviction or other court order enjoining such violation of the No-Build Area restriction. In addition to the Judicial Relief, any non-violating Owner or Permittee shall be entitled to recover all reasonable attorney’s fees, court costs and litigation expenses incurred in enforcing the No-Build Area restriction from any such violating Owner or Permittee.

8. **Indemnification.** Except and to the extent caused by or due to the willful acts or gross negligence of an Indemnified Owner (as hereinafter defined), its agents, contractors, servants, licensees and employees, each Owner (the “**Indemnifying Owner**”) having rights with respect to an easement granted hereunder shall indemnify and hold the Owner (the “**Indemnified Owner**”) whose Parcel is subject to the easement harmless from and against any and all liabilities, damages, penalties or judgments, any and all actions, suits, proceedings, claims, demands, assessments, costs and expenses, including, without limitation, reasonable legal fees and expenses, incurred in enforcing this indemnity, arising from injury to person or property sustained by anyone in and about the Indemnified Owner’s Parcel resulting from any act or omission of the Indemnifying Owner or its Permittees. The Indemnifying Owner shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought

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against the Indemnified Owner or in which the Indemnified Owner may be impleaded with others upon any such above-mentioned matter, claim or claims, except for those arising from the affirmative acts, omissions, bad faith or negligence of the Indemnified Owner or the affirmative acts, omissions, bad faith or negligence of the Indemnified Owner's Permittees.

9. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of any Parcel. No easements, except those expressly set forth in Section 2 shall be implied by this Declaration.

10. **Remedies and Enforcement.**

10.1 **All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. Bottleneck shall have the right, but not the obligation, to enforce this Declaration on behalf of the Owner of Parcel 2 and/or to cure a breach or default hereunder by the Owner of Parcel 2 which enforcement or cure shall be accepted by the other Owners as if effected by the Owner of Parcel 2.

10.2 **Self-Help.** In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by J.P. Morgan Chase Bank, N.A., or its successors, plus two percent (2%), not to exceed the maximum rate of interest allowed by law (the "**Default Rate**"). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on a Parcel, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the Default Rate.

10.3 **Lien Rights.** Any claim for reimbursement of any payment obligation under this Declaration, including interest and reasonable attorneys' fees, costs and legal expenses incurred in enforcing such payment obligation, shall be assessed against the defaulting Owner in favor of the non-defaulting Owner and shall constitute a lien (the "**Assessment Lien**") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the Recorder of Deeds of Cook County, Illinois. Any such Assessment Lien shall be subject and subordinate to (a) liens for taxes and other public charges which by applicable law are expressly made superior, (b) all liens recorded in the Office of the County Recorder of the County of Cook, State of Illinois prior to the date of recordation of said notice of

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lien, (c) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien, and (d) any mortgage, leasehold mortgage, or other security instrument entered into in good faith and for valuable consideration, whether presently in existence or hereafter recorded against any part of the Development. All liens recorded subsequent to the recordation of the notice of Assessment Lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of Assessment Lien was recorded, the party recording same shall record an appropriate release of such notice of Assessment Lien.

10.4 **Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

10.5 **No Termination For Breach.** Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

10.6 **Irreparable Harm.** In the event of a violation or threat thereof of any of the provisions of this Declaration, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of this Declaration, the nondefaulting Owner, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of the provisions of this Declaration.

10.7 **Limitation of Liability.** No manager, member, partner, shareholder, trustee beneficiary, director, officer, legal representative, employee or agent of any Owner, or any partner of such parties, or any affiliate of any Owner, shall have any personal liability under this Declaration. In addition, no Owner shall have personal liability under this Declaration and, in the event any person obtains a judgment against any Owner in connection with this Declaration, such person's sole recourse shall be to the estate and interest of such Owner in and to its Parcel. Nothing in this paragraph, however, shall limit any person's right to pursue equitable remedies in the event of a default by an Owner under this Declaration as otherwise provided in this Declaration.

11. **Term.** The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the County Recorder of the County of Cook, State of Illinois, and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Parcels in accordance with Section 12.2 hereof; provided, however, that if any term or provision hereof would otherwise be unlawful and void or voidable for violation of the rule against perpetuities or any other common law or statutory rule pertaining to the duration of such easements and rights, then such term or



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provision shall be effective only until the date which is twenty-one (21) years after the death of the last surviving descendant, currently living, of the former Presidents of the United States alive on the date of this Declaration.

## 12. Rights of Mortgagees.

12.1 Mortgages Subject to Declaration. No provision of this Declaration shall in any way defeat or render invalid the lien of any mortgage, leasehold mortgage, or other security instrument (a "Mortgage Lien") entered into in good faith and for valuable consideration, whether presently in existence or hereafter recorded against any part of the Development, but any such Mortgage Lien shall be subordinate and subject to the provisions of this Declaration but not to any liens created by this Declaration; provided, however, that if any portion of the Development is purchased in connection with a foreclosure of such mortgage, leasehold mortgage, or security instrument or is conveyed to the party so secured in lieu of foreclosure, any person so acquiring or purchasing and his successors and assigns shall hold any and all real property so purchased or acquired subject to the provisions of this Declaration.

12.2 Mortgagee Notice and Right to Cure. The holder of a mortgage affecting the fee interest or ground leasehold interest of a Parcel, during such period of time as such mortgage shall be outstanding of record in the applicable land records shall be entitled to receive notice of any default by the Owner of such Parcel (including without limitation, notice of a default which would entitle another Owner to exercise self-help), provided that prior to the giving of the notice of default such mortgagee shall have delivered a notice in the form hereinafter to each Owner. The form of such notice shall be substantially as follows:

"The undersigned, whose address is [name, U.S. address, phone, fax and office or party for attention of mortgage holder] does hereby certify that it is the holder of a [first/second/etc.] mortgage (the "Mortgage") upon the tract of land or leasehold interest therein described on Exhibit "A" attached hereto and made a part hereof and being the Parcel of [Owner] in Cook County, Illinois. In the event that any notice shall be given of a default by the Owner upon whose Parcel the Mortgage is recorded under the Declaration, a copy of such notice shall be delivered to the undersigned at the address set forth above, and the undersigned shall thereafter independently have the same rights as such Owner to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default given as to such Owner, but such notice shall be effective as to such Mortgage holder only when given to the undersigned. This notice shall be of no further force or effect upon discharge of record of the Mortgage."

Any notice to such mortgagee shall be mailed or delivered to the address in the United States referred to in the form of notice set forth above and in the same manner as provided in Section 12.11 hereof. The giving of or failure to give any notice of default or the failure to deliver a copy to any such mortgagee shall in no event create any liability on the part of the Owner so declaring or entitled to declare a default. Such mortgagee shall be permitted to cure any monetary default

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within thirty (30) days after a copy of such notice has been sent to such mortgagee and any other type of default within forty-five (45) days after a copy of the notice of default shall have been sent to such mortgagee, provided that, in the case of a default which cannot with diligence be remedied within such period of forty-five (45) days, if it has notified the Owners that it is curing the default and if it has promptly commenced within the forty-five (45) day period and has proceeded and is proceeding with all due diligence to remedy such default, then such mortgagee shall have such additional reasonably required period as may be necessary to remedy such default, but in no event more than ninety (90) days after such mortgagee receives a notice of default.

## 13. Miscellaneous.

13.1 Attorneys' Fees. In the event an Owner institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

13.2 Amendment. The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of the County of Cook, State of Illinois. Notwithstanding the foregoing, no termination of this Declaration, and no modification or amendment of this Declaration shall be made nor shall the same be effective unless the same has been expressly consented to in writing by Bottleneck, during such time as the Bottleneck Lease remains in full force and effect.

13.3 Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing.

13.4 No Waiver. No waiver of any default of any obligation by any Owner shall be implied from any omission by another Owner to take any action with respect to such default.

13.5 No Agency or Partnership. Nothing in this Declaration shall be deemed or construed by any Owner or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between or among the Owners.

13.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the

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respective Owners of the Parcels and their successors, assigns, heirs, and personal representatives.

13.7 **Grantee's Acceptance.** The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or from a subsequent Owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained in this Declaration. By such acceptance, any such grantee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other Owners, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

13.8 **Severability.** Each provision of this Declaration and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the Owners shall promptly cause such legal description to be prepared. Ownership of all the Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

13.9 **Time of Essence.** Time is of the essence of this Declaration.

13.10 **Entire Agreement.** This Declaration contains the complete understanding and agreement of the Declarant hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

13.11 **Notices.** Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Owner may change from time to time their respective address for notice hereunder by like notice to the other Owners. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to Bottleneck, during such time as the Bottleneck Lease remains in full force and effect. The notice addresses of the Declarant and Bottleneck are as follows:

**Declarant:** Woodfield Hospitality, LLC  
 c/o First Equity Group, LLC  
 205 West Wacker Drive, Suite 901  
 Chicago, Illinois 60606  
 Attn: Tim Gallagher

**With a copy to:** Stahl Cowen Crowley Addis LLC  
 55 West Monroe Street, Suite 1200

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Chicago, Illinois 60603  
Attn: Thomas G. Moffitt

**Bottleneck:** Bottleneck Schaumburg LLC  
2211 North Elston Avenue, Suite 206  
Chicago, Illinois 60614

With a copy to: BUPD Law  
225 West Illinois Street, Suite 300  
Chicago, Illinois 60654  
Attn. Peter N. Isaac, Esq.

13.12 **Governing Law.** The laws of the State of Illinois shall govern the interpretation, validity, performance, and enforcement of this Declaration.

13.13 **Estoppel Certificates.** Each Owner, within thirty (30) day of its receipt of a written request from any other Owners, shall from time to time provide the requesting Owner a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any Owner is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

13.14 **Bankruptcy.** In the event of any bankruptcy affecting any Owner or occupant of any Parcel, this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

13.15 **Force Majeure.** Any Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof, in the event that, and only for as long as, the performance of any such obligation is prevented, delayed, retarded or hindered by Act of God, fire, earthquake, flood, explosion, extraordinary action of the elements, war, invasion, insurrection, terrorism, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, condemnation, requisition, Laws, order of government or civil, military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, (the "**Force Majeure Event**"). Such Owner shall provide notice to the other Owners within five (5) business days following the onset of the Force Majeure Event, specifying the cause which prevents such Owner's performance and estimating the period of expected delay.

**IN WITNESS WHEREOF**, the Declarant has executed this Declaration as of the date first written above.

**DECLARANT:**

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IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first written above.

**DECLARANT:**

**WOODFIELD HOSPITALITY, LLC,**  
an Illinois limited liability company

By: T2FE Ventures, LLC, an Illinois limited liability company

Its: Manager

By: FEPH Woodfield Hospitality, LLC, an Illinois limited liability company

Its: Manager

By: Timothy P. Gallagher

Name: Timothy P. Gallagher

Its: Manager

**Exhibits:**

Exhibit "A" - Legal Descriptions of the Parcels.

Exhibit "B" - Site Plan.

Exhibit "B-1" - No Build Area.

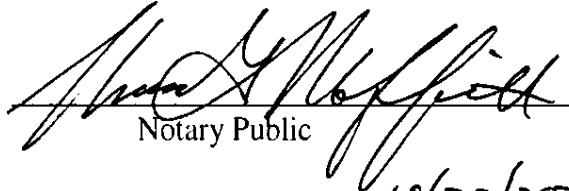
Property of Cook County Clerk's Office

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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, a Notary Public, do hereby certify that Timothy P. Gallagher, personally known to me to be the Manager of FEPH Woodfield Hospitality, LLC, an Illinois limited liability company, the Manager of T2FE Ventures, LLC, an Illinois limited liability company, the Manager of WOODFIELD HOSPITALITY, LLC, an Illinois limited liability company, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as such Manager of said company, as his free and voluntary act, and as the free and voluntary act and deed of said company, for the purposes therein set forth.

Given under my hand and notarial seal this 2nd day of November, 2018.

  
Notary Public

My commission expires: 10/23/2022



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## CONSENT OF BOTTLENECK

Bottleneck Schaumburg LLC, a Delaware limited liability company, the tenant under the Bottleneck Lease, as defined herein, and does hereby consent to the execution and recording of the foregoing Declaration of Easements, Covenants, Conditions and Restrictions and agrees that the Bottleneck Lease is hereby subordinated thereto.

IN WITNESS WHEREOF, Bottleneck Schaumburg LLC, a Delaware limited liability company, has caused this Consent to the Declaration of Easements, Covenants, Conditions and Restrictions to be executed this 12th day of November, 2018.

**Bottleneck Schaumburg LLC**, a Delaware limited liability company

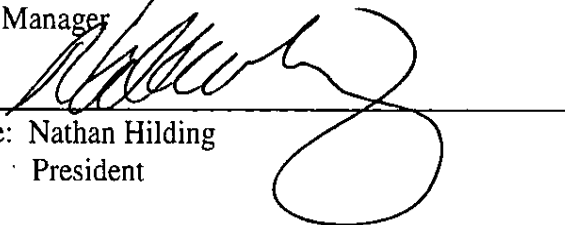
By: Bottleneck Management, Inc., an Illinois corporation

Its: Manager

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

Name: Nathan Hilding

Its: President



STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF COOK            )

I, ERIN L. MARKLEY, a Notary Public in and for the county and state aforesaid DO HEREBY CERTIFY that Nathan Hilding, the President of Bottleneck Management, Inc., an Illinois corporation, the Manager of Bottleneck Schaumburg LLC, a Delaware limited liability company, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such President appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act as such President as the free and voluntary act of said company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 12th day of November, 2018.



Notary Public

My Commission expires: 11/10/2022









# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PARCELS

LOTS 1, 2, 3, 4 AND 5 IN THE HYATT REDEVELOPMENT IN THE SOUTHEAST QUARTER (1/4) OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE FINAL PLAT OF SUBDIVISION OF THE HYATT REDEVELOPMENT RECORDED MAY 4, 2018 AS DOCUMENT NUMBER 1812416069, IN COOK COUNTY ILLINOIS.

PIN's and Common Addresses:

07-12-400-010-0000 (1800 East Golf Road, Schaumburg, IL 60173)  
07-12-400-011-0000 (1850 East Golf Road, Schaumburg, IL 60173)  
07-12-402-016-0000 (1750 East Golf Road, Schaumburg, IL 60173)

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EXHIBIT B

SITE PLAN

(see attached)

COOK COUNTY  
RECORDER OF DEEDS

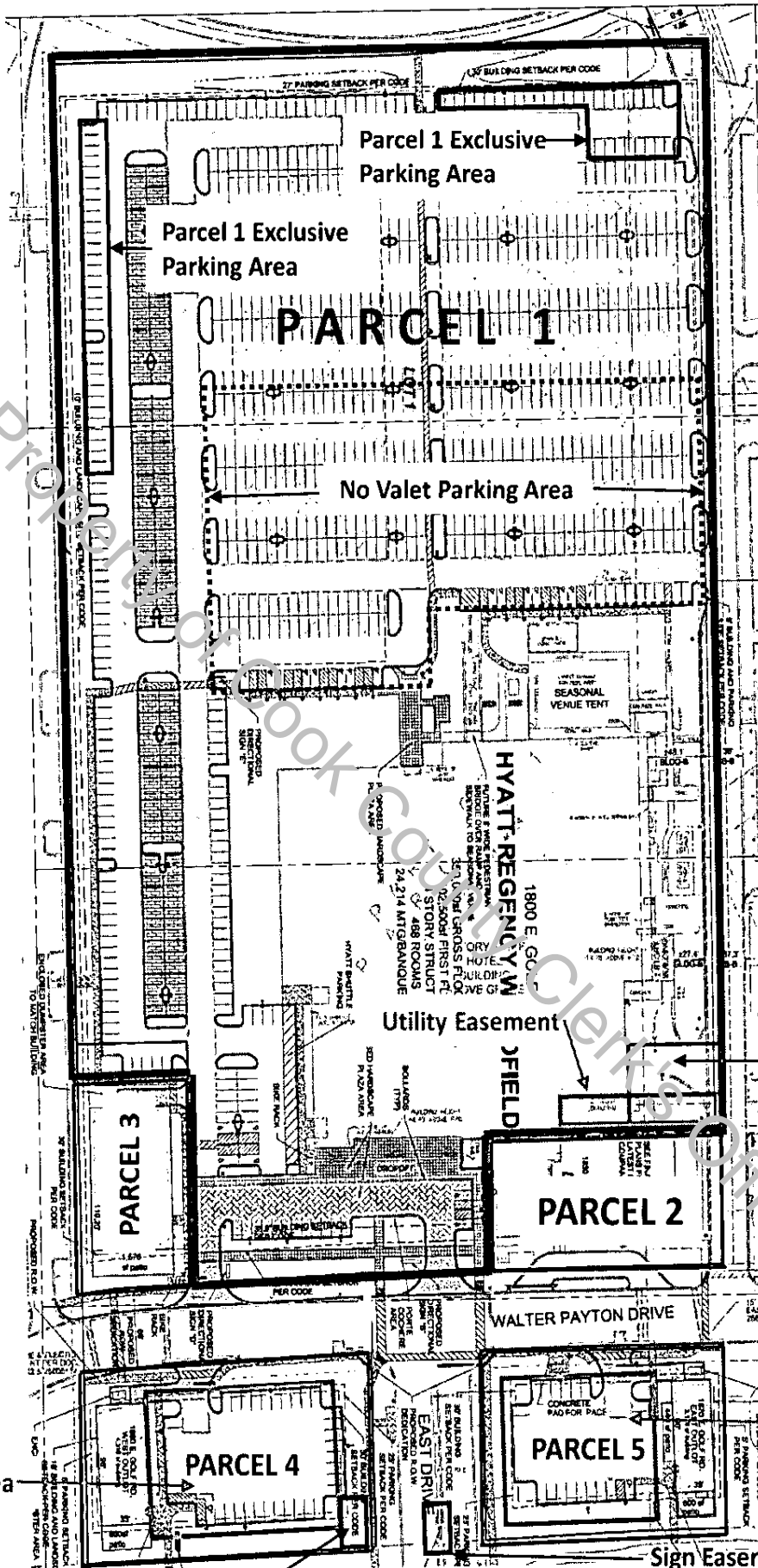
COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

Property of Cook County Clerk's Office

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## EXHIBIT B - SITE PLAN



Drainage Easement Area

Alternate Sign Easement

Loading/Trash Area

Drainage Easement Area

Sign Easement

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**EXHIBIT B-1**

**NO-BUILD AREA**

(see attached)

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

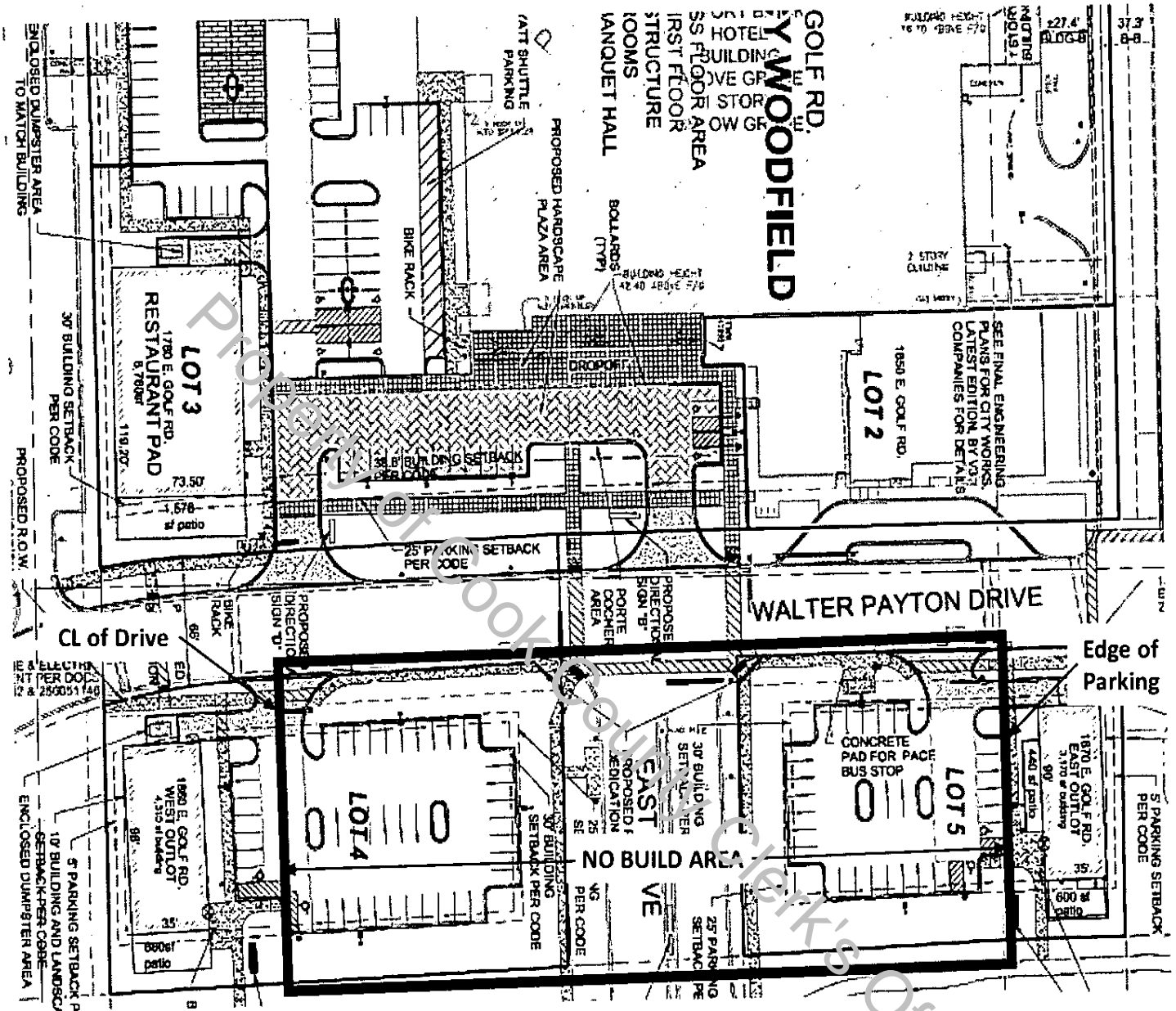
COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

Property of Cook County Clerk's Office

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## EXHIBIT B1 - NO BUILD AREA



City's Office