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-Declaration of Covenants, Conditions, Restrictions and Easements-

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**PARCELS IJKL
CHICAGO, ILLINOIS**

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

**THIS INSTRUMENT WAS PREPARED
BY AND SHOULD BE RETURNED
AFTER RECORDATION TO:**

**HOWARD S. DAKOFF
ABRAHAM TRIEGER
MARK C. VAUGHAN
LEVENFELD PEARLSTEIN, LLC
TWO NORTH LASALLE STREET
SUITE 1300
CHICAGO, ILLINOIS 60602**

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PARCELS IJKL CHICAGO, ILLINOIS

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Declaration") is made and entered into as of the 14th day of MARCH, 2022 (the "Effective Date") by **445 EAST WATERSIDE DRIVE OWNER LLC**, a Delaware limited liability company ("K/L Parcel Owner"), **211 NORTH HARBOR DRIVE OWNER LLC**, a Delaware limited liability company ("J Parcel Owner"), and **IJKL LLC**, a Delaware limited liability company ("I Parcel Owner") (collectively and severally, "Declarant").

RECITALS:

A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the above Preamble, shall have the meanings set forth in Article 1 of this Declaration.

B. K/L Parcel Owner owns the K/L Parcel, and has constructed, or will construct, a Building on the K/L Parcel generally consisting of the following: (i) a residential apartment project to be known as "455 Waterside" containing approximately forty-two (42) floors; (ii) approximately one hundred eighty four (184) parking spaces and related improvements and facilities located in the Parking Area (as hereinafter defined); and (iii) strength studio, movie room, jam room, makers lounge and game rooms located or to be located on Lower Level 1 thereof.

C. J Parcel Owner owns the J Parcel, and has constructed, or will construct, a Building on the J Parcel generally consisting of the following: (i) a mixed-use residential condominium and retail project to be known as "Cirrus Condominiums" containing approximately fifty-two (52) floors; (ii) approximately three-hundred sixty-seven (367) parking spaces and related improvements and facilities located in the Parking Area; (iii) outdoor pool and terrace with fire pits, wet and pool lounges, main fitness studio, motion studio, lap pool, hydrotherapy pool, winter garden, salon, game and study lounges, and locker rooms located or to be located on Lower Level 1 thereof; (iv) splash pad and pool equipment room located or to be located on Lower Level 2 thereof, and other amenities; and (v) indoor and outdoor dog parks located or to be located on Lower Level 5 thereof.

D. Parcel I Owner owns the I Parcel, and has constructed, or will construct, a Building on I Parcel currently intended to consist generally of the following: (i) a mixed-use residential and retail project; (ii) approximately forty one (41) parking spaces located in the Parking Area and related improvements and facilities; (iii) access drive located or to be located on Lower Level 5 of the I Parcel Building; and (iv) certain shared fitness, social outdoor areas and other amenities.

E. The Parcels (as hereinafter defined) are subject to (i) that certain Declaration of Covenants, Conditions, Restrictions and Easements for Lakeshore East dated as of June 26, 2002 and recorded July 2, 2002 with the Cook County Recorder of Deeds as Document No. 0020732020, as has been and may be amended from time to time (the "**Lakeshore East Declaration**"); and (ii) the other Existing Easement Agreements (as hereinafter defined).

F. Since none of the Parcels will be functionally independent of the other and each will depend upon the others, to some extent, for structural support, ingress and egress, utility services and other facilities and components necessary to the efficient operation and intended use of the Parcels,

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Declarant hereof intends to provide for the efficient operation of each respective portion, estate and interest in the Property (as hereinafter defined), to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Property, and to protect the respective values of each such portion, estate and interest in the Property, by providing for, declaring and creating certain easements, covenants, conditions and restrictions against and affecting each of the Parcels which will be binding upon each present and future Owner of such Parcel, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each of the present and future Owners of the Parcels, and/or of any portion thereof or interest or estate therein, including any Unit therein.

NOW, THEREFORE, in consideration of the Recitals and the covenants contained herein, as of the Effective Date, Declarant hereof, intending to be legally bound, declares that the Property and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Declaration, and declares that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land subjected to this Declaration.

ARTICLE 1

DEFINITIONS

1.1 **Definitions.** Whenever used in this Declaration, the following terms shall have the respective meanings specified below:

ACT – The Condominium Property Act of the State of Illinois in effect as of the Effective Date, as the same may be amended from time to time.

ALTERATIONS – As defined in Section 17.1(A).

ALTERING OWNER – As defined in Section 17.1(A).

APPLICABLE PERCENTAGE(S) – As defined in Paragraph 7 of Exhibit 8.5.

APPROVING PARTY – The Owner designated from time to time to make certain decisions or give certain approvals pursuant to the terms of this Declaration. There shall be one Approving Party representing the K/L Parcel, one Approving Party representing the J Parcel, and one Approving Party representing the I Parcel. Each Approving Party shall have absolute discretion to make the decisions or give the approvals expressly designated to be made or given on behalf of the K/L Parcel Owner, the J Parcel Owner, and the I Parcel Owner. The holder of the Approving Party position shall have the right to assign, in writing, such position to any other Person owning the Parcel represented by the Approving Party position. The K/L Parcel Owner shall be the initial Approving Party for the K/L Parcel. The J Parcel Owner shall be the initial Approving Party for the J Parcel. The I Parcel Owner shall be the initial Approving Party for the I Parcel. If and when a Parcel or any portion thereof is ever submitted to the Act and legally becomes a condominium property, then, the Approving Party position for such Parcel or portion (as the case may be) shall be held and exercised only by the Board of Directors of the Condominium Association for such Parcel or portion (as the case may be) as required by the Act or a representative as such Board of Directors may designate. At any time there is a permitted change in the identity of any Approving Party, the Owner on whose behalf the new Approving Party is acting shall immediately notify all other Owners in accordance with Section 23.1 hereof, of the name, address and comparable information as contained in Section 23.1 hereof relating to said new Approving Party, and no

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change in the identity of the Approving Party shall be effective until such notice is given. To the fullest extent permitted by Law: (i) until the date on which the K/L Parcel Owner or the K/L Parcel Owner's affiliate successor developer of the K/L Parcel turns over control of the K/L Parcel or any portion thereof to a Condominium Association to the Unit Owners as required by the Act, the K/L Parcel Owner or the K/L Parcel Owner's affiliate successor developer, as the case may be, shall be the Approving Party for the K/L Parcel or such portion, as the case may be, and shall act within its sole discretion in such capacity (ii) until the date on which the J Parcel Owner or the J Parcel Owner's affiliate successor developer of the J Parcel turns over control of the J Parcel or any portion thereof to a Condominium Association to the Unit Owners as required by the Act, the J Parcel Owner or the J Parcel Owner's affiliate successor developer, as the case may be, shall be the Approving Party for the J Parcel or such portion, as the case may be, and shall act within its sole discretion in such capacity; and (iii) until the date on which the I Parcel Owner or the I Parcel Owner's affiliate successor developer of the I Parcel turns over control of the I Parcel or any portion thereof to a Condominium Association to the Unit Owners as required by the Act, the I Parcel Owner or the I Parcel Owner's affiliate successor developer, as the case may be, shall be the Approving Party for the I Parcel or such portion, as the case may be, and shall act within its sole discretion in such capacity.

ARBITRABLE DISPUTE – Any dispute arising under this Declaration which is expressly made subject to arbitration under the provisions of Article 14 hereof or designated as an Arbitrable Dispute.

ARCHITECT – As defined in Section 21.1.

AWARD – As defined in Section 16.1.

BENEFITED OWNER – As defined in Paragraph 2 of Exhibit 8.5.

BUILDING; BUILDINGS – All enclosed structures, driveways, accessways and other outward extensions and other improvements constructed or located within and upon a Parcel, or located in public areas, which are owned or controlled by the K/L Parcel Owner, J Parcel Owner, or I Parcel Owner, collectively and individually as the context requires, and are used or useful in connection with the ownership, operation or maintenance of the improvements and/or Facilities located within and upon such Parcel, collectively and individually as the context requires.

CITY – The City of Chicago, Illinois, a municipal corporation.

COMMON IMPROVEMENTS – As defined in Section 2.2.

CONDOMINIUM ASSOCIATION – Collectively and individually, as the context requires, if and when a Parcel or any portion of a Parcel is submitted to the Act by the Recording of a Condominium Declaration, and legally become a condominium property, then an Illinois not-for-profit corporation to be formed for the purpose of administering such Parcel or portion thereof (as applicable) pursuant to Act.

CONDOMINIUM DECLARATION – Any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits any Parcel or portion thereof to the provisions of the Act.

CONTRIBUTING PARTY – As defined in Paragraph 1(a) of Exhibit 8.5.

CREDITOR OWNER – An Owner (A) to whom payment of money or other duty or obligation is owed under this Declaration by another Owner who has failed to make such payment or to perform such duty or obligation as and when required by this Declaration or (B) who has exercised any self-help

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remedy provided for in this Declaration. (An Owner may be a Creditor Owner notwithstanding that the term "Creditor Owner" is not specifically stated in a particular provision of this Declaration.)

DECLARANT – As defined in the Preamble on Page 1 of this Declaration.

DECLARATION – This Declaration, together with all Exhibits, amendments and supplements hereto.

DEFAULT AMOUNT – As defined in Section 13.1.

DEFAULTING OWNER – An Owner who has failed to perform any of its duties or obligations as and when required under this Declaration or to make payment of money owed under this Declaration to another Owner. (An Owner may be a Defaulting Owner notwithstanding that the term "Defaulting Owner" is not specifically stated in a particular provision of this Declaration.)

DEPOSITARY – The person or entity, from time to time acting pursuant to Article 19.

DESIGNATED MANAGEMENT AND ENGINEERING STAFF – As defined in Section 8.10.

EASEMENT FACILITIES – The K/L Parcel Easement Facilities, J Parcel Easement Facilities, and I Parcel Easement Facilities, collectively and individually, as the context requires.

EASEMENTS – All easements declared, granted or created pursuant to the terms and provisions of this Declaration.

EFFECTIVE DATE – The date specified in the Preamble on Page 1 of this Declaration.

EMERGENCY SITUATION – A situation (A) impairing or imminently likely to impair structural support of any of the Buildings; (B) causing or imminently likely to cause bodily injury to persons, or substantial physical damage to any of the Buildings or any property in, on, under, within, upon or about any of the Buildings; (C) causing or imminently likely to cause substantial economic loss to an Owner; or (D) substantially disrupting or imminently likely to substantially disrupt operations, or use and enjoyment of any Portion for its intended purposes. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

ENCLOSURE(S) – All construction elements (including, without limitation, any and all walls, roofs, partitions, windows and floors) which divide the interior conditions of the Buildings (or portions or rooms of any of the Buildings) from exterior conditions.

ESTOPPEL CERTIFICATE – As defined in Section 18.1.

EXISTING EASEMENTS AND AGREEMENTS – Collectively and individually, as the context requires: (A) the Lakeshore East Declaration, (B) Electrical Vault and Facilities Easement Recorded July 6, 2020 as Document 2018822100 (the "ComEd Easement"), and (C) Easement Grant Recorded October 23, 2020 as Document No. 2029706264 (the "Peoples Gas Easement").

FACILITIES – Any facilities, fixtures, machinery and equipment, including without limitation, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chillers (including any chiller serving the Buildings), closets (for facilities and risers), coils, computers, conduits, controls, control centers, condensers, cooling towers, couplers, devices, ducts, equipment, including, without limitation, heating,

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ventilating, air conditioning and plumbing equipment), fans, fixtures, generators, heat traces, indicators, junctions, lines, light fixtures, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, sprinklers, starters, steam heating systems (including steam and condensate supply and return risers), switches, switchboards, systems, tanks, telecommunication equipment, transformers, vacuum pipe valves, wiring, and the like used in providing services from time to time in any part of the Buildings, including, without limitation, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, lighting protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, and any replacements of or additions to any of the items described in this paragraph.

GUARD ROOM – That area within the J Parcel Building as so identified and generally depicted on the Improvement Plans.

HAZARDOUS MATERIALS – Any hazardous substance, pollutant, contaminant, or waste regulated under the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. §2601 et seq.); asbestos and asbestos-containing materials; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §136 et seq.); PCBs and other substances regulated under the Toxic Substances Control Act, as amended (7 U.S.C. §136 et seq.); source material, special nuclear material, byproduct materials, and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the Occupational Safety and Health Act Hazard Communication Standard, as amended (29 C.F.R. §1910.1200 et seq.); industrial process and pollution control wastes whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et seq.); and other substances and materials regulated under Laws relating to environmental quality, health, safety, contamination and clean-up.

IMPACTED OWNER – As defined in Section 9.2.

IMPROVEMENTS - The K/L Parcel Improvements, the J Parcel Improvements, and the I Parcel Improvements, collectively and individually, as the context requires.

IMPROVEMENT PLANS. The Improvement Plans attached hereto as Exhibit 1.1(C).

INDEMNIFYING OWNER – As defined in Section 9.1.

INDEMNITEE – As defined in Section 9.1.

INDOOR DOG PARK – That certain indoor dog park located or to be located on Lower Level 5 of the J Parcel, and as so identified on the Improvement Plans.

I PARCEL – The real property so designated in this Declaration and legally described on Exhibit 1.1(B), located in the City of Chicago, County of Cook and State of Illinois.

I PARCEL EASEMENT FACILITIES – Those Facilities, if any, located or to be located (or which otherwise may, pursuant to this Declaration (including the right of the K/L Parcel Owner to revise the I Parcel Parking Area as provided below in the definition of “**I Parcel Parking Area**”) or other agreement of the Owners, hereafter be located) in the I Parcel Portion (A) primarily benefiting the I Portion, or (B) necessary for the I Parcel Owner to perform its obligations under Article 8, but in either case excluding (1) those Facilities, the Maintenance for which the remaining Owners are expressly

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responsible under Article 8 hereof, and (2) the I Parcel Owned Facilities. I Parcel Easement Facilities may include those Facilities, if any, so identified or shown in the Improvement Plans.

I PARCEL IMPROVEMENTS – All improvements constructed, or which will be constructed, upon and within the I Parcel, including those improvements, if any, so identified or shown in the Improvement Plans, as the Improvement Plans regarding the I Parcel Easement Facilities may be from time to time revised by the K/L Parcel Owner to reflect the construction, size, components, location and configuration of, and the services to be provided under Article 8 to, the I Parcel Improvements on the I Parcel Inclusion Date, so long as, and provided that, the K/L Parcel Owner reasonably determines that the construction, size, components, location of the I Parcel Improvements would materially adversely affect the accessibility, use or operation of the K/L Parcel Improvements or the J Parcel Improvements, any Easements granted to the K/L Parcel or J Parcel, or the services to be provided under Article 8 to the I Parcel Improvements, as the case may be.

I PARCEL INCLUSION DATE – The date on which the City issues a Certificate of Occupancy for the Occupancy for the Improvements located on the I Parcel.

I PARCEL OWNED FACILITIES – Those Facilities, if any, owned by the I Parcel Owner and now located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the K/L Portion or the J Portion; provided, however, the I Parcel Owned Facilities may be from time to time revised by the K/L Parcel Owner to reflect the construction, size, components location and configuration of, and the services to be provided under Article 8 to, the I Parcel Owned Facilities on the I Parcel Inclusion Date, so long as, and provided that, the K/L Parcel Owner reasonably determines that the construction, size, components, location of the I Parcel Owned Facilities would materially adversely affect the accessibility use or operation of the K/L Parcel Owned Facilities or the J Parcel Owned Facilities, any Easements granted to the K/L Parcel or J Parcel, or the services to be provided under Article 8 to the I Parcel Owned Facilities, as the case may be.

I PARCEL OWNER – The person or persons or entity or entities (excluding occupants or tenants and the holders of any Mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the I Parcel or any portion thereof. If, and so long, as the I Parcel or any portion thereof has been submitted and remains subject to the Act, the I Parcel Owner shall mean collectively all of the Unit Owners, represented by the Condominium Association and Board of Directors of such Condominium Association.

I PARCEL PARKING AREA. That portion of the I Parcel located, or which, commencing on the I Parcel Inclusion Date, shall be located, within the I Parcel Improvements, comprised of the ramps, driveways, drive lanes, drive aisles, doorways, vestibules, pedestrian walkways and all related areas and any and all Facilities serving all or any of the parking spaces and parking garages located, or to be located, in the Project. Within thirty (30) days from the date on which the I Parcel Owner determines the size and configuration of, and the number and location of parking spaces to be contained in, the I Parcel Parking Area, the I Parcel Owner shall deliver to the K/L Parcel Owner a site plan showing in reasonable detail the proposed size and configuration of, and the number and location of parking spaces to be contained in, the I Parcel Parking Area. If (i) the K/L Parcel Owner reasonably determines that the size and configuration of, and the number of parking spaces to be contained in, the I Parcel Parking Area as shown in said site plan would materially adversely affect the accessibility, use or operation of the K/L Parcel Parking Area, the J Parcel Parking Area, the K/L Parcel Owned Facilities, the J Parcel Owned Facilities, or any Easements granted to the K/L Parcel or the J Parcel, and (ii) the K/L Parcel Owner gives the I Parcel Owner written notice within sixty (60) days from the K/L Parcel Owner's receipt of such site plan, which written notice sets forth in reasonable detail that such size and configuration of, and the number of parking spaces to be contained in, the I Parcel Parking Area as shown in such site plan would

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materially adversely affect such accessibility, use or operation, then, the K/L Parcel Owner and I Parcel Owner shall use reasonable and good faith efforts to revise such site plan accordingly. If the K/L Parcel Owner and I Parcel Owner, in spite of using such reasonable good faith efforts are unable to agree on a revision of such site plan regarding the size and configuration of, and/or the number of parking spaces to be contained in (as the case may be), the I Parcel Parking Area within thirty (30) days from the I Parcel Owner's receipt of such written notice from the K/L Parcel Owner, then the matter shall be an Arbitrable Dispute. In no event shall the I Parcel Parking Area include any parking spaces.

I PARCEL PORTION – The I Parcel as improved with the I Parcel Improvements, which would not include the I Parcel Owned Facilities.

I PARCEL TRI-PARTY AMENITY AREAS – That portion of the Tri-Party Amenity Areas located or which, after the Effective Date, may be located, within the I Parcel Improvements as further described in Section 2.4(A) and as further defined in Exhibit 1.1(F).

J PARCEL – The real property so designated in this Declaration and legally described on Exhibit 1.1(B), located in the City of Chicago, County of Cook and State of Illinois.

J-I PARCEL BI-PARTY AMENITY AREAS. As defined in Exhibit 1.1(D).

J PARCEL EASEMENT FACILITIES – Those Facilities, if any, located (or which otherwise may, pursuant to or in accordance with the Improvement Plans, this Declaration or other agreement of the Owners, hereafter be located) in the J Parcel Portion (A) primarily benefiting the J Parcel Portion, or (B) necessary for the J Parcel Owner to perform its obligations under Article 8, but in either case excluding (1) those Facilities, the Maintenance for which the remaining Owners are expressly responsible under Article 8, and (2) J Parcel Owned Facilities. J Parcel Easement Facilities may include those Facilities, if any, so identified or shown in the Improvement Plans.

J PARCEL IMPROVEMENTS – All improvements constructed, or which will be constructed, upon and within J Parcel, including those improvements, if any, so identified or shown in the Improvement Plans.

J PARCEL OWNED FACILITIES – Those Facilities, if any, owned by the J Parcel Owner and now located or to be located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the K/L Portion or the I Portion.

J PARCEL OWNER – The persons or entities (excluding occupants or tenants and the holders of any Mortgage) whose estates or interests, individually or collectively, aggregate from time to time, fee simple ownership of the J Parcel or any portion thereof. If, and so long as, the J Parcel or any portion thereof has been submitted and remains subject to the Act, the J Parcel Owner shall mean collectively all of the Unit Owners, represented by the Condominium Association and the Board of Directors of such Condominium Association.

J PARCEL PARKING AREA. That portion of the J Parcel comprised of the ramps, driveways, drive lanes, drive aisles, doorways, vestibules, pedestrian walkways and all related areas and any and all Facilities located, or to be located, within, or serving all or any of the parking spaces and parking garages located, or to be located, in the Project. The J Parcel Parking Area is generally depicted in the Improvement Plans. In no event shall the J Parcel Parking Area include any parking spaces.

J PARCEL PORTION – The J Parcel as improved with the J Parcel Improvements, which would not include the J Parcel Owned Facilities.

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J PARCEL TRI-PARTY AMENITY AREAS. That portion of the Tri-Party Amenity Areas located, or which, after the Effective Date, may be located, within the J Parcel Improvements as further defined in Exhibit 1.1(D).

K/L-I PARCEL BI-PARTY AMENITY AREAS. As defined in Exhibit 1.1(G).

K/L PARCEL – The real property so designated in this Declaration and legally described on Exhibit 1.1(B), located in the City of Chicago, County of Cook and State of Illinois.

K/L PARCEL EASEMENT FACILITIES – Those Facilities, if any, located or to be located (or which otherwise may, pursuant to the Improvement Plans, this Declaration or other agreement of the Owners, hereafter be located) in the K/L Portion (A) primarily benefiting the K/L Portion, or (B) necessary for the K/L Parcel Owner to perform its obligations under Article 8, but in either case excluding (1) those Facilities the Maintenance for which the remaining Owners are expressly responsible under Article 8, and (2) K/L Parcel Owned Facilities. K/L Parcel Easement Facilities may include these Facilities, if any, so identified or shown in the Improvement Plans.

K/L PARCEL IMPROVEMENTS – All improvements constructed upon and within the K/L Parcel, including those improvements, if any, so identified or shown in the Improvement Plans.

K/L PARCEL OWNED FACILITIES – Those Facilities, if any, owned by the K/L Parcel Owner and now located or to be located (or which may, pursuant to this Declaration or other agreement of the Owners, hereafter be located) in the J Parcel Portion or the I Parcel Portion.

K/L PARCEL OWNER – The person or persons or entity or entities (excluding occupants or tenants and the holders of any Mortgage) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the K/L Parcel or any portion thereof. If, and so long as, K/L Parcel or any portion thereof has been submitted and remains subject to the Act, the K/L Parcel owner shall mean collectively all of the Unit Owners, represented by the Condominium Association and the Board of Directors of such Condominium Association.

K/L PARCEL PARKING AREA – That portion of K/L Parcel comprised of the ramps, driveways, drive lanes, drive aisles, doorways, vestibules, pedestrian walkways and all related areas and any and all Facilities located, or to be located, within, or serving all or any of the parking spaces and parking garages located, or to be located, in the Project. The K/L Parcel Parking Area is generally depicted in the Improvement Plans. In no event shall the K/L Parcel Parking Area include any parking spaces.

K/L PARCEL PORTION – The K/L Parcel as improved with the K/L Improvements, which would not include the K/L Parcel Owned Facilities.

K/L PARCEL TRI-PARTY AMENITY AREAS – That portion of the Tri-Party Amenity Areas located, or which, after the Effective Date, may be located, within the K/L Parcel Improvements as further defined in Exhibit 1.1(E).

LAKESHORE EAST DECLARATION – As defined in Recital E above.

LAW OR LAWS – All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers,

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foreseen and unforeseen, ordinary or extraordinary, which now or at any later time may be applicable to the Property, or any parts thereof.

LIENING OWNER – As defined in Section 9.2.

LOADING DOCK – The platforms and loading dock located at Lower Level 5, and any and all dock stairs, dock doors, associated mechanical Facilities, joints, seals, compactors, trash areas, any levelers and adjoining areas located or to be located on the Property for deliveries to and from the Property as may be so identified and generally shown on the Improvement Plans.

LOADING DOCK AREAS – Those areas within the Property adjacent to, or otherwise use in connection with, the operation of the Loading Dock, as so identified and generally shown on the Improvement Plans.

MAINTENANCE; MAINTAIN – Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, restoration, reconstruction and replacement when necessary or desirable of the Parcels, the Buildings, or any Facilities, and portions thereof, and includes the right of the K/L Parcel Owner to access and remove from any Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration. As used in Article 8, Maintenance excludes obligations for which another Owner is responsible under Articles 7, 12 or 16. Maintenance costs may include utilities consumed in providing Maintenance services.

MAINTENANCE STANDARD. The order, condition, and operation consistent with first-class multi-story residential or mixed use residential and commercial buildings, as applicable, located in downtown Chicago, Illinois of the age, size and construction comparable to the Buildings.

MECHANICS' LIEN ACT – As defined in Section 17.3.

MORTGAGE – As defined in Section 24.12.

MORTGAGEE – As defined in Section 24.12.

NET CAPITALIZED COST OF REPLACEMENT – As defined in Paragraph 7 of Exhibit 8.5.

NET SALVAGE VALUE OF THE CAPITAL ITEM BEING REPLACED – As defined in Paragraph 7 of Exhibit 8.5.

NON-PERFORMING OWNER – As defined in Article 15.

OCCUPANT(S) – Any Person or Persons from time to time entitled to the use and occupancy of any portion of the J Parcel Portion, the I Parcel Portion or the K/L Parcel Portion, as an Owner or under any lease, sublease, license, concession or other similar agreement.

OPERATING EXPENSES – As defined in Paragraph 7 of Exhibit 8.5.

OPERATING OWNER – As defined in Paragraph 2 of Exhibit 8.5.

OUTDOOR DOG PARK – That certain outdoor park located or to be located in the southeastern corner of the J Parcel and so identified on the Improvement Plans.

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OWNED FACILITIES – A reference to K/L Parcel Owned Facilities, J Parcel Owned Facilities, and I Parcel Owned Facilities, collectively and individually, as the context requires. For the purpose of granting Easements and rights in Owned Facilities pursuant to this Declaration, such Owned Facilities shall be deemed part of the Portion in which they are located and the Owner of the Portion in which they are located shall have the right to grant, and shall be deemed to have granted, such Easements and rights to the extent easements and rights have been granted as to an Owned Portion in question pursuant to this Declaration.

OWNER(S) – The K/L Parcel Owner, J Parcel Owner, and the I Parcel Owner, collectively and individually as the context requires.

PARCEL(S) – The K/L Parcel, the J Parcel, and the I Parcel, collectively and individually as the context requires.

PARKING AREA. The K/L Parcel Parking Area, J Parcel Parking Area, and I Parcel Parking Area, as generally depicted, or which are to be generally depicted, on the Improvement Plans, collectively and individually as the context requires.

PERMITTEES – All Occupants and the officers, directors, members, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, subtenants and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Building.

PERSON – Any individual, partnership, firm, association, corporation, limited liability company, trust, land trust or any other form of entity, including business or not-for-profit organizations and governmental entities.

PORTION(S) – The K/L Parcel Portion, the J Parcel Portion, and the I Parcel Portion, collectively and individually as the context requires.

PUBLIC ELEVATOR – The elevator and vestibule for such elevator located or to be located in the J Parcel Improvements, and identified on the Improvement Plans as “Public Elevator” and serving the Ground Level, and Lower Levels 4 and 5 of the J Parcel Improvements, including, in all instances, the passenger cab, door, motor, wires, cables, electrical service, equipment, machinery, machine pit and machine room, and any access corridors and public lobbies for such elevator located or to be located within the J Parcel Improvements on the Ground Level, Lower Level 4 and Lower Level 5 of the J Parcel Improvements. Declarant acknowledge and agree that the Public Elevator is “VC E” (as such term is defined in, and is subject to, the Lakeshore East Declaration).

PRIOR LIEN – As defined in Section 13.1.

PROGRESS PAYMENT – As defined in Paragraph 2 of Exhibit 8.5.

PROJECTION NOTICE – As defined in Paragraph 2(a) Exhibit 8.5.

PROJECTIONS – As defined in Paragraph 2(a) of Exhibit 8.5.

PROPERTY – A collective reference to the K/L Parcel Portion, the J Parcel Portion, and the I Parcel Portion.

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RECORD, RECORDING, RECORDATION, OR RECORDED – To Record or having Recorded in the Office of the Recorder.

RECORDER – The Recorder of Deeds of Cook County, Illinois.

SHARED EQUIPMENT; SHARED FACILITIES – As defined in Section 2.2.

STATEMENT – As defined in Paragraph 2(c) of Exhibit 8.5.

STRUCTURAL SUPPORTS – All construction elements (including, without limitation, any and all other structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses) which are load bearing or which are necessary for the structural integrity of any portion of the Building, as applicable. For purposes of this Declaration, Structural Supports shall include exterior windows and window systems.

SURVEY. That certain survey attached hereto as Exhibit 1.1(A).

TRI-PARTY AMENITY AREAS – The K/L Parcel Tri-Party Amenity Areas, J Parcel Tri-Party Amenity Areas, and I Parcel Tri-Party Amenity Areas, collectively and individually as the context requires.

UNAVOIDABLE DELAY – As defined in Article 15.

UNIT – Any portion of the Property described as a “Unit” in any Condominium Declaration.

UNIT OWNER – The person or persons, entity or entities whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit Ownership.

UNIT OWNERSHIP – Any portion of the Property consisting of one Unit and the undivided interest in the common elements attributable thereto.

UTILITY COMPANY – Any Person, including governmental bodies, furnishing water, chilled water, electricity, sewer, gas, steam, telephone, network television, cable television, satellite equipment, microwave signals, internet service or other services or materials generally known as utilities.

WORK – As defined in Section 20.1(A).

1.2 **Construing Various Words and Phrases**. Wherever it is provided in this Declaration that a party “may” perform an act or do anything, it shall be construed that party “may, but shall not be obligated to,” so perform or so do. The following words and phrases shall be construed as follows: (i) “at any time” shall be construed as “at any time or from time to time;” (ii) “any” shall be construed as “any and all;” (iii) “including” shall be construed as “including but not limited to;” and (iv) “will” and “shall” shall each be construed as mandatory. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Declaration and all references to Exhibits or Appendices shall refer to the Exhibits and Appendices attached to this Declaration. The words “herein,” hereof,” hereunder,” “hereinafter” and words of similar import shall refer to this Declaration as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions and the index are used in this Declaration for convenience only and shall not be used to construe the meaning of any part of this Declaration.

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ARTICLE 2

EASEMENTS APPURTENANT TO K/L PARCEL PORTION

2.1 **In General K/L Parcel Portion Easements.** For the purposes of this Article 2, the following shall apply:

(A) The J Parcel Owner and the I Parcel Owner have granted, reserved, declared and created the Easements described in this Article 2. The term “Granted” or “granted” as used in this Article 2 describing Easements shall be deemed to mean “granted, reserved, declared and created”. The Easements in Sections 2.2 through 2.4 shall bind and be enforceable against the J Parcel Owner and the I Parcel Owner, and each of them, and each of their respective successors, grantees and assigns.

(B) The Easements granted by Sections 2.2 and 2.4 shall bind and burden the J Parcel Portion and the I Parcel Portion, and each of them, before and after any such Portions are submitted to the Act, if ever, and which Portions shall, for the purpose Sections 2.2 and 2.4 be deemed to be the servient tenements. Where only a part of the J Parcel Portion or the I Parcel Portion, as the case may be, is bound and burdened by the Easement, only that part shall be deemed to be the servient tenement. The Easements granted by this Article 2 are appurtenant to and shall benefit (i) the K/L Parcel Portion, which shall, for the purpose of this Article 2 with respect to such Easement, be deemed to be the dominant tenement, and (ii) the K/L Parcel Owner and its successors and assigns, including, without limitation, any Unit Owners and the Condominium Association for the K/L Parcel Portion or any part thereof subsequent to the date, if any, that the K/L Parcel Portion or any part thereof is submitted to the Act. Where only a portion of the K/L Parcel Portion is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the K/L Parcel Portion, as it may exist from time to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement, the dominant tenement being identified in each such grant of easement below.

(C) In exercising an Easement granted under Sections 2.2 and 2.4, the K/L Parcel Owner shall minimize the impact of its exercise on the Owner of the Parcel burdened by the Easement, taking into consideration the impact of any disruption and shall comply with the provisions of Section 17.1 whether or not the work being performed or exercise of the Easement constitutes “Alterations”.

(D) The J Parcel Owner and the I Parcel Owner may (i) in connection with its respective Portion, (ii) in an Emergency Situation, or (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of their Portions, temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements to the K/L Parcel Portion granted under Sections 2.2 and 2.4, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. The J Parcel Owner and the I Parcel Owner may, from time to time, impose reasonable limitations on the use by the residents of the K/L Parcel Portion or any Permittee’s use of an Easement providing for ingress and egress in, over, on, across and through the J Parcel Portion, or the I Parcel Portion described in this Article 2. In imposing limitations or controls, the J Parcel Owner or the I Parcel Owner (as applicable) shall take into consideration the reasonable needs and requirements of the users of such Easement as well as the imposing Owner’s own needs and requirements.

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(E) Any disputes concerning the existence, location, nature, use, restrictions, and scope of any of the Easements granted under Sections 2.2 or 2.4 shall constitute Arbitrable Disputes.

(F) Any exclusive Easement granted under this Article 2 shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the Portion of the Owner of the servient estate, for the exercise by the K/L Parcel Owner of its rights and obligations under Section 8.1, for exercise of rights of self-help granted under Section 8.6, and its rights under Article 12 or Article 16 or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

2.2 Easements By J Parcel Owner and I Parcel Owner. The following Easements will be granted by the J Parcel Owner and the I Parcel Owner for the benefit of the K/L Parcel and the K/L Parcel Owner: (i) a non-exclusive Easement for all Structural Supports for the support of (x) the K/L Parcel Portion, (y) any Facilities or areas located in the J Parcel Portion and/or the I Parcel Portion (as the case may be) with respect to which the K/L Parcel Owner is granted an Easement, and (z) any K/L Parcel Owned Facilities of or for any portion of the K/L Parcel Improvements; (ii) a non-exclusive construction Easement with respect to the initial development of the K/L Parcel, the initial construction of K/L Parcel Improvements, the initial construction of that equipment shared and used by the K/L Parcel Improvements, and one or both of the J Parcel Improvements and the I Parcel Improvements (the “**Shared Equipment**”) and any Facilities shared and used by the K/L Parcel Improvements and one or both of the J Parcel Improvements and the I Parcel Improvements (the “**Shared Facilities**”), and those improvements, benefiting the K/L Parcel Improvements and one or both of the other Parcels (the “**Common Improvements**”), and any construction or alterations to the exterior or interior of each Parcel after the initial construction thereof; (iii) a non-exclusive Easement to install, maintain, repair and replace certain equipment serving the J Parcel and the I Parcel, or either of them (including, but not limited to, wires, pipes, cables and conduits necessary to operate such equipment) at certain locations in the J Parcel and the I Parcel, or either of them; (iv) a non-exclusive Easement and right to connect the K/L Parcel Owner’s equipment or systems to those equipment or systems serving the K/L Parcel or to the Shared Equipment located on the J Parcel and the I Parcel, or either of them, on which the K/L Parcel Owner’s equipment is dependent for operation; (v) non-exclusive Easement to install, maintain, repair and replace utility lines, chases and ducts at certain locations and points of connection in the J Parcel and the I Parcel, or either of them; (vi) non-exclusive easement and right to inspect, maintain, repair and replace the Shared Equipment and the Common Improvements; (vii) non-exclusive easement for access over the J Parcel and the I Parcel, or either of them, by persons, material and equipment for the purposes set forth above and in the event of an Emergency Situation; (viii) a non-exclusive Easement for ingress and egress by persons over those Common Improvements on the J Parcel and the I Parcel, or either of them to the extent reasonably necessary to permit access to other Parcels; and (ix) a non-exclusive Easement for ingress and egress over the J Parcel and the I Parcel as the K/L Parcel Owner determines is reasonably necessary for the K/L Parcel Owner to perform its obligations under Article 8.

2.3 Grant of Easements – By J Parcel Owner. The following Easements in, to, under, over, upon and through portions of the J Parcel Portion in favor of the K/L Parcel Portion are hereby granted:

(A) **Tri-Party Amenity Areas.** A non-exclusive Easement for the use and enjoyment of the J Parcel Tri-Party Amenity Areas. The foregoing non-exclusive Easement includes the right of the K/L Parcel Owner and its Permittees to access the J Parcel Tri-Party Amenity Areas as generally identified or shown on the Improvement Plans. The K/L Parcel Owner shall have the right from time to time to promulgate reasonable rules and regulations with regard to the exercise of the foregoing Easement rights, regulating the use of the Tri-Party Amenities Areas, including

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allocation of Operating Expenses for the Maintenance and operation of the Tri-Party Amenities Areas, insurance to be placed with respect to the Tri-Party Amenity Areas and hours of operations and the Operating Expenses for the Maintenance and operation of the Tri-Party Amenity Areas. The J Parcel Owner shall pay the K/L Parcel Owner the Operating Expenses for Maintenance of the Tri-Party Amenity Areas in accordance with Section 8.3(B) and Exhibit 8.5.

(B) **Intentionally Omitted.**

(C) **Ingress and Egress in Favor of K/L Parcel Owner.** A non-exclusive Easement in, to, over, upon and through all areas located within the J Parcel Portion and J Building for ingress and egress by motor vehicles, Persons, materials and equipment in, over, on, across and through such portions of the J Parcel Portion, as are reasonably necessary to permit the use and operation or the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (i) the K/L Parcel Portion, (ii) any Facilities located in the J Parcel Portion or which provide or are necessary to provide the K/L Parcel Portion with any utilities or other services necessary to the operation of the K/L Parcel Portion and K/L Parcel Owned Facilities, and (iii) any other areas in the J Parcel Portion, to which an Easement for use or Maintenance has been granted to the K/L Parcel Owner, or for which the obligations of the K/L Parcel Owner to perform a service has been imposed by Section 8.1.

(D) **Intentionally Omitted.**

(E) **K/L Parcel Utilities.** A non-exclusive Easement for utility purposes required by the K/L Parcel Portion (and if required by the applicable Utility Company and agreed to by the K/L Parcel Owner, to such Utility Company in connection therewith), for access over and through the J Parcel Portion to, and use of, those areas of the J Parcel Portion, where such utilities are currently located or to be located as part of the J Parcel Improvements, including, but not limited to, the fire pumps and emergency generator on Lower Level 5 of the J Parcel Improvements, the air-handling and dehumidification equipment and other Shared Equipment and Shared Facilities located in the mechanical room on Lower Level 3 of the J Parcel Improvements and the boiler, cooling tower and condensing water system located on Level 47 of the J Parcel Improvements, and such other Shared Equipment and Facilities discussed in Exhibit 8.3(E). If, at any time, it shall become necessary to relocate or add to utility easements (including installation of Facilities) other than where currently located or to be located as part of the J Parcel Improvements, in the J Parcel Portion, in order to provide or upgrade required utility service to the K/L Parcel Portion, the J Parcel Owner agrees to grant such additional or relocated utility easements at such location mutually agreed to by the K/L Parcel Owner and such other Owner, provided (i) such Easements do not unreasonably interfere with the reasonable use and enjoyment of any portion of the J Parcel Portion for the purposes for which such portion is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, (ii) the J Parcel Owner shall not be required to grant an Easement which would convert otherwise available space that is used for the purposes for which such portion is used unless such relocation or additional easements are required by Law and no other space is reasonably available, and the J Parcel Owner is equitably compensated for the value of such converted space, and (iii) the K/L Parcel Owner shall pay the reasonable costs and expenses of the J Parcel Owner in connection with granting such added or relocated Easement. Except as provided in Article 8, the J Parcel Owner, at its sole cost and expense, shall perform all Maintenance of the Shared Equipment and Shared Facilities referenced in this Section.

(F) **K/L Parcel Portion Encroachments.** An Easement permitting the existence of encroachments of the K/L Parcel Portion or K/L Parcel Owned Facilities into the J Parcel Portion,

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if such encroachments presently exist as of the Effective Date, are generally shown in the Improvement Plans, or are replaced in the same location, or if by reason of settlement or shifting any part of the K/L Parcel Portion or Condominium Owned Facilities shall hereafter encroach upon any part of the J Parcel Portion. This Easement shall exist only so long as the encroaching portion of the K/L Parcel Portion or K/L Parcel Owned Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(G) **Public Elevator.** A non-exclusive Easement for the use and Maintenance of the Public Elevator as necessary or desirable for access to Lower Levels 4 and 5, and the Ground Level of the J Parcel Improvements.

(H) **Dog Parks.** A non-exclusive Easement for the use and enjoyment of the Outdoor Dog Park and the Indoor Dog Park. The K/L Parcel Owner shall have the right to promulgate reasonable rules and regulations with regard to the exercise of the foregoing easement rights, including liability insurance for, and hours of operating and regulating the use of, the Outdoor Dog Park and the indoor Dog Park.

(I) **K/L Parcel Owned Facilities.** An Easement permitting the existence, attachment and Maintenance of any K/L Parcel Owned Facilities.

(J) **Loading Dock.** A non-exclusive Easement for the use of that portion of the Loading Dock and Loading Dock Areas located, or to be located, in, and forming a part of, the J Parcel Portion, as so identified and generally delineated on the Improvements Plans.

2.4 **Grant of Easements – By I Parcel Owner.** The following Easements in, to, under, over, upon and through portions of the I Parcel Portion in favor of the K/L Parcel Portion are hereby granted:

(A) **Tri-Party Amenity Areas.** Commencing on the date on which the City issues a temporary certificate of occupancy (or equivalent) for the I Parcel Tri-Party Amenity Areas, a non-exclusive Easement for the use and enjoyment of the I Parcel Tri-Party Amenity Areas located, as generally shown or which shall be generally shown, on the Improvement Plans. The foregoing non-exclusive Easement includes the right of the K/L Parcel Owner and its Permittees to access the I Parcel Tri-Party Amenity Areas located, or which after the Effective Date, may be located, within the I Parcel Improvements. Declarant hereby agree and acknowledge that, as of the Effective Date, the exact location(s) of, access areas to, and Facilities and other amenities to be included in and as part of, the I Parcel Tri-Party Amenity Areas located within the I Parcel Improvements have not been finalized and/or constructed and installed. At such time as the exact location(s) of, access areas to, and Facilities and other amenities to be included in and as part of, the Tri-Party Amenity Areas located within the I Parcel Improvements, are finalized, constructed and installed, the K/L Parcel Owner shall have the right to amend this Declaration to further define and describe the I Parcel Tri-Party Amenity Areas located within the I Parcel Improvements, including amending Exhibit 1.1(F) and the Improvement Plans as the K/L Parcel Owner reasonably deems appropriate. The K/L Parcel Owner shall have the right from time to time to promulgate reasonable rules and regulations regulating the use of the Tri-Party Amenity Areas, including allocation of Operating Expenses for the Maintenance and operation of the Tri-Party Amenity Areas, hours of operation, insurance to be placed with respect to the Tri-Party Amenity Areas and the Operating Expenses for the Maintenance and operation of the Tri-Party Amenity Areas. The I Parcel Owner shall pay to the K/L Parcel Owner the Operating Expenses

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for Maintenance of the Tri-Party Amenity Areas in accordance with Section 8.3(B) and Exhibit 8.5.

(B) **K/L-I Parcel Bi-Party Amenity Areas.** Commencing on the date on which the City issues a temporary certificate of occupancy (or equivalent) for that portion of the K/L-I Parcel Bi-Party Amenity Areas located within the I Parcel Improvements, a non-exclusive Easement for the use and enjoyment of the K/L-I Parcel Bi-Party Amenity Areas located, or which, after the Effective Date, may be located, within the I Parcel Improvements, as generally shown, or which shall be generally shown, on the Improvements Plan. The foregoing non-exclusive Easement includes the right of the K/L Parcel Owner and its Permittees to access the K/L-I Parcel Bi-Party Amenity Areas located or which, after the Effective Date, may be located, within the I Parcel Improvements. The K/L Parcel Owner and I Parcel Owner hereby agree and acknowledge that, as of the Effective Date, the exact location(s) of, access areas to, and Facilities and other amenities to be included in and as part of, the K/L-I Parcel Bi-Party Amenity Areas have not been finalized and/or constructed and installed. At such time as the exact location(s) of, access areas to, and Facilities and other amenities to be included in and as part of, the K/L-I Parcel Bi-Party Amenity Areas, are finalized, constructed and installed, the K/L Parcel Owner shall have the right to amend this Declaration to further define and describe the K/L-I Parcel Bi-Party Amenity Areas, including amending Exhibit 1.1(G) and the Improvement Plans as the K/L Parcel Owner reasonably deems appropriate. The K/L Parcel Owner shall have the right to promulgate reasonable rules and regulations regulating the use of the K/L-I Parcel Bi-Party Amenity Areas, including allocation of Operating Expenses for the Maintenance and operation of the K/L-I Parcel Bi-Party Amenity Areas, hours of operation, insurance to be placed with respect to the K/L-I Parcel Bi-Party Amenity Areas, and the Operating Expenses for the Maintenance and operation of the K/L-I Bi-Party Amenity Areas. The I Parcel owner shall pay to the K/L Parcel Owner the Operating Expenses for Maintenance of the K/L-I Parcel Bi-Party Amenity Areas in accordance with Section 8.3(C) and Exhibit 8.5.

(C) **Intentionally Omitted.**

(D) **Ingress and Egress in Favor of K/L Parcel Owner.** A non-exclusive Easement in, to, over, upon and through all areas located within the I Parcel Portion, including the I Parcel Parking Area, for ingress and egress by motor vehicles, Persons, materials and equipment in, over, on, across and through such portions of the I Parcel Portion, as are reasonably necessary to permit the use and operation or the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (i) the K/L Parcel Portion, (ii) any Facilities located in the I Parcel Portion or which provide or are necessary to provide the K/L Parcel Portion with any utilities or other services necessary to the operation of the K/L Parcel Portion and K/L Parcel Owned Facilities, and (iii) any other areas in the I Parcel Portion, to which an Easement for use or Maintenance has been granted to the K/L Parcel Owner, or for which the obligations of the K/L Parcel Owner to perform a service has been imposed by Section 8.1.

(E) **K/L Parcel Portion Structural Support.** A non-exclusive Easement in all Structural Supports located in or constituting a part of the I Parcel Portion for the support of (i) the K/L Parcel Portion, (ii) any Facilities or areas located in the I Parcel Portion with respect to which the K/L Parcel Owner is granted an Easement and (iii) any K/L Parcel Owned Facilities.

(F) **K/L Parcel Utilities.** A non-exclusive Easement for utility purposes required by the K/L Parcel Portion (and if required by the applicable Utility Company and agreed to by the K/L Parcel Owner, to such Utility Company in connection therewith), in those areas of the I Parcel Portion, where such utilities are currently located or to be located as part of the I Parcel

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Improvements. If, at any time, it shall become necessary to relocate or add to utility easements (including installation of Facilities) other than where currently located or to be located as part of the I Parcel Improvements, in the I Parcel Portion, in order to provide or upgrade required utility service to the K/L Parcel Portion, the I Parcel Owner agrees to grant such additional or relocated utility easements at such location mutually agreed to by the K/L Parcel Owner and the I Parcel Owner, provided (i) such Easements do not unreasonably interfere with the reasonable use and enjoyment of any portion of the I Parcel Portion for the purposes for which such portion is used, or if such use and enjoyment would be disturbed, and no reasonable alternative is available, (ii) the I Parcel Owner shall not be required to grant an Easement which would convert otherwise available space that is used for the purposes for which such portion is used unless such relocation or additional easements are required by Law and no other space is reasonably available, and the I Parcel Owner is equitably compensated for the value of such converted space, and (iii) the K/L Parcel Owner shall pay the reasonable costs and expenses of the I Parcel Owner in connection with granting such easement. Except as provided in Article 8, the I Parcel Owner, at its sole cost and expense, shall perform all Maintenance of the Shared Equipment and Shared Facilities referenced in this Section.

(G) **K/L Parcel Portion Encroachments.** Easement permitting the existence of encroachments of the K/L Parcel Portion or K/L Parcel Owned Facilities into the I Parcel Portion, if such encroachments presently exist as of the Effective Date, are generally shown in the Improvement Plans, or are replaced in the same location, or if by reason of settlement or shifting any part of the K/L Parcel Portion or Condominium Owned Facilities shall hereafter encroach upon any part of the I Parcel Portion. This Easement shall exist only so long as the encroaching portion of the K/L Parcel Portion or K/L Parcel Owned Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment.

(H) **K/L Parcel Owned Facilities.** An Easement permitting the existence, attachment and Maintenance of any K/L Parcel Owned Facilities.

(I) **Loading Dock.** A non-exclusive Easement for the use of that portion of the Loading Dock and Loading Dock Areas located, or to be located, in, and forming a part of, the I Parcel Portion, as so identified and generally delineated on the Improvement Plans.

Notwithstanding anything contained in this Section 2.4 to the contrary, Declarant hereby agree and acknowledge that the location, nature, and use of the Easements granted by the I Parcel Owner pursuant to this Section 2.4 may be subject to (i) the determination and revisions and disruptions as described in Section 4.1(G) and (ii) the I Parcel Access Rights (as defined in Section 4.5 (B)).

ARTICLE 3

EASEMENTS APPURTENANT TO J PARCEL PORTION

3.1 **In General J Parcel Portion Easements.** For the purposes of this Article 3, the following shall apply:

(A) The K/L Parcel Owner and the I Parcel Owner have granted, reserved, declared and created the Easements described in this Article 3. The term "Granted" or "granted" as used in Section 3.2 describing Easements shall be deemed to mean "granted, reserved, declared and created". The Easements in Section 3.2 shall bind and be enforceable against the K/L Parcel

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Owner and the I Parcel Owner, and each of them, and each of their respective successors, grantees and assigns.

(B) The Easements granted by Section 3.2 and Section 3.3 shall bind and burden the K/L Parcel Portion or any part thereof and the I Parcel Portion, or any part thereof and each of them, before and after any such Portions or any parts thereof are submitted to the Act, if ever, and which Portions shall, for the purpose of Section 3.2 and Section 3.3, be deemed to be the servient tenements. Where only a part of the K/L Parcel Portion or the I Parcel Portion, as the case may be, is bound and burdened by the Easement, only that part shall be deemed to be the servient tenement. The Easements granted by this Article 3 are appurtenant to and shall benefit (i) the J Parcel Portion, which shall, for the purpose of this Article 3 with respect to such Easement, be deemed to be the dominant tenement, and (ii) the J Parcel Owner and its successors and assigns, including, without limitation, any Unit Owners and the Condominium Association for the J Parcel Portion or any part thereof subsequent to the date, if any, that the J Parcel Portion or any part thereof is submitted to the Act. Where only a portion of the J Parcel Portion is so benefitted, only that portion shall be deemed to be the dominant tenement. No property other than the J Parcel Portion, as it may exist from time to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement, the dominant tenement being identified in each such grant of easement below.

(C) In exercising an Easement granted under Section 3.2 and Section 3.3, the J Parcel Owner shall minimize the impact of its exercise on the Owner of the Parcel burdened by the Easement, taking into consideration the impact of any disruption, and shall comply with the provisions of Section 17.1 whether or not the work being performed or exercise of the Easement constitutes "Alterations".

(D) The K/L Parcel Owner and the J Parcel Owner may (i) in connection with its respective Portion, (ii) in an Emergency Situation, or (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of their Portions, temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements to the J Parcel Portion granted under Section 3.2, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. The K/L Parcel Owner and the I Parcel Owner may, from time to time, impose reasonable limitations on the use by the residents of the J Parcel Portion or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the K/L Parcel Portion or the I Parcel Portion, as the case may be, described in this Article 3. In imposing limitations or controls, the K/L Parcel Owner or the I Parcel Owner, as the case may be, shall take into consideration the reasonable needs and requirements of the users of such Easement as well as the imposing Owner's own needs and requirements.

(E) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under Section 3.2 and Section 3.3 shall constitute Arbitrable Disputes.

(F) Any exclusive Easement granted under this Article 3 shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights of self-help granted under Section 8.6, and its rights under Article 12 or Article 16 or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

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3.2 **Reciprocal Easements.** The following Easements will be granted by the K/L Parcel Owner and the I Parcel Owner for the benefit of J Parcel and the J Parcel Owner: (i) a non-exclusive construction Easement with respect to the initial development of the J Parcel, the initial construction of the improvements on the J Parcel, the initial construction of Shared Equipment and Common Improvements, and any construction or alterations to the exterior or interior of each Parcel after the initial construction thereof; (ii) a non-exclusive Easement to install, maintain, repair and replace certain equipment serving the K/L Parcel and the I Parcel, or either of them (including, but not limited to, wires, pipes, cables and conduits necessary to operate such equipment) at certain locations in the K/L Parcel and the I Parcel, or either of them; (iii) a non-exclusive Easement and right to connect the J Parcel Owner's equipment or systems to those equipment or systems serving the J Parcel or to the Shared Equipment located on the K/L Parcel and the I Parcel, or either of them, on which the J Parcel Owner's equipment is dependent for operation; (iv) a non-exclusive Easement to install, maintain, repair and replace utility lines, chases and ducts at certain locations and points of connection in the K/L Parcel and the I Parcel, or either of them; (v) a non-exclusive Easement and right to inspect, maintain, repair and replace the Shared Equipment and the Common Improvements; (vi) a non-exclusive Easement for access over the K/L Parcel and the I Parcel, or either of them by persons, material and equipment for the purposes set forth above and in the event of an Emergency Situation; and (vii) a non-exclusive Easement for ingress and egress by persons over those Common Improvements on the K/L Parcel and the I Parcel, or either of them, to the extent reasonably necessary to permit access to other Parcels, subject to any reasonable security measures instituted by the K/L Parcel Owner and the I Parcel Owner, or either of them.

3.3 **Grant of Easements - By K/L Parcel Owner.** The following Easements in, to, under, over, upon and through portions of the K/L Parcel Portion in favor of the J Parcel Portion are hereby granted:

(A) **Tri-Party Amenity Areas.** A non-exclusive Easement for the use and enjoyment of the K/L Parcel Tri-Party Amenity Areas. The foregoing non-exclusive Easement includes the right of the J Parcel Owner and its Permittees to access the K/L Parcel Tri-Party Amenity Areas as generally shown on the Improvement Plans. The K/L Parcel Owner shall have the right from time to time to promulgate reasonable rules and regulations regulating the use of the Tri-Party Amenity Areas, as described in Section 2.3(A). The J Parcel Owner shall pay to the K/L Parcel Owner the Operating Expenses for Maintenance of the Tri-Party Amenity Areas in accordance with Section 8.3(B) and Exhibit 8.5.

(B) **Ingress and Egress in Favor of J Parcel Owner.** A non-exclusive Easement in, to, over, upon and through all areas located within the K/L Parcel Portion, including the K/L Parcel Parking Area, for ingress and egress by motor vehicles, Persons, materials and equipment in, over, on, across and through such portions of the K/L Parcel Portion, as are reasonably necessary to permit the use and operation or the Maintenance (but only in and when such Maintenance is required or permitted under this Declaration) of (x) the J Parcel Portion, (y) any Facilities located in the K/L Parcel Portion or which provide or are necessary to provide the J Parcel Portion with any utilities or other services necessary to the operation of the J Parcel Portion and J Parcel Owned Facilities, and (z) any other areas in the K/L Parcel Portion, to which an Easement for use or Maintenance has been granted to the J Parcel Owner, or the obligation to perform a service has been imposed by Section 8.1.

(C) **J Parcel Portion Structural Support.** A non-exclusive Easement in all Structural Supports located in or constituting a part of the K/L Parcel Portion for the support of (i) the J Parcel Portion, (ii) any Facilities or areas located in the K/L Parcel Portion with respect to which the J Parcel Owner is granted an Easement, and (iii) any J Parcel Owned Facilities.

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(D) **J Parcel Utilities.** A non-exclusive Easement for utility purposes required by the J Parcel Portion (and if required by the applicable Utility Company and agreed to by the J Parcel Owner, to such Utility Company in connection therewith), in those areas of the K/L Parcel Portion, where such utilities are currently located or to be located as part of the K/L Parcel Improvements. If, at any time, it shall become necessary to relocate or add to utility easements (including installation of Facilities) other than where currently located or to be located as part of the K/L Parcel Improvements, in the K/L Parcel Portion, in order to provide or upgrade required utility service to the J Parcel Portion, the K/L Parcel Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by the J Parcel Owner and such other Owner, provided (i) such easements do not unreasonably interfere with the reasonable use and enjoyment of any portion of the K/L Parcel Portion for the purposes for which such portion is used, or if such use and enjoyment would be disturbed, no reasonable alternative is available, (ii) the K/L Parcel Owner shall not be required to grant an easement which would convert otherwise available space that is used for the purposes for which such portion is used unless such relocation or additional easements are required by Law and no other space is reasonably available, and the K/L Parcel Owner is equitably compensated for the value of such converted space, and (iii) the J Parcel Owner shall pay the reasonable costs and expenses of the K/L Parcel Owner in connection with granting such easement.

(E) **J Parcel Portion Encroachments.** An Easement permitting the existence of encroachments of the J Parcel Portion or J Parcel Owned Facilities into the K/L Parcel Portion, if such encroachments presently exist as of the Effective Date, are generally shown in the Improvement Plans, or are replaced in the same location, or if by reason of settlement or shifting any part of the J Parcel Portion or Condominium Owned Facilities shall hereafter encroach upon any part of the K/L Parcel Portion. This Easement shall exist only so long as the encroaching portion of the J Parcel Portion or J Parcel Owned Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(F) **Intentionally Omitted.**

(G) **Dock Storage Room.** A non-exclusive Easement for the use of the Dock Storage Room as so identified and generally delineated on the Improvement Plans.

(H) **Loading Dock.** A non-exclusive Easement for the use of that portion of the Loading Dock and Loading Dock Areas located, or to be located, in, and forming a part of, the K/L Parcel Portion, as so identified and generally delineated on the Improvement Plans.

3.4 **Grant of Easements – By I Parcel Owner.** The following Easements in, to, under, over, upon and through portions of the I Parcel Portion in favor of the J Parcel Portion are hereby granted:

(A) **Tri-Party Amenity Areas.** Commencing on the date on which the City issues a temporary certificate of occupancy (or equivalent) for the I Parcel Tri-Party Amenity Areas, a non-exclusive Easement for the use and enjoyment of the Tri-Party Amenity Areas located, or which, after the Effective Date, may be located, within the I Parcel Improvements, as shown or which shall be shown, on the Improvement Plans. The foregoing non-exclusive Easement includes the right of the K/L Parcel Owner and its Permittees to access such Tri-Party Amenity Areas located, or which, after the Effective Date, may be located, within the I Parcel Improvements. Declarant hereby agree and acknowledge that, as of the Effective Date, the exact location(s) of, access areas to, and Facilities and other amenities to be included in and as part of,

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the Tri-Party Amenity Areas located within the I Parcel Improvements have not been finalized and/or constructed and installed. At such time as the exact location(s) of, access areas to, and Facilities and other amenities to be included in and as part of, the I Parcel Tri-Party Amenity Areas, are finalized, constructed and installed, the K/L Parcel Owner shall have the right to amend this Declaration to further define and describe the I Parcel Tri-Party Amenity Areas, including amending Exhibit 1.1(F) and the Improvement Plans as provided in Section 2.4(A), and the K/L Parcel Owner shall have the right from time to time to promulgate reasonable rules and regulations with regard to the exercise of the foregoing Easement rights, as also provided in Section 2.4(A). The I Parcel Owner shall pay to the K/L Parcel Owner the Operating Expenses for Maintenance of the Tri-Party Amenity Areas in accordance with Section 8.3(B) and Exhibit 8.5.

(B) **J-I Parcel Bi-Party Amenity Areas.** Commencing on the date on which the City issues a temporary certificate of occupancy (or equivalent) for that portion of the J-I Parcel Bi-Party Amenity Areas located within the I Parcel Improvements, a non-Exclusive Easement for the use and enjoyment of the J-I Parcel Bi-Party Amenity Areas located within the I Parcel Improvements as shown, or which shall be shown, on the Improvement Plans. The foregoing non-exclusive Easement includes the right of the J Parcel Owner and its Permittees to access the J-I Parcel Bi-Party Amenity Areas located or which, after the Effective Date, may be located, within the I Parcel Improvements. Declarant hereby agree and acknowledge that, as of the Effective Date, the exact location(s) of, access areas to, and Facilities and other amenities to be included in, and as part of, the J-I Parcel Bi-Party Amenity Areas have not been finalized and/or constructed and installed. At such time as the exact location(s) of, access to, and Facilities and other amenities to be included in and as part of, the J-I Parcel Bi-Party Amenity Areas are finalized, constructed and installed, the I Parcel Owner shall have the right to amend this Declaration to further define and describe the J-I Parcel Bi-Party Amenity Areas located within the Parcel Improvements, including amending Exhibit 1.1(F) and the Improvement Plans as the I Parcel Owner reasonably deems appropriate. From and after the date the City issues such certificate of occupancy (or equivalent), the I Parcel Owner shall have the right from time to time to promulgate reasonable rules and regulations regulating the use of the J-I Parcel Bi-Party Amenity Areas, including allocation of Operating Expenses for the Maintenance and operation of the J-I Parcel Bi-Party Amenity Areas, public liability Insurance to be placed with respect to the J-I Parcel Bi-Party Amenity Areas, and hours of operations, insurance, and the Operating Expenses for the Maintenance and operation of the J-I Parcel Bi-Party Amenity Areas. The J Parcel Owner shall pay the I Parcel Owner the Operating Expenses for Maintenance of the J-I Parcel Bi-Party Amenity Areas, in accordance with Section 8.3(D).

(C) **Intentionally Omitted.**

(D) **Ingress and Egress in Favor of J Parcel Owner.** A non-exclusive Easement in, to, over, upon, and through all areas located within the I Parcel Portion, including the I Parcel Parking Area, for ingress and egress by motor vehicles, Persons, materials and equipment in, over, on, across and through such portions of the I Parcel Portion, as are reasonably necessary to permit the use and operation or the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (x) the J Parcel Portion, (y) any Facilities located in the I Parcel Portion or which provide or are necessary to provide the J Parcel Portion with any utilities or other services necessary to the operation of the J Parcel Portion and J Parcel Owned Facilities, and (z) any other areas in the I Parcel Portion, to which an Easement for use or Maintenance has been granted to the J Parcel Owner, or the obligation to perform a service has been imposed by Section 8.1.

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(E) **J Parcel Portion Structural Support.** A non-exclusive Easement in all Structural Supports located in or constituting a part of the I Parcel Portion for the support of (i) the J Parcel Portion, (ii) any Facilities or areas located in the I Parcel Portion with respect to which the J Parcel Owner is granted an Easement, and (iii) any J Parcel Owned Facilities.

(F) **J Parcel Portion Encroachments.** An Easement permitting the existence of encroachments of the J Parcel Portion or J Parcel Owned Facilities into the I Parcel Portion, if such encroachments presently exist as of the Effective Date, are generally shown in the Improvement Plans, or are replaced in the same location, or if by reason of settlement or shifting any part of the J Parcel Portion or Condominium Owned Facilities shall hereafter encroach upon any part of the I Parcel Portion. This Easement shall exist only so long as the encroaching portion of the J Parcel Portion or J Parcel Owned Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(G) **Loading Dock.** A non-exclusive Easement for the use of that portion of the Loading Dock and Loading Dock Areas located, or to be located, in, and forming a part of, the I Parcel Portion, as so identified and generally delineated on the Improvement Plans.

Notwithstanding anything contained in this Section 3.4 to the contrary, Declarant hereby agree and acknowledge that the location, nature, and requirements of the Easements granted by the I Parcel Owner pursuant to this Section 3.4 may be subject to (i) the determination and revisions and disruptions as described in Section 4.1(G) and (ii) the I Parcel Access Rights (as defined in Section 4.5 (B)).

ARTICLE 4

EASEMENTS APPURTENANT TO I PARCEL PORTION

4.1 **In General I Parcel Portion Easements.** For the purposes of this Article 4, the following shall apply:

(A) The K/L Parcel Owner and the J Parcel Owner have granted, reserved, declared and created the Easements described in this Article 4. The term "Granted" or "granted" as used in Section 4.2 describing Easements shall be deemed to mean "granted, reserved, declared and created". The Easements in Section 4.2 shall bind and be enforceable against the K/L Parcel Owner and the J Parcel Owner, and each of them, and each of their respective successors, grantees and assigns.

(B) The Easements granted by Section 4.2 and Section 4.3 shall bind and burden the K/L Parcel Portion and the J Parcel Portion, and each of them, before and after any such Portions or parts thereof are submitted to the Act, if ever, and which Portions shall, for the purpose of Section 4.2 and Section 4.3, be deemed to be the servient tenements. Where only a part of the K/L Parcel Portion or the J Parcel Portion, as the case may be, is bound and burdened by the Easement, only that part shall be deemed to be the servient tenement. The Easements granted by this Article 4 are appurtenant to and shall benefit (i) the I Parcel Portion, which shall, for the purpose of this Article 4 with respect to such Easement, be deemed to be the dominant tenement, and (ii) the I Parcel Owner and its successors and assigns, including, without limitation, any Unit Owners and the Condominium Association for the I Parcel Portion or any part thereof subsequent to the date, if any, that the I Parcel Portion or any part thereof is submitted to the Act. Where

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only a portion of the I Parcel Portion is so benefitted, only that portion shall be deemed to be the dominant tenement. No property other than the I Parcel Portion, as it may exist from time to time in accordance with the terms of this Declaration, shall constitute part of the dominant tenement, the dominant tenement being identified in each such grant of easement below.

(C) In exercising an Easement granted under Section 4.2 and Section 4.3, the I Parcel Owner shall minimize the impact of its exercise on the Owner of the Parcel burdened by the Easement, taking into consideration the impact of any disruption, and shall comply with the provisions of Section 17.1 whether or not the work being performed or exercise of the Easement constitutes "Alterations".

(D) The K/L Parcel Owner and the J Parcel Owner may (i) in connection with its respective Portion, (ii) in an Emergency Situation, or (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of their Portions, temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements to the I Parcel Portion granted under Section 4.2, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. The K/L Parcel Owner and the J Parcel Owner may, from time to time, impose reasonable limitations on the use by the residents of the I Parcel Portion or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the K/L Parcel Portion or the J Parcel Portion, as the case may be, described in this Article 4. In imposing limitations or controls, the K/L Parcel Owner or the J Parcel Owner (as applicable) shall take into consideration the reasonable needs and requirements of the users of such Easement as well as the imposing Owner's own needs and requirements.

(E) Any disputes concerning the existence, location, nature, use and scope of any of the Easements granted under Section 4.2 and Section 4.3 shall constitute Arbitrable Disputes.

(F) Any exclusive Easement granted under this Article 4 shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights of self-help granted under Section 8.6, and its rights under Article 12 or Article 16 or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

(G) Declarant hereby agree and acknowledge that, as of the Effective Date, the I Parcel Improvements have not been constructed, and that, accordingly (i) until the I Parcel Inclusion Date, the exact location, nature, and requirements for the Easements to be granted by the K/L Parcel Owner and J Parcel Owner, or either of them, to the I Parcel Owner may not be able to be determined until the I Parcel Inclusion Date, (ii) until the I Parcel Inclusion Date, the use of such Easements to be granted by the K/L Parcel, Owner and J Parcel Owner, or either of them, by the I Parcel Owner may be disrupted as a result of construction activities on, or with respect to, the I Parcel, and (iii) the data on which the City issues a final certificate of occupancy (or equivalent) for the I Parcel Improvements, the use of the Easements to be granted by the I Parcel Owner to the K/L Parcel Owner and the J Parcel Owner, or either of them, may be disrupted as a result of construction activities on, or with respect to, the I Parcel.

4.2 **Reciprocal Easements**. The following Easements will be granted by the K/L Parcel Owner and the J Parcel Owner for the benefit of the I Parcel and the I Parcel Owner: (i) a non-exclusive Easement to install, maintain, repair and replace certain equipment serving the K/L Parcel and the J Parcel, or either of them (including, but not limited to, wires, pipes, cables and conduits necessary to

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operate such equipment) at certain locations in the K/L Parcel and the J Parcel, or either of them; (iii) a non-exclusive Easement and right to connect the I Parcel Owner's equipment or systems to those equipment or systems serving the I Parcel or to the Shared Equipment located on the K/L Parcel and the J Parcel, or either of them on which the I Parcel Owner's equipment is dependent for operation; (iv) non-exclusive Easement to install, maintain, repair and replace utility lines, chases and ducts at certain locations and points of connection in the K/L Parcel and the J Parcel, or either of them; (v) a non-exclusive Easement and right to inspect, maintain, repair and replace the Shared Equipment and the Common Improvements; (vi) a non-exclusive Easement for access over the K/L Parcel and the J Parcel, or either of them by persons, material and equipment for the purposes set forth above and in the event of emergency situations; and (vii) a non-exclusive Easement for ingress and egress by persons over those Common Improvements on the K/L Parcel and the J Parcel, or either of them, to the extent reasonably necessary to permit access to other Parcels, subject to any reasonable security measures instituted by the K/L Parcel Owner and the J Parcel Owner, or either of them.

4.3 **Grant of Easements – By K/L Parcel Owner.** The following Easements in, to, under, over, upon and through portions of the K/L Parcel Portion in favor of the I Parcel Portion are hereby granted:

(A) **Tri-Party Amenity Areas.** Commencing on the I Parcel Inclusion Date, a non-exclusive Easement for the use and enjoyment of the Tri-Party Amenity Areas located or which, after the Effective Date, may be located, within the K/L Parcel Tri-Party Amenity Areas, as generally shown or which shall be generally shown, on the Improvement Plans. The foregoing non-exclusive Easement includes the right of the I Parcel Owner, and its Permittees to access Tri-Party Amenity Areas within the Parcel Improvements. Declarant hereby agree and acknowledge that, as of the Effective Date, the exact location(s) of, access areas to, and Facilities and amenities to be included in, and as part of, the Tri-Party Amenity Areas located within the K/L Parcel Improvements have not been finalized and/or constructed and installed. At such time as the exact location(s) of, access areas to, and Facilities and other amenities to be included in and as part of, the I Parcel Improvements, are finalized, constructed and installed, the K/L Parcel Owner shall have the right to amend this Declaration to further define and describe such Tri-Party Amenity Areas, including amending Exhibit 1.1(E) and the Improvement Plans as provided in Section 2.4(A), and the K/L Parcel Owner shall have the right from time to time to promulgate reasonable rules and regulations with regard to the exercise of the foregoing Easement rights and, as also provided in Section 2.4(A).

(B) **K/L-I Parcel Bi-Party Amenity Areas.** Commencing on the I Parcel Inclusion Date, a non-exclusive Easement for the use and enjoyment of the K/L-I Parcel Bi-Party Amenity Areas located, or which, after the Effective Date, may be located, within the K/L Parcel Improvements, as shown, or which shall be shown, on the Improvements Plan. The foregoing non-exclusive Easement includes the right of the I Parcel Owner and its Permittees to access the K/L-I Parcel Bi-Party Amenity Areas located or to be located, within the K/L Parcel Improvements. Declarant hereby agree and acknowledge that, as of the Effective Date, the exact location(s) of, access areas to, and Facilities and amenities to be included in, and as part of, the K/L-I Parcel Bi-Party Amenity Areas have not been finalized and/or constructed and installed. At such time as the exact location(s) of, access to, and Facilities and other amenities to be included in and as part of, the K/L-I Parcel Bi-Party Amenity Areas are finalized, constructed and installed, the K/L Parcel Owner shall have the right to amend this Declaration to further define and describe the K/L-I Parcel Bi-Party Amenity Areas, including amending Exhibit 1.1(G) and the Improvement Plans as the K/L Parcel Owner reasonably deems appropriate. The K/L Parcel Owner shall have the right to promulgate reasonable rules and regulations regulating the use of the K/L-I Parcel Bi-Party Amenity Areas, including hours of operation, insurance and the Operating Costs for the Maintenance and operation of the K/L-I Parcel Bi-Party Amenity Areas

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The Operating Expenses to be paid to the K/L Parcel Owner shall be in accordance with Section 8.3(C) and Exhibit 8.5.

(C) **Intentionally Omitted.**

(D) **Ingress and Egress in Favor of I Parcel Owner.** A non-exclusive Easement in, to, over, upon and through all areas located within the K/L Parcel Portion, including the K/L Parcel Parking Area, for ingress and egress by motor vehicles, Persons, materials and equipment in, over, on, across and through such portions of the K/L Parcel Portion, as are reasonably necessary to permit the use and operation or the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (x) the I Parcel Portion, (y) any Facilities located in the K/L Parcel Portion or which provide or are necessary to provide the I Parcel Portion with any utilities or other services necessary to the operation of the I Parcel Portion and I Parcel Owned Facilities, and (z) any other areas in the K/L Parcel Portion, to which an Easement for use or Maintenance has been granted to the I Parcel Owner, or the obligation to perform a service has been imposed by Section 8.1.

(E) **I Parcel Portion Structural Support.** A non-exclusive Easement in all Structural Supports located in or constituting a part of the K/L Parcel Portion for the support of (i) the I Parcel Portion, (ii) any Facilities or areas located in the K/L Parcel Portion with respect to which the I Parcel Owner is granted an Easement, and (iii) any I Parcel Owned Facilities.

(F) **Storm Water Connection.** Commencing on the I Parcel Inclusion Date, a non-exclusive Easement to connect those underground storm water Facilities within the K/L Parcel at Lower Harbor Drive (via ductile iron piping), that extends each to west from Lower Harbor Drive and runs underneath the K/L Parcel to the I Parcel to the stormwater connection.

(G) **I Parcel Portion Encroachments.** An Easement permitting the existence of encroachments of the I Parcel Portion or I Parcel Owned Facilities into the K/L Parcel Portion, if such encroachments presently exist as of the Effective Date, are generally shown in the Improvement Plans, or are replaced in the same location, or if by reason of settlement or shifting any part of the I Parcel Portion or Condominium Owned Facilities shall hereafter encroach upon any part of the K/L Parcel Portion. This Easement shall exist only so long as the encroaching portion of the I Parcel Portion or I Parcel Owned Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(H) **Loading Dock.** A non-exclusive Easement for the use of that portion of the Loading Dock and Loading Dock Areas located, or to be located, in, and forming a part of, the K/L Parcel Portion, as so identified and generally delineated on the Improvement Plans.

4.4 **Grant of Easements – By J Parcel Owner.** The following Easements in, to, under, over, upon and through portions of the J Parcel Portion in favor of the I Parcel Portion are hereby granted:

(A) **Tri-Party Amenity Areas.** A non-exclusive Easement for the use and enjoyment of (i) the J Parcel Bi-Party Amenity Areas, and (ii) the J Parcel Tri-Party Amenity Areas. The foregoing non-exclusive Easement includes the right of the I Parcel Owner and its Permittees to access the J Parcel Bi-Party Amenity Areas from and through those Common Improvements, such as corridors, portions of the Parking Area and elevators from time to time designated by the K/L Parcel Owner. The K/L Parcel Owner shall have the right to promulgate

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reasonable rules and regulations with regard to the exercise of the foregoing easement rights, including allocation of Operating Expenses for the Maintenance and operation of the Tri-Party Amenity Areas as such Operating Expenses are to be paid to the K/L Parcel Owner in accordance with Exhibit 8.5, insurance and hours of operations regulating the use of the J Parcel Bi-Party Amenity Areas and J Parcel Tri-Party Amenity Areas.

(B) **J-I Parcel Bi-Party Amenity Areas.** Commencing on the I Parcel Inclusion Date, a non-exclusive Easement for the use and enjoyment of the J-I Parcel Bi-Party Amenity Areas located within the J Parcel Improvements. The foregoing non-exclusive Easement includes the right of the I Parcel Owner and its Permittees to access the J-I Parcel Amenity Areas located within the J Parcel Improvements. Declarant hereby agree and acknowledge that, as of the Effective Date, the exact locations of, access areas to, and Facilities and amenities to be included in and as part of, the J-I Parcel Bi-Party Amenity Areas located, or which after the Effective Date, shall be located, within the I Parcel Improvements as located or to be located within the I Parcel Improvements shown or which shall be shown, on the Improvement Plans have not been finalized and/or constructed and installed. At such time as the exact location(s) of, and access to, and Facilities and other amenities to be included in and as part of, the J-I Parcel Bi-Party Amenity Areas located or to be located within the I Parcel Improvements are finalized, constructed and installed, the I Parcel Owner shall have the right to amend this Declaration to further define and describe the I Parcel Bi-Party Amenity Areas located or to be located within the I Parcel Improvements, including amending Exhibit 1.1(F) and the Improvement Plans as the I Parcel Owner reasonably deems appropriate. The I Parcel Owner shall have the right to promulgate reasonable rules and regulations regulating the use and operation of the J-I Parcel Bi-Party Amenity Areas and the operating expenses for the use of the I Parcel Bi-Party Amenity Areas as described in Section 3.4(B).

(C) **Intentionally Omitted.**

(D) **Ingress and Egress in Favor of I Parcel Owner.** A non-exclusive Easement in, to, over, upon and through all areas located within the J Parcel Portion, including the J Parcel Parking Area, for ingress and egress by motor vehicles, Persons, materials and equipment in, over, on, across and through such portions of the J Parcel Portion as are reasonably necessary to permit the use and operation or the Maintenance (but only if and when such Maintenance is required or permitted under this Declaration) of (x) the I Parcel Portion, (y) any Facilities located in the J Parcel Portion or which provide or are necessary to provide the I Parcel Portion with any utilities or other services necessary to the operation of the I Parcel Portion and I Parcel Owned Facilities, and (z) any other areas in the J Parcel Portion, to which an Easement for use or Maintenance has been granted to the I Parcel Owner, or the obligation to perform a service has been imposed by Section 8.1.

(E) **I Parcel Portion Structural Support.** A non-exclusive easement in all Structural Supports located in or constituting a part of the J Parcel Portion for the support of (i) the I Parcel Portion, (ii) any Facilities or areas located in the J Parcel Portion with respect to which the I Parcel Owner is granted an Easement, and (3) any I Parcel Owned Facilities.

(F) **I Parcel Portion Encroachments.** An easement permitting the existence of encroachments of the I Parcel Portion or I Parcel Owned Facilities into the J Parcel Portion, if such encroachments presently exist as of the Effective Date, are generally shown in the Improvement Plans, or are replaced in the same location, or if by reason of settlement or shifting any part of the I Parcel Portion or Condominium Owned Facilities shall hereafter encroach upon any part of the J Parcel Portion. This Easement shall exist only so long as the encroaching

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portion of the I Parcel Portion or I Parcel Owned Facilities continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment. No such encroachment shall be placed where such encroachment is not permitted or did not previously exist or is deliberately, materially enlarged.

(G) **Public Elevator.** A non-exclusive easement for the use of the Public Elevator as necessary or desirable for access to Lower Levels 4 and 5, and the Ground Level of the J Parcel Improvements. The J Parcel Owner shall have the right to promulgate reasonable rules and regulations with regard to the exercise of the foregoing easement right, including scheduling and regulating the use of the Public Elevator.

(H) **Dog Parks.** A non-exclusive Easement for the use and enjoyment of the Outdoor Dog Park and the Indoor Dog Park. The K/L Parcel Owner shall have the right to promulgate reasonable rules and regulations with regard to the exercise of the foregoing easement rights, including liability insurance for, and hours of operating and regulating the use of, the Outdoor Dog Park and the Indoor Dog Park.

(I) **Loading Dock.** A non-exclusive Easement for the use of that portion of the Loading Dock and Loading Dock Areas located, or to be located, in, and forming a part of, the J Parcel Portion, as so identified and generally delineated on the Improvements Plans.

4.5 **Construction Access Rights.**

(A) Notwithstanding anything contained in this Article 4 or any other provision of this Declaration, Declarant agree and acknowledge that, as of the Effective Date, the I Parcel Improvements have not been constructed, and that the I Parcel Owner may, from time to time, be required if, and to the extent, reasonably necessary, to (i) access the K/L Parcel and the J Parcel Portion, or either of them, including the K/L Parcel Parking Area and the J Parcel Parking Area, or either of them, in connection with construction and development activities on the I Parcel and (ii) use the airspace above the K/L Parcel Portion and the J Parcel Portion, all subject to the terms and conditions of this Section 4.5.

(B) Subject to the terms and conditions of this Section 4.5, the K/L Parcel Owner and the J Parcel Owner, and each of them, hereby grants to the I Parcel Owner, and to the I Parcel Owner's agents, employees, contractors and suppliers, and such other parties the I Parcel Owner may authorize or designate (each an "**I Parcel Accessing Party**"), a temporary and non-exclusive right, if, and to the extent reasonably necessary, to (i) enter upon the K/L Parcel Portion and the J Parcel Portion solely and exclusively in connection with the construction activities on the I Parcel and (ii) use the airspace above the K/L Parcel Portion and the J Parcel Portion, including the right to operate a construction crane within a portion of such airspace. The rights granted to the I Parcel Owner for the benefit of the I Parcel under this Section 4.5(B) are collectively referred to as the "**I Parcel Access Rights**".

(C) All costs and risks of the exercise by the I Parcel Owner and any I Parcel Accessing Party of the I Parcel Access Rights and the activities by the I Parcel Owner and any I Parcel Accessing Party shall be borne solely by the I Parcel Owner. During the Property Access Term (as hereinafter defined), the I Parcel Owner shall:

- (i) not unreasonably interfere, nor permit unreasonable interference, with the operations on, in, under and around the K/L Parcel Portion or the J Parcel Portion;

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(ii) not enter, nor permit entry, upon the K/L Parcel Portion or the J Parcel Portion for any purpose other than the purposes described in Section 4.5(B); and

(iii) in exercising the I Parcel Access Rights, comply with all applicable Laws, including any Laws relating to the erection and operation of any crane

The I Parcel Access Rights shall commence on the Effective Date and shall continue until the date on which the City issues a final certificate of occupancy (or equivalent) for the I Parcel Improvements (the "I Parcel Access Term"). Upon the written request of any Owner during the I Parcel Access Term, the Owners shall use good faith efforts to negotiate, and enter into a reasonable written agreement providing for the orderly and efficient construction and development activities on the I Parcel if, and to the extent, such construction and development activities involve or impact the I Parcel Access Rights; such written agreement shall, if applicable, contain reasonable restrictions and requirements relating to the erection and operation of any crane. Any dispute concerning the negotiation and/or terms and conditions of such written agreement shall constitute an Arbitrable Dispute.

(D) The K/L Parcel Owner and the J Parcel Owner shall each shall have the right to revoke the I Parcel Access Rights with respect to an I Parcel Accessing Party in the event that such I Parcel Accessing Party fails to fulfill any obligation under this Section 4.5 and does not cure such failure within fifteen (15) business days after receipt of written notice from the K/L Parcel Owner or J Parcel Owner (as the case may be) of the failure or such greater period as is reasonable; provided, however, if such failure creates, or is reasonably likely to create, an Emergency Situation, then the K/L Parcel Owner and J Parcel Owner, or either of them, shall have the right, but not the obligation, to take reasonable measures to remedy such failure, and the I Parcel Owner shall reimburse the K/L Parcel Owner or the J Parcel Owner (as the case may be) for the reasonable costs incurred to remedy such failure.

(E) The I Parcel Owner and every I Parcel Accessing Party shall, on the last day of the I Parcel Access Term or upon any earlier termination of the I Parcel Access Rights, immediately vacate and surrender all entry, access and other rights granted pursuant to this Section 4.5 to the K/L Parcel Owner or J Parcel Owner (as the case may be) without delay, and shall remove any debris, waste, equipment, materials, temporary storage facilities, and vehicles' and free and clear of all occupancies, liens, and encumbrances other than those created by the I Parcel Owner and each I Parcel Access Party. In the event that the I Parcel Owner or an I Parcel Accessing Party does not remove debris, waste, equipment, materials, temporary storage facilities, and vehicles for which the I Parcel Owner or such I Parcel Accessing Party is responsible and return the K/L Parcel Portion and the J Parcel Portion, or either of them (as the case may be), free and clear of all occupancies, liens, and encumbrances, K/L Parcel Portion and the J Parcel Portion, or either of them (as the case may be), shall have the right, but not the obligation, to so remove any debris, waste, equipment, materials, temporary storage facilities, vehicles, occupancies, liens, and encumbrances. The I Parcel Owner shall indemnify and hold harmless the K/L Parcel Owner and J Parcel Owner, and each of them, from and against any and all damages, costs, expenses or liabilities suffered or incurred by the K/L Parcel Owner or the J Parcel Owner in connection with the restoration of the K/L Parcel Portion or the J Parcel Portion (as the case may be). The I Parcel Owner's indemnification obligations set forth in this Section shall survive the expiration of the I Parcel Access Term or any other termination of I Parcel Access Rights.

(F) In the event that any damages to the K/L Parcel Portion or J Parcel Portion were caused by an I Parcel Accessing Party's use thereof, the I Parcel Owner shall repair same

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promptly upon receipt of written demand from the K/L Parcel Owner or J Parcel Owner (as the case may be). If the I Parcel Owner does not repair such damage, the K/L Parcel Owner or J Parcel Owner (as the case may be) shall have the right, but not the obligation, to repair the damage, the I Parcel Owner shall indemnify and hold harmless the K/L Parcel Owner or J Parcel Owner (as the case may be) from and against any and all damages, cost, expenses or liability suffered or incurred by the K/L Parcel Owner or J Parcel Owner (as the case may be) in connection with repair of the damage to the K/L Parcel Portion or J Parcel Portion (as the case may be). The indemnification obligations set forth in this Section shall survive the expiration of the I Parcel Access Term or any other termination of the I Parcel Access Rights.

ARTICLE 5

EXISTING EASEMENT AGREEMENTS

5.1 **Existing Easement Agreements.** Each Owner for itself, and for its successors and assigns, hereby agrees and acknowledges that (i) if, and to the extent, any of the Existing Easement Agreements establish any easements binding on any area benefiting or encumbering any other Owner's Parcel, or any portion thereof, the Owner whose Parcel is subject to any such easement and the agents, contractors, tenants, licensors, employees, representatives, successors and assigns of such Owner shall not damage, disrupt or otherwise interfere with such established easements or the equipment or other Facilities located within the subject easement area, if any damage, disruption or other interference would adversely affect any other Owner's Parcel or result in any liability to any other Owner, and (ii) if, and to the extent, any of the Existing Easement Agreements require an Owner to perform, and/or to pay the costs of, maintaining, repairing, replacing, renewing, operating, or insuring any Improvements or other Facilities, the failure of the Owner to so perform and/or pay such costs would damage, disrupt or otherwise interfere with, or would adversely affect any other Owner's Parcel or result in any liability to any other Owner, then such Owner shall in a timely and efficient manner perform all such obligations, and pay all such costs.

5.2 **Indemnity.** If an Owner breaches or violates any of agreements, terms, provisions, or other obligations under Section 5.1, then, such Owner shall be a Defaulting Owner, and, without limiting any indemnity obligations of such Defaulting Owner under any other provisions under this Declaration, such Defaulting Owner shall indemnify, defend and hold harmless the other Owners and the respective agents, contractors, tenants, licensees, employees, representatives, successors and assigns of such other Owners against any and all claims, proceedings, causes of action, suits, demands, damages, losses, liabilities, costs and expenses (including, without limitation reasonable attorney's fees and expenses) suffered or incurred by any such other Owners and their respective agents, contractors, tenants, licensors, employees, representatives, successors and assigns connected with, or arising out of, any breach or violations of any of the agreements, terms provisions, or other obligations under Section 5.1 by such Defaulting Owner.

5.3 **Self-Help Rights.** Without limiting any of the K/L Parcel Owner's rights and remedies under Section 13.9 or any other provision of Article 13, if an Owner violates any of the agreements, terms, provisions or other obligations under Section 5.1, the K/L Parcel Owner shall have the right, but not the obligation, upon any notice that is reasonable under the circumstances and which may be oral, to perform the obligations which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default. The K/L Parcel Owner, as the Creditor Owner, shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees, including appeals from judgments or orders) paid by the K/L Parcel Owner in performing such obligations which the Defaulting Owner failed to perform.

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ARTICLE 6

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ARTICLE 7

STRUCTURAL SUPPORTS AND ENCLOSURES

7.1 **Structural Safety and Integrity.** Each Owner shall, at its sole cost and expense, at all times, Maintain the Structural Supports and Enclosures located within such Owner's Parcel or comprising such Owner's Improvements in good and sound condition, and otherwise in a manner consistent with the Maintenance Standard, if, and to the extent that, failure by such Owner to so Maintain the Structural Supports and Enclosures located within such Owner's Parcel could reasonably be expected to (i) adversely affect (x) the structural safety or integrity of any portion of the Improvements located on any other Parcel, including any portion of the Parking Area located on any other Parcel, or (y) any other Common Improvements; (ii) diminish the benefits afforded to another Owner by an Easement or interrupt such other Owner's use or enjoyment of any Easement; or (iii) cause an Emergency Situation to any other Parcel or any other Owner. No Owner shall do or permit any act which would adversely affect the structural safety or integrity of any portion of the Improvements located on any other Parcel.

7.2 **Construction of Support.**

(A) The Owner responsible for any adverse effect on the structural safety or integrity of any portion of the Improvements located on such Owner's Parcel shall commence the construction of all necessary, remedial structural Supports and Enclosures located within such Owner's Parcel or comprising such Owner's Improvements in a reasonable time under the circumstances and shall diligently complete or cause completion of such construction in accordance with plans and specifications detailing necessary remedial Structural Supports and as prepared by or approved by Architect and the other Owners (whose approval will not be unreasonably withheld or delayed). The responsible Owner shall pay all costs and expenses, including all architectural and engineering fees in connection with construction of the remedial structural support, including any ongoing Maintenance costs. The provisions of Sections 12.3 and 12.4, and not this Article 7, shall apply if the adverse effect of the structural safety or integrity of the Improvements results from a fire or other casualty.

(B) The construction of such necessary, remedial Structural Supports and Enclosures shall be performed by a contractor or contractors selected by the Owners (with the advice of the Architect). If the Owners, fail to agree upon the selection of a contractor or contractors, the selection of a contractor or contractors shall constitute an Arbitrable Dispute. For purposes of this Article 7, provision or construction of necessary remedial Structural Supports shall also include any Maintenance required to remedy or prevent any adverse effect on the structural integrity or safety of the Building.

7.3 **Effect of Delay.** If delay in constructing necessary remedial Structural Supports and/or Enclosures would endanger the structural safety or integrity of any portion of any Improvements, in the reasonable opinion of the K/L Parcel Owner or the Architect, or responsibility for providing Structural Supports and/or Enclosures cannot readily be determined or is disputed, and it is not likely that such work will be commenced in time to avoid a reduction in structural integrity or safety, then the Owner of such Improvements in which the reduction occurred or is occurring shall, upon not less than ten (10) days advance written notice to the other Owners (except that such advance written notice shall not be required in an Emergency Situation), provide necessary, remedial Structural Supports and/or Enclosures (as

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applicable) as and wherever required, or the Owners shall together undertake to provide substitute or additional Structural Supports and/or Enclosures (as applicable); provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of the other Owners' provision of any necessary, remedial Structural Supports and Enclosures.

ARTICLE 8

SERVICES TO K/L PARCEL OWNER, J PARCEL OWNER AND I PARCEL OWNER

8.1 **Services to J Parcel Owner and I Parcel Owner.** The K/L Parcel Owner shall, to the extent within its control, furnish or cause to be furnished the following services to the J Parcel Owner and, except as provided in this Section 8.1, to the I Parcel Owner, as applicable, when, as and if reasonably required:

(A) **Domestic (City) Water Service.** To the extent not performed by the provider of domestic (City) water services to the K/L Parcel and J Parcel, Maintenance of the Facilities providing delivery of domestic (City) water to the K/L Parcel and J Parcel, upon the terms and conditions set forth in Exhibit 8.1(A). The foregoing services are not applicable to the I Parcel or the I Parcel Owner.

(B) **Fire Pumps and Control Systems.** Maintenance of Facilities providing the fire pumps, upon the terms and conditions set forth in Exhibit 8.1(B). The foregoing services are not applicable to the I Parcel or the I Parcel Owner.

(C) **Electrical Service.** Maintenance of Shared Facilities providing electrical service to the Property, including any Shared electrical panels and switchgear, house panels, distribution equipment, meter centers, transformers, electrical closets, and the equipment in the ComEd vault (to the extent Maintenance is not provided by ComEd), upon the terms and conditions set forth in Exhibit 8.1(C). The Operating Expenses to be paid to the K/L Parcel Owner in accordance with Exhibit 8.5 shall include all lease charges and other charges to be paid to ComEd or any successor utility provider for the electrical and other Shared Facilities necessary for the Maintenance of all such electrical systems and equipment and Shared Facilities pursuant to this Section 8.1(C) and satisfaction of all obligations under all agreements with ComEd with regard to any Shared Equipment or Shared Facilities. The foregoing services are not applicable to the I Parcel or the I Parcel Owner.

(D) **Loading Dock and Loading Dock Areas.** Maintenance of the Loading Dock and Loading Dock Areas and related Facilities, storage areas, office and related Shared Facilities, including providing security and pest control, and entering scavenger service contracts, upon the terms and conditions set forth in Exhibit 8.1(D).

(E) **Access and Control System.** Maintenance of any Shared Facilities comprising the centralized security access and control system for the Property, upon the terms and conditions set forth on Exhibit 8.1(E). The foregoing services are not applicable to the I Parcel or the I Parcel Owner.

(F) **Indoor Dog Park.** Maintenance of the Indoor Dog Park, upon the terms and conditions set forth on Exhibit 8.1(F).

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(G) **Outdoor Dog Park.** Maintenance of the sidewalks, lighting, landscaping, improvements and other related Facilities in the Outdoor Dog Park, upon the terms and conditions set forth in Exhibit 8.1(G).

(H) **Street Level Exterior Maintenance and Snow Removal.** To the extent not performed pursuant to the Lakeshore East Declaration, Maintenance of the street level sidewalks, improvements and other related Facilities, upon the terms and conditions set forth in Exhibit 8.1(H).

(I) **Communications System.** Maintenance of any Shared Facilities comprising the fire alarm and voice communication system providing detection and mechanical communication to emergency responders, upon the terms and conditions set forth in Exhibit 8.1(I).

(J) **Rainwater Reuse System.** Maintenance of the rainwater reuse system for the Property, upon the terms and conditions set forth in Exhibit 8.1(J).

(K) **Storm and Sanitary Water Disposal.** Maintenance of all underground storm water Facilities connecting to City water utility, to the extent such underground storm water Facilities serve two or more Portions, upon the terms and conditions set forth in Exhibit 8.1(K).

(L) **Guard Room.** Maintenance of the Guard Room, upon the terms and conditions set forth in Exhibit 8.1(L); provided, however, that (i) any Facilities within the Guard Room serving less than all the Improvements or less than all the Parcels shall be Maintained by the Owner of such Improvements or Parcel, as the case may be, at such Owner's sole cost and expense; and (ii) Maintenance of the Structural Supports and Enclosures of the Guard Room shall be the sole responsibility of the J Parcel Owner, at the sole cost and expense of the J Parcel Owner.

(M) **Parking Area.** Maintenance of the Parking Area, but only to the extent of general cleaning and repair and replacement of those Facilities as specifically described in Exhibit 8.1(M), and upon, and subject to, the terms and conditions set forth in Exhibit 8.1(M); provided, however, each Owner, at its sole cost and expense (except as provided in the next sentence), shall perform all other Maintenance of that portion of the Parking Area located within such Owner's Parcel in accordance with the requirements set forth in Section 8.3(A). The cost and expense incurred by the K/L Parcel Owner with respect to Maintenance and the Net Capitalized Cost of Replacement (if any) pursuant to this Section 8.1(M) and Exhibit 8.1(M) shall be allocated as follows: (i) prior to the I Parcel Inclusion Date: 31% for the K/L Parcel Owner, 62% for the J Parcel Owner, and 7% for the I Parcel Owner; and (ii) upon, and subsequent to, the I Parcel Inclusion Date: 20% for the K/L Parcel Owner, 39% for the J Parcel Owner, and 41% for the I Parcel Owner. All other provisions of Exhibit 8.5 (including, but not limited to, Projection Notices and Statements) shall be applicable to the Maintenance and/or Net Capitalized Cost of Replacement (if any) performed by the K/L Parcel Owner pursuant to this Section 8.1(M).

(N) **Building Automation System.** Maintenance of any Shared Facilities comprising the centralized platform to monitor and control mechanical, plumbing and electrical systems for the Property, upon the terms and conditions set forth on Exhibit 8.1(N). The foregoing services are not applicable to the I Parcel or the I Parcel Owner.

8.2 **Other Services From K/L Owner.**

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(A) K/L Owner shall furnish or cause to be furnished other services, as applicable, reasonably required or requested by the J Parcel Owner and the I Parcel Owner, as applicable, for normal operations of the J Parcel and the I Parcel Owner on terms and conditions mutually acceptable to the K/L Parcel Owner, the J Parcel Owner and the I Parcel Owner, as applicable. Once determined, the K/L Parcel Owner, J Parcel Owner and I Parcel Owner may amend this Declaration to incorporate the terms and conditions agreed to by all the Owners regarding these services.

(B) To facilitate the Services from the K/L Parcel Owner, each of the remaining Owners and their Occupants, including Condominium Owners, hereby authorize the K/L Parcel Owner and its agents to enter any Unit upon reasonable notice for non-emergency services and without notice, for emergency repairs.

(C) If, and to the extent necessary or advisable, as reasonably determined by the K/L Parcel Owner, the K/L Parcel Owner and its agents and contractors shall have access to the J Parcel Portion and the I Parcel Portion, inclusive of the interior of any Unit in the J Parcel Portion or the I Parcel Portion (if the J Parcel Portion or the I Parcel Portion, as the case may be, or any part thereof, is ever submitted to the Act), for the time period necessary, as reasonably determined by the K/L Parcel Owner, under the circumstance for the K/L Parcel Owner to perform any of the operations and Maintenance required pursuant to Section 8.1 or this Section 8.2.

8.3 Other Services Between Owners.

(A) **Maintenance of the Parking Area.** Except to the extent the K/L Parcel Owner is to perform Maintenance of the Parking Area pursuant to Section 8.1(M), each Owner, at such Owner's sole cost and expense, shall perform all Maintenance as and when necessary, and incur Net Capitalized Cost of Replacement, of that portion of the Parking Area located within such Owner's Parcel and the Facilities related to such portion of the Parking Area, including, but not limited to the Structural Supports and Enclosures of that portion of the Parking Area located within such Owner's Parcel, and any and all, fans, ventilation, improvements, paving, lighting, sprinkler system, drains, emergency pull stations, for the benefit of the Owners. Any cost or expense incurred in connection with the Maintenance required pursuant to this Section 8.3(A) with respect to such Maintenance shall not be included in Operating Expenses pursuant to Exhibit 8.5.

(B) **Maintenance of the Tri-Party Amenity Areas.** The Tri-Party Amenity Areas shall be controlled and Maintained by the K/L Parcel Owner. Each of the K/L Parcel Owner, J Parcel Owner, and, commencing on the I Parcel Inclusion Date, I Parcel Owner, and their respective Occupants and Permittees, may use the Tri-Party Amenity Areas pursuant to the Easement rights granted under this Agreement and such reasonable rules and regulations promulgated by the K/L Parcel Owner from time to time as described in Section 2.3(A). Pursuant to Section 8.10, the K/L Parcel Owner shall have the right to select a management company to manage the Tri-Party Amenity Areas. Any cost or expense incurred by or on behalf of the K/L Parcel Owner in connection with the Maintenance required pursuant to this Section 8.3(B), including, without limitation, the cost of any management company and the cost and expense of any insurance to be placed by the K/L Parcel Owner with respect to the Tri-Party Amenity Areas shall be included in Operating Expenses pursuant to Exhibit 8.5.

(C) **Maintenance of the K/L-I Parcel Bi-Party Amenity Areas.** The K/L-I Parcel Bi-Party Amenity Areas shall be controlled and Maintained by the K/L Parcel Owner; provided, however, that until the I Parcel Inclusion Date, the K/L Parcel Owner shall not be obligated to

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Maintain that part of the K/L-I Parcel Bi-Party Amenity Areas located, or to be located, within the I Parcel Improvements. Each of the K/L Parcel Owner and I Parcel Owner, and their respective Occupants and Permittees, may use the K/L-I Parcel Bi-Party Amenity Areas pursuant to the Easement rights granted under this Agreement and such reasonable rules and regulations promulgated by the K/L Parcel Owner from time to time as described in Section 2.4(A). Pursuant to Section 8.10, the K/L Parcel Owner shall have the right to select a management company to manage the K/L-I Parcel Bi-Party Amenity Areas. Any cost or expense incurred by or on behalf of the K/L Parcel Owner in connection with the Maintenance required pursuant to this Section 8.3 (C), including, without limitation, the cost of any management company and the cost and expense of any insurance, shall be allocated as follow: (i) prior to the I Parcel Inclusion Date: 100% for the K/L Parcel Owner; and (ii) upon, and subsequent to, the I Parcel Inclusion Date: 30% for the K/L Parcel Owner and 70% for the I Parcel Owner. All other provisions of Exhibit 8.5 (including, but not limited to, Projection Notices and Statements) shall be applicable to the Maintenance and/or Net Capitalized Cost of Replacement of the K/L-I Parcel Bi-Party Amenity Areas.

(D) **Maintenance of the J-I Parcel Bi-Party Amenity Areas.** Until the I Parcel Inclusion Date, the J-I Parcel Bi-Party Amenity Areas shall be controlled and Maintained by the J Parcel Owner at the sole cost and expense of the J Parcel Owner. Commencing on the I Parcel Inclusion Date, the J-I Parcel Bi-Party Amenity Areas shall be controlled and Maintained by the I Parcel Owner in accordance with this Declaration. Each of the J Parcel Owner and I Parcel Owner, and their respective Occupants and their respective Permittees, may use the J-I Parcel Bi-Party Amenity Areas pursuant to the Easement rights granted under Section 3.4(B) and Section 4.4(B) and such reasonable rules and regulations promulgated by the I Parcel Owner from time to time as described in Section 3.4(B). Commencing on the I Parcel Inclusion Date, the I Parcel Owner shall have the right, but not the obligation, to select a management company to manage the J-I Parcel Bi-Party Amenity Areas. Commencing on the I Parcel Inclusion Date, the J Parcel Owner shall reimburse the I Parcel Owner for any cost or expense incurred by or on behalf of the I Parcel Owner in connection with the Maintenance required pursuant to this Section 8.3(D), including, without limitation, the cost of any management company and the cost and expense of any insurance to be placed by the I Parcel Owner with respect to the J-I Parcel Bi-Party Amenity Areas. The J Parcel Owner shall pay such reimbursement to the I Parcel Owner within thirty (30) days from the date the I Parcel Owner submits an invoice for such reimbursement along with reasonable documentation evidencing the cost and expense incurred by the I Parcel Owner pursuant to this Section 8.3(D). The cost and expense incurred by or on behalf of the I Parcel Owner with respect to Maintenance, including such insurance, and Net Capitalized Cost of Replacement pursuant to this Section 8.3(D), including, without limitation, the cost of any management company and the cost and expense of any insurance, shall be allocated as follow: (i) prior to the I Parcel Inclusion Date: 100% J Parcel Owner; and (ii) upon, and subsequent to, the I Parcel Inclusion Date: 40% J Parcel Owner and 60% I Parcel Owner. Commencing on the I Parcel Inclusion Date, the I Parcel Owner shall procure and maintain, or cause to be procured and maintained, insurance against general liability claims and losses arising out of, or in connection with, the use and operation of the J-I Bi-Party Amenity Areas. Such general liability insurance shall be in the amounts and provide for the coverages that the I Parcel Owner deems appropriate, which insurance may include umbrella liability coverage. The J Parcel Owner and I Parcel Owner shall each pay to the K/L Parcel Owner or as the K/L Parcel Owner may direct, as and for Operating Expenses pursuant to Exhibit 8.5, the premiums and other costs for liability insurance (for third-party bodily injury and property damage) with respect to the J-I Bi-Party Amenity Areas, in accordance with the allocations set forth in this Section 8.3(D). Prior to the I Parcel Inclusion Date, the J Parcel Owner shall, at its sole and exclusive cost, procure and maintain, or shall cause to be procured and maintained, such insurance.

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(E) **HVAC Shared Equipment and Shared Facilities.** The J Parcel Owner, at its sole cost and expense, shall perform Maintenance as and when necessary of the mechanical, hot water and condensing water system to the extent such system comprises or includes Shared Equipment, Shared Facilities or other Common Improvements serving both the J Parcel Improvements and the K/L Parcel Improvements as described in Exhibit 8.3(E), including, but not limited to, the cooling tower, cooling tower pumps, hot water boilers, hot water pumps, and related equipment located in the mechanical room on Level 47 of the J Parcel Improvements, and such other Shared Equipment and Facilities described in Exhibit 8.3(E), and upon the terms and conditions set forth in Exhibit 8.3(E).

(F) **Tri-Party Amenity Areas Shared Equipment and Shared Facilities.** The K/L Parcel Owner shall perform Maintenance as and when necessary of the following Shared Equipment and Shared Facilities serving the Tri-Party Amenity Areas: the air handling units, dehumidification units, variable air volume units, heat pumps, fan powered boxes, fans, ductwork, heaters and other related HVAC equipment located in the mechanical room on Lower Levels 2 and 3 of the J Parcel Improvements, and such other Shared Equipment and Facilities described in Exhibit 8.3(F), and upon the terms and conditions set forth in Exhibit 8.3(F).

(G) **Plumbing Shared Equipment and Shared Facilities.** The K/L Parcel Owner, shall perform Maintenance as and when necessary of the Shared Plumbing Equipment and Facilities serving the Tri-Party Amenity Areas, including, but not limited to, the lap pool, steam rooms, splash pad, hydrotherapy pool, water heaters, piping, bath fixtures, pumps, controllers, tanks, filters, steam generators, chemical controllers, sensors, and other related equipment located in Lower Level 1, Lower Level 2, and Lower Level 5 Tri-Party Amenity Areas and Mechanical Rooms, and such other Shared Equipment and Facilities described in Exhibit 8.3(G) and upon the terms and conditions set forth in Exhibit 8.3(G).

(H) **Public Elevator.** The J Parcel Owner, at its sole cost and expense, shall perform Maintenance as and when necessary of the Public Elevator and those related Facilities and access corridors and public lobbies on the Ground Level, Lower Level 4 and Lower Level 5, upon the terms and conditions set forth in Exhibit 8.3(H).

8.4 **Obligation to Furnish Services.** Each Owner shall make a good-faith effort to operate its Facilities and furnish any and all services required to be performed by such Owner under this Article 8 in a manner consistent with the Maintenance Standard, and in a manner consistent with the standards for Maintenance established in Section 12.1 hereof. Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this Article 8 but shall not be liable under this Article 8 for interruption or inadequacy of service or loss or damage to property or business (including any consequential damages) arising out of such interruption or inadequacy. The K/L Parcel Owner reserves the right to curtail or halt the performance of any service hereunder at any time in reasonable respects upon reasonable advance notice under the circumstances (except in an Emergency Situation) and for a reasonable period of time to perform Maintenance, or in an Emergency Situation. Each Owner who is obligated to maintain, repair and replace any Facilities under Sections 8.1 and 8.2 which are connected to other Facilities within any of the other Improvements, the responsibility for whose Maintenance is another Owner's under this Article 8, shall perform its obligations under Section 8.1 or 8.2 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under Article 8. Where an exception exists to an Owner's obligation to perform Maintenance of Facilities described in an Exhibit to Article 8, such exception has been set forth in such Exhibit.

8.5 **Payment for Services.** The J Parcel Owner and the I Parcel Owner shall pay to the K/L Parcel Owner for the services rendered by the K/L Parcel Owner pursuant to this Article 8 and other

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charges and fees related to such services, including overhead and supervision fees, plus other allocated costs in accordance with the terms and provisions of Exhibit 8.5 attached hereto and made a part hereof, and as otherwise provided in this Declaration. The Applicable Percentages assigned to each Parcel were determined by the K/L Parcel Owner according to the estimated square footage for each Parcel. Notwithstanding anything to the contrary contained in this Declaration, the K/L Parcel Owner shall have the unilateral right (but not the obligation), to be exercised in its good faith discretion without the consent of the J Parcel Owner, the I Parcel Owner, any Unit Owners, any Condominium Association, or any other party, to adjust the Applicable Percentages assigned to each Parcel if the K/L Parcel Owner in good faith determines that: (i) any Applicable Percentage assigned to a Parcel is then inequitable in an equitable sharing of costs based on the actual costs incurred for a particular service, system, material or other supply being consumed or provided under this Declaration; (ii) the adjustment of such Applicable Percentage is justified based on measurable quantities of such service, system, material or supply reflecting such inequitable division requiring a readjustment as contemplated herein; and (iii) the need for such readjustment is based on historical experience with the actual costs incurred for a particular service, system, material or other supply being consumed or provided under this Declaration and K/L Parcel Owner's projections as to such adjustment, and, upon request, the K/L Parcel Owner shall provide reasonable back-up documentation with respect thereto.

8.6 Owner's Failure to Perform Services.

(A) If the K/L Parcel Owner fails to perform as required by the terms and conditions of this Article 8 (except when such failure is caused by the J Parcel Owner and/or the I Parcel Owner or by Unavoidable Delay or except if the K/L Parcel Owner is entitled to discontinue such service pursuant to Section 8.4 or Section 8.8), and such failure shall continue for a period of thirty (30) days, or such longer period reasonably needed to correct such failure, provided that the K/L Parcel Owner commences to cure within such period and diligently proceeds to cure, after receipt of written notice thereof to the K/L Parcel Owner from the J Parcel Owner or the I Parcel Owner, the J Parcel Owner or the I Parcel Owner shall have the right of self-help to perform the same until such time as the K/L Parcel Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting any Improvements or any of their respective Occupants.

(B) During any period in which the K/L Parcel Owner is failing to perform any of the services pursuant to Section 8.6(A) hereof, and the J Parcel Owner or the I Parcel Owner is exercising the right of self-help in accordance with this Section 8.6(A), the K/L Parcel Owner shall make payments to the J Parcel Owner or the I Parcel Owner (as applicable) in respect of its Applicable Percentage of the matter in question.

(C) If the I Parcel Owner or the J Parcel Owner fails to perform as required by the terms or conditions of this Article 8, and such failure shall continue for a period of thirty (30) days, or if the failure to perform may create an Emergency Situation, such period as reasonably provided that the I Parcel Owner or the J Parcel Owner, as the case may be, commences to cure within such period and diligently proceeds to cure, after receipt of written notice thereof to the I Parcel Owner or the J Parcel Owner, as the case may be, from any of the other Owners, the other Owners shall have the right of self-help to perform the same until such time as the I Parcel Owner or the J Parcel Owner, as the case may be, cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting any Improvements or any of their respective Occupants.

(D) During any period in which the I Parcel Owner or the J Parcel Owner is performing any of the services pursuant to Section 8.6(C) the Owner curing such failure to

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perform such terms or conditions shall be a Creditor Owner, and the Owner failing to perform such terms and conditions shall be a Defaulting Owner.

(E) If a dispute exists as to whether an Owner has failed to perform, or with respect to any amount to be paid by such Owner to another under this Section 8.6, then, such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 14 if not resolved within ten (10) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate an Owner's rights under this Section 8.6.

8.7 Data Unavailable from Metering. Where the allocation of the cost of a service under Section 8.1 is based on usage recorded by meters, and, if at any time the actual allocation of cost of service based on an Owner's usage recorded by meters cannot be determined because the meters or system for recording metered information are not installed or operative, then for such period when the usage data from meters is unavailable, the K/L Parcel Owner shall in good faith make such reasonable determination of costs based on historical data and usage, using such experts or systems as the K/L Parcel Owner may consider helpful to achieve an estimate of usage. The K/L Parcel Owner shall notify the other affected Owners in detail of its determination of estimated usage and the method for the K/L Parcel Owner's determination at the time the K/L Parcel Owner sends a Projection Notice or Statement (as such terms are defined in Exhibit 8.5) or statement of Net Capitalized Cost of Replacement under Exhibit 8.5 relating to such service. If, within thirty (30) days after receipt of such notice, the Owner receiving such notice does not, in good faith, dispute that estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties for such period; provided further, however, if the Owner receiving such notice, in good faith, disputes that the estimated usage has been determined reasonably, such Owner shall so notify the K/L Parcel Owner. If the K/L Parcel Owner and such other Owner fail to agree concerning the method of estimating usage within thirty (30) days after receipt of the disputing the K/L Parcel Owner's notice, then such other Owner may, within fourteen (14) days following such thirty (30)-day period, submit the question to the Architect or other expert agreed to by the parties for its advice. The Architect or other expert agreed to by the parties shall advise the Owners concerning a resolution of the question within a reasonable period of time after the dispute has been submitted to the Architect or other expert. If such other Owner does not submit such question to the Architect or other expert within such fourteen (14)-day period, the K/L Parcel Owner's determination of the estimated usage and cost thereof shall be final and binding.

8.8 Discontinuance of Services. If, at any time, a Defaulting Owner fails to perform its obligations under Article 8 after applicable notice and grace period, or to pay a Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of Article 8 within ten (10) days after receipt of written notice from the Creditor Owner demanding payment of said sum of money, then, if the Creditor Owner is the K/L Parcel Owner, in addition to any other rights or remedies the K/L Parcel Owner may have, the K/L Parcel Owner may discontinue furnishing services to be furnished by the K/L Parcel Owner under Article 8 until said sum of money is paid. If the Defaulting Owner in good faith disputes the Defaulting Owner's obligation to pay said sum of money and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, or brings an action or initiates an arbitration proceeding (where permitted or provided for under Article 14) to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then the K/L Parcel Owner may not discontinue furnishing any such services unless and until it shall finally be determined by arbitration in accordance with Article 14 hereof or a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid in excess of five (5) days after any such determination; and further provided, however, that the K/L Parcel Owner may not discontinue any such services if such discontinuance would cause an Emergency Situation (other than one involving solely economic loss) or hinder steps to remedy an existing Emergency Situation (other than one involving solely economic loss).

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Notwithstanding that there may be dispute as to the amount owed, an Owner shall nevertheless continue making payments as required under this Article 8 and Exhibit 8.5 until the dispute is resolved, at which time the Owners shall refund any overpayment or pay any deficiency, as applicable, including any interest thereon required under Exhibit 8.5.

8.9 Replacement of Facilities/Funding and Payment. An Owner may, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better, provided such replacement Facilities do not materially increase the obligations of an Owner in providing services under Article 8 and do not materially increase the cost to any Owner of any payments required to be made by such Owner (as a Contributing Party or a Benefited Owner) as a result of the decision by a Replacing Party or Operating Owner to install replacement Facilities that are more expensive than the replacement cost of Facilities comparable to the Facilities that are being replaced. Any Owner may correct the description of the room number or Facilities described in the Article 8 Exhibits by notice to the other Owner if such correction is due to error in the description or due to the replacement of such Facilities.

8.10 Property Management and Designated Management and Engineering Staff. Declarant and each subsequent Owner by acceptance of a deed to a portion of the Property, hereby acknowledges and accepts that, in order to maximize the benefits to be achieved by the management, Maintenance and operation of the Parking Area, all Shared Equipment, Shared Facilities, and Common Improvements within the Property shall at all times be managed and overseen by a single management and engineering staff employed and/or from time to time designated either directly by the K/L Parcel Owner or by a management company which may be an affiliate of the K/L Parcel Owner (the "**Designated Management and Engineering Staff**"); provided, however, management and/or other Maintenance of the Tri-Party Amenity Areas and the K/L-I Parcel Bi-Party Amenity Areas may be performed by a management company from time to time selected by the K/L Parcel Owner. Unless the K/L Parcel Owner, in its sole and exclusive discretion, otherwise elects in a duly executed and Recorded amendment to this Declaration, the uniform management, Maintenance and oversight of all Shared Equipment, Shared Facilities and Common Improvements, and the management, Maintenance and operation of Shared Equipment, Shared Facilities and Common Improvements shall not be performed by management or engineering personnel other than the Designated Management and Engineering Staff. All fees, costs, and reimbursements due and payable with respect to the Designated Management and Engineering Staff, and any agreement between the K/L Parcel Owner and the management company which employs the Designated Management and Engineering Staff (which management company may be an affiliate of K/L Parcel Owner), shall be included in Operating Expenses, and shall be reimbursed by the J Parcel Owner and I Parcel Owner to the K/L Parcel Owner, based on their respective Applicable Percentage in accordance with the terms and conditions of Exhibit 8.5.

8.11 Owners' Obligation for Security. Notwithstanding anything contained in this Article 8 or any other provision of this Declaration or the Exhibits to this Declaration, except to the extent expressly required under this Declaration, the K/L Parcel Owner, J Parcel Owner and I Parcel Owner are not providing security to (i) any of the other Owners, (ii) any Unit Owners or Occupants of a Portion (or any part thereof) not owned by the K/L Parcel Owner, J Parcel Owner or I Parcel Owner (as the case may be) nor (iii) any Portion not owned by the K/L Parcel Owner, J Parcel Owner or I Parcel Owner (as the case may be). No Owner shall be liable to any other Owner, such Unit Owners or such Occupants, nor to any of them with respect to, or in connection, with the providing of security to any other Owner, any Unit Owners or Occupants of a Portion (or part thereof). To the extent permitted by law, each Owner, on its behalf and on the behalf of such Unit Owners and such Occupants of such Owner's Portion, waives any claim against any of the other Owners and the Designated Manager and Engineering Staff, and each of them, and their respective agents, employees and contractors, with respect to any claim arising out of any personal injury or death or loss by theft or any other damage suffered or incurred by an Owner, any Unit

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Owners or any Occupants of such Owner's Portion (or any part thereof) in connection with any unauthorized entry into the Property or any portion thereof or any other breach of security with respect to the Property, or any portion thereof.

8.12 **Owners' Obligation for Structural Supports and Enclosures.** In no event shall the K/L Parcel Owner or any other Owner be required pursuant to this Article 8 or pursuant to any of the Exhibit 8 series to perform Maintenance with on, or with respect to, the Structural Supports and Enclosures located on another Owner's Parcel. The Maintenance and services to be performed by an Owner pursuant to this Article 8 or pursuant to any of the Exhibit 8 series shall be limited to Shared Equipment and Shared Facilities, and shall not apply to the Maintenance of any Structural Supports or Enclosures within an Owner's Parcel or comprising an Owner's Portion, maintenance of Structural Supports and Enclosures being covered by Article 7.

ARTICLE 9

INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS; USE; SUBDIVISION OF PARCELS

9.1 **Indemnity by Owners.** Each Owner (hereinafter in this Section 9.1, the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owners (hereinafter in this Section 9.1, the "**Indemnitee**") from and against any and all claims, including any actions or proceedings, against Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any Person other than the Indemnitee, arising from the Indemnifying Owner's negligent use, possession or management of the Indemnifying Owner's Parcel or activities therein, including any activities by the Indemnifying Owner's vendors, contractors and agents, as applicable, or arising out of the Indemnifying Owner's negligent use, exercise or enjoyment of an Easement, and from and against all costs, reasonable attorneys' fees (including appeals of any judgment or order), expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom, but only to the extent the Indemnitee is not insured against such losses, liabilities, damages, judgments, costs, or expenses under valid and collectible insurance policies. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee.

9.2 **Liens.**

(A) Every Owner (the "**Liening Owner**") shall remove, within thirty (30) days after the filing thereof by a third party that is not an Owner, any mechanics', materialmen's, manager's or broker's or any other similar lien arising by reason of the acts of the Liening Owner, its agents and contractors or any work or materials or services for which the Liening Owner or its agents or contractors has contracted (i) against any other Owner's Parcel, or (ii) against its own Parcel if the existence or foreclosure of such lien against its own Parcel would adversely affect any other Owner (such other Owner in (i) or (ii) being the "**Impacted Owner**").

(B) The Liening Owner shall not be required to remove such lien within thirty (30) days after its filing if: within said thirty (30) day period, (i) such lien cannot be foreclosed, and (ii) the Liening Owner (a) shall in good faith diligently proceed to contest the same by appropriate actions or proceedings and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien and (b) shall deliver to the Impacted Owner either, at the Liening Owner's option, (i) cash or a surety bond from a responsible surety

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company reasonably acceptable to the Impacted Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner. An endorsement by the Impacted Owner's title insurance company over such lien claim to the Impacted Owner's title insurance policy shall be deemed an indemnity reasonably acceptable to the Impacted Owner, and shall satisfy the requirements of clause (b) above. In any case, a Liening Owner must remove or release such lien prior to entry of a final judgment of foreclosure.

(C) If the Liening Owner fails to comply with the foregoing provisions of this Section 9.2, thereby becoming a Defaulting Owner, the Impacted Owner, thereby becoming a Creditor Owner, may take such action as the Creditor Owner may deem necessary to defend against or remove such lien. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees and litigation expenses, including appeals of any judgment or order) paid or incurred by the Creditor Owner in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owner for such purposes and for any other damages from Defaulting Owner's breach under Section 9.2.

(D) In the event a lien has been filed against a Parcel subject to the Act and all Units located within such Parcel, and to the extent that individual Unit Owners do not exercise their statutory right to pay a portion of the lien equal to the percentage ownership of the Unit Owner, the Board of Directors of the Condominium Association for such Parcel shall either pay the unsatisfied portion of the lien or provide the security referenced in Section 9.2(B) above.

9.3 **Compliance with Laws.** Each Owner:

(A) shall each comply with all Laws, if noncompliance by such Owner with respect Parcel (or any portion thereof) or Owned Facilities or areas for which such Owner has been granted an exclusive Easement would subject any of the other Owners to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any of the other Owners or would jeopardize any Owner's right to occupy or utilize beneficially such Owner's Parcel (or any portion thereof), Owned Facilities or any Easement (considering the time and circumstances), or would result in the imposition of a lien against any of the property of any of the other Owners;

(B) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Property, or any portion thereof, or the requirements of any insurance coverage on any Owner's Parcel (or any portion thereof) or Owned Facilities if noncompliance by it with respect to its respective Parcel or any part thereof or Owned Facilities would (i) increase the premiums of any policy of insurance maintained by any of the other Owners or the premiums of any policy of insurance maintained by all Owners (unless the non-complying Owner pays all such increases), or (ii) render any other Owner's Parcel (or any portion thereof) or Owned Facilities uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring such other Owner's Parcel (or portion thereof) or Owned Facilities; and

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(C) shall each deliver to every other Owner, within ten (10) days after receipt, a copy of any written report, citation or notice having an effect on or relating to compliance of any Parcel or the Property with Laws.

9.4 Use.

(A) The use, presence or release of Hazardous Materials, except in the ordinary course of the permitted and usual business operations conducted thereon, shall not be permitted in the any Parcel without the consent of all of the Approving Parties, which may be withheld in an Approving Parties' sole and exclusive discretion, provided that any such use shall at all times be in compliance with all applicable environmental Laws.

(B) Each Owner shall have the right to use its Parcel for all uses permitted by Law so long as any such uses are consistent with the Maintenance Standard as reasonably determined by the K/L Parcel Owner and are not prohibited under City of Chicago Planned Development No. 70 in which the Parcels are located. Without limiting the scope of the immediately preceding sentence, in no event shall any Portion be used for any of the following businesses or purposes: (i) a marijuana dispensary; (ii) mortuary; (iii) off-track betting office; (iv) a dry cleaning establishment having cleaning plants on premises; (v) any industrial or manufacturing type uses of any kind or nature; (vi) an adult book store or similar uses involving the sale of pornographic material; or (vii) live nude entertainment as part of so-called "gentleman's clubs" or strip-clubs.

9.5 **Subdivision of Parcels.** Each Owner may at its own expense subdivide such Owner's Parcel, thereby creating two or more subdivided portions (for tax and/or conveyancing purposes) at any time and from time to time, and to sell, convey, lease, license or otherwise demise any such subdivided portions to one or more third party (affiliated or non affiliated) purchasers, grantees, lessees, licensees, or devisees. Notwithstanding the foregoing, such subdivided portions shall continue to be treated as one Parcel under, and for purposes of, this Declaration. The Owner so subdividing such Owner's Parcel shall have the right, at any time and from time to time, to further encumber such Parcel or any portion thereof with such documentation as may be necessary or appropriate to account for the Maintenance, cost sharing, Easements and other rights and obligations among the separate Owners of such subdivided Parcel in connection with any such separation, subdivision or other division thereof. The Owner who seeks to subdivide its Parcel shall notify the other Owners of the proposed amendment to this Declaration. The amendment shall describe the proposed subdivision including a survey depicting each of the subdivided portions of such Parcel, the proposed use of the subdivided Parcel arising from the subdivision, and the proposed reallocation of the Applicable Percentages assigned to the subdivided portions of such Parcel under Exhibit 8.5. The notice shall comply with the requirements of Article 22 of this Declaration. The use and operation of all subdivided Parcels shall in all respects comply with, and shall be subject and subordinate to, the provisions of this Declaration.

ARTICLE 10

REAL ESTATE TAXES

10.1 **Separate Real Estate Tax Bills.** Promptly after Recordation of this Declaration, the K/L Parcel Owner shall file a tax partition for the Parcels and obtain from the Assessor of Cook County, Illinois (the "Assessor") separate real estate tax parcel identification numbers and separate real estate tax bills for the K/L Parcel, J Parcel, and I Parcel. The J Parcel Owner and I Parcel Owner agree to fully cooperate in any such filings and applications, including, without limitation, executing any form or application necessary to obtain such partition. If and when the K/L Parcel or any part thereof, the J Parcel or any part thereof, and the I Parcel or any part thereof, or any of them, are submitted to the Act, separate

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real estate tax bills and real estate tax index numbers will issue or be applied for with respect to each Unit Ownership in respect of such Parcel or portion thereof. Prior to the issuance of separate real estate tax parcel identification numbers and separate real estate tax bills for each of the Parcels, each of the K/L Parcel Owner, J Parcel Owner and I Parcel Owner shall, pay to Cook County Treasurer or to any appropriate Cook County office, the real estate taxes applicable to its respective Parcel. The Owners shall use good faith efforts to determine each Owner's share of any tax bills that may be applicable to its Parcel and also constitute a lien on any other Parcel. If the Owners are unable to agree on the share or amount of any tax bills that may be applicable to an Owner's Parcel and also constitute a lien on any such issue shall constitute an Arbitrable Dispute. If the Assessor or any Owner requests information or advice from another Owner to allocate the assessed valuation for land or improvements (other than information relating to income or expenses of an Owner's Portion) such Owner shall so notify the other Owners, and the other Owners shall consult and reasonably cooperate with one another regarding such information and advice to be furnished to the Assessor.

10.2 **Tax Protests.** Except as provided in, and subject to, Section 10.1, each Owner shall have the independent right to protest taxes and other charges in respect of such Owner's Parcel.

10.3 **Failure to Pay Real Estate Taxes.** If any Owner shall fail to pay any tax or other charge which is due and which such Owner is obligated to pay pursuant to this Article 10, and the failure to pay same results in the imposition of a lien on, or forfeiture or foreclosure of, any other Owner's Parcel, or subjects any other Owner to personal liability for this obligation, such Owner shall be a Defaulting Owner, and then any other Owner shall be a Creditor Owner, and may in its sole discretion, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty, payments thereon, with interest thereon as hereinafter provided, and the Creditor Owner shall also have a lien against the Defaulting Owner's Parcel in accordance with Article 13.

ARTICLE 11

INSURANCE

11.1 **Insurance Required.** The Owners shall each procure and maintain, or shall cause to be procured and maintained, the following insurance. At any time and for so long as any Parcel or part thereof has been submitted and is subject to the Act, then the Condominium Association for such Parcel or portion thereof shall be the Owners responsible for paying their respective a located shares of the premiums and other costs for the following insurance relating to said Portion or part thereof of the Property.

(A) **Real and Personal Property** – Except as provided in this Section 11.1(A), each Owner shall keep its Portion insured under a "special cause of loss" property form real property and personal property owned by such Owner used in the operation of its Portion for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. If any Portion or part thereof is submitted to and is subject to the Act, the special cause of loss coverage to be procured by the Condominium Association for such Portion or part thereof (as applicable) shall be consistent with the requirements of the Act. The Owner shall exclude from such insurance improvements or betterments and personal property owned by Unit Owners and tenants and any other Occupants. Except for any Parcel or part thereof which is submitted to and is subject to the Act, each Owner shall separately insure its loss of rental income or use caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts and with such deductibles as may be carried by prudent owners of first-class commercial or

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residential buildings or parking garages (as the case may be) in the City of Chicago, Illinois, and shall pay all premiums for such coverage. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement cost coverage endorsement (waiving any applicable co-insurance clause) in accordance with such determination or appraisal. Notwithstanding anything contained in this Section 11.1(A), the K/L Parcel Owner shall keep the Parking Area and all parking spaces and parking garages located or to be located in the Project insured under a “special cause of loss” property form or such other form or coverage the K/L Parcel Owner from time to time reasonably deems appropriate. The cost and expense of such insurance shall comprise Operating Expense, and shall be allocated among the Owners in the percentages set forth in Section 8.1(M).

(B) **General Liability** – Except as provided in this Section 11.1(B), each Owner shall (i) insure against general liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury, or property damage occurring in, on, under, within, upon or about that Portion of the Property owned by it, or as a result of operations thereon (including contractual liability covering obligations created by this Declaration including, but not limited to, those indemnity obligations contained herein), and (ii) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage in such amounts as may be required by Law and as may from time to time be carried by prudent owners of first-class commercial or residential buildings or parking garages (as the case may be) in the City of Chicago, Illinois, but in all events for limits, as to each Owner and its Portion of the Property, of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate combined single limit, for personal and bodily injury or property damage and with umbrella liability in an amount of not less than \$25,000,000 per occurrence. Notwithstanding anything contained in this Section 11.1(B), the K/L Parcel Owner shall insure the Parking Area and all parking spaces and parking garages located or to be located in the Project insured against general liability claims and losses on the general liability form of insurance or such other form or coverage the K/L Parcel Owner from time to time reasonably deems appropriate. The cost and expense of such insurance shall comprise Operating Expenses, and shall be allocated among the Owners in the percentages set forth in Section 8.1(M).

(C) **Equipment Breakdown** – Each Owner shall insure its equipment breakdown risks, on a comprehensive, blanket basis covering its Portion, and all equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis for not less than \$10,000,000 limit each accident.

(D) **Flood and Earthquake** – Each Owner may, in addition to “special cause of loss” property insurance required under Section 11.1(A), determine to jointly insure their respective portions of the Property, as applicable, against earthquake and flood risks in an amount equal to the replacement cost thereof or such lesser amount as then may be reasonably available in the insurance market; both subject, however, to deductibles available and reasonable for such types of insurance.

(E) **Builder's Risk** – Each Owner shall or shall cause its contractors to carry “all risk” builder's risk insurance (including loss of income and “soft costs”) for not less than the completed value of the work then being performed by such Owner or Owners under Article 4, Section 8.3, Section 8.4 or Section 12.4 or for any Alterations which require another Owner's consent under Section 17.1. Such insurance shall include coverage for items stored off-site and items in transit for an amount sufficient to cover fully any loss. Loss of rental income or use and

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“soft costs” occurring during the period covered by builder’s risk insurance shall be insured in such amounts as may be carried by prudent owners of first-class commercial or residential buildings in the City of Chicago. Coverage under this Section 11.1(E) shall only be required to the extent such coverage is not already provided within the property coverage under Section 11.1(A).

(F) **Worker’s Compensation** – Each Owner shall or cause its contractors to carry worker’s compensation insurance in amounts as required by Law and employer’s liability insurance in not less than the following amounts: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 each employee.

11.2 **Insurance Companies**. In the case of any insurance policy covering the Owners collectively, the Owners shall apportion the premium based on the manner in which the insurance company has underwritten the risks. Policies not issued as a single joint policy may be issued separately by the same or different insurance companies with respect to each Owner’s interest in the Property, as applicable. If a collective policy is issued for the insurance required under Section 11.1(A), then coverage under Section 11.1(D) may be included in the same policy. In the case of a collective policy, if any Owner disagrees with the apportionment of the insurance premium, the question of apportionment of premium shall constitute an Arbitrable Dispute. Insurance policies required by Section 11.1 shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current Policyholder’s Alphabetic and Financial Size Category Rating of not less than A-/VIII (or such lesser rating as the Owners and Mortgagees may agree) according to Best’s Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. If separate insurance companies provide the coverages required hereunder, then all such companies shall coordinate their coverages with the other, to insure that there are no gaps in coverage, and any disputes regarding coverages will not delay adjustments of loss and payments to the insureds. The Owners shall use reasonable efforts, if feasible, to have one insurance company provide one or more of the coverages required under Section 11.1(A).

11.3 **Insurance Provisions**. Each policy described in Section 11.1 (other than Section 11.1(F)) hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall insure as “named” insured the respective Owner, and if any Parcel or part thereof is submitted to and is subject to the Act, such policy shall also insure as additional insureds the Condominium Association, Unit Owners, the Board of Directors of such Condominium Association and managing agent with respect to such Portion or part hereof; (iii) shall provide (except for liability insurance described in Section 11.1(B), for which it is inapplicable) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party, for loss occurring to the property insured under the policy; (iv) shall provide, except for liability insurance required by Section 11.1(B), that all insurance proceeds with respect to losses payable thereunder arising from damage to the Improvements located on more than one Parcel and/or affecting the Improvements or Owned Facilities of more than one Owner shall be deposited with the Depositary in accordance with the terms of Article 20, unless the Owners otherwise agree; (v) shall provide for a minimum of thirty (30) days advance written notice of the cancellation, nonrenewal or material modification thereof to Mortgagees and all insureds thereunder, except that ten (10) days advance written notice shall be provided in the event of non-payment of premium; (vi) shall include a standard mortgagee endorsement and loss payable clause in favor of the Mortgagees reasonably satisfactory to them; (vii) shall not include a co-insurance clause; (viii) shall provide coverage on an occurrence basis, rather than a claims made basis; and (ix) subject to the consent of the Mortgagees, in respect of insurance maintained by an Owner alone and not as part of a joint policy with another unaffiliated Owner, such insurance may be carried on a “blanket” basis with

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other policies so long as the blanket policies specify the amount of coverage allocated to the Portion of the Property covered thereby.

Unless otherwise specified herein, the "special cause of loss" form of property-related insurance required to be procured and maintained by each Owner shall provide no less coverage (with the exception of deductible amounts) than the standard form of insurance currently promulgated by the Insurance Services Office, its successor, or other substantially similar insurance organization having responsibility for the design and publication of standardized insurance coverage forms for use by the insurance industry.

Notwithstanding anything contained in this Article 11 to the contrary, the K/L Parcel Owner shall have the right from time to time to require that the Owners, or any of them, obtain such other additional coverages or increase the minimum limits of the insurance carried by such Owner or Owners as the K/L Parcel Owner reasonably determines which are then consistent with the coverages and minimum limits being carried by owners of first-class multi-story residential and commercial buildings located in downtown Chicago, Illinois of the age, size and construction comparable to the buildings within the Property.

11.4 **Limits of Liability.** Insurance specified in this Article 11 or carried by the Owners shall be collectively reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than annually (unless there is a substantial change in the Property, as applicable, or operations conducted in the Property, as applicable), to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be covered and the financial responsibility of the insureds, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations, or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Initially, deductible amounts for insurance required under Sections 11.1(A) (other than loss of rental income insurance), 11.1(C) and 11.1(E) shall not exceed \$25,000; provided, however, such maximum shall not apply to an Owner at any time who qualifies under Section 11.7 to self-insure risks. Deductible amounts for insurance required under Section 11.1(B) shall not be more than is reasonable considering the financial responsibility of the insured. Where separate policies are issued under Section 11.1(A) or 11.1(D), then deductibles shall be the same, if reasonably possible. Limits of liability may not be less than limits required by Mortgagees, notwithstanding amounts set forth above in this Article 11. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may Record as a supplement to this Declaration; provided, that no agreement regarding a decrease in limits of liability, increase in deductible amounts or elimination of any types of coverages shall be effective without the written consent of all of the Owners and the Mortgagees. With the consent of all Owners, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be allocated among the Owners in the ratio their annual insurance premiums of insurance required or provided for hereunder bear to each other.

11.5 **Renewal Policies.** Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by each Owner to the other Owners and to the Mortgagees at least thirty (30) days prior to the expiration date of any such expiring insurance policy with respect to the primary layers of the respective coverages. Binders shall be replaced with certified full copies of the actual renewal policies as soon as reasonably possible.

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11.6 **Waiver.** Without limiting any release or waiver of liability or recovery contained elsewhere in this Declaration, each Owner hereby waives all claims for recovery from the other Owners for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies plus any deductible amounts.

11.7 **Self-Insurance.** Notwithstanding anything to the contrary contained in this Article 11, an Owner (or the beneficiary thereof in the event an Owner is a land trust) having a net worth in excess of (i) \$25,000,000 plus (ii) the amount for which such Owner is responsible for insuring under this Article 11, shall not be required, at any time that such net worth standard is met, to obtain and pay for insurance coverage from a third party as required under Section 11.1(B) and may self-insure the risks under Section 11.1(B) upon notice to the other Owners; provided that the coverage self-insured (i.e., amounts which would otherwise be required to be insured by a third party insurer under Section 11.1(B)) shall not exceed ten percent (10%) of the said net worth of such Owner (or the beneficiary thereof) and such self-insurance shall comply with any applicable Law. At any time such net worth standard is not met or no longer met, such insurance requirements under Section 11.1(B) shall apply. The consent of the Mortgagees shall be required in order for the corresponding applicable Owner to self-insure its risks under Section 11.1(B), which consent may be granted or withheld by the Mortgagees in their absolute discretion. The Owner of a Parcel or part thereof subject to the Act may not self-insure any risks under this Section. If an Owner elects to self-insure as provided in this Section, it shall first notify the other Owners of such election, and shall upon request of another Owner provide such requesting Owner with reasonable evidence that the self-insuring Owner satisfies the requirements of this Section.

ARTICLE 12

MAINTENANCE AND REPAIR; DAMAGE TO ANY PARCEL

12.1 **Maintenance of Each Parcel.** Except as expressly provided in Article 8 (and related Exhibits) relating to Maintenance of certain Facilities and areas of the Property, or hereinafter in this Article 12, or in the event of fire or other casualty, and except as provided in and without limiting or diminishing such Owner's obligations under Article 8, each Owner shall, at their respective sole cost and expense, maintain and keep their respective Parcels in the order and condition, consistent with the Maintenance Standard, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Each Owner further agrees that they shall not suffer or commit, and shall use all reasonable precautions to prevent waste to their respective Parcels. With respect to such Maintenance of Facilities located in Portions not owned by the maintaining Owner, Maintenance expressly includes the right of entry with reasonable prior notice (except in an Emergency Situation) by the party seeking to perform Maintenance, and its contractors, agents and employees into any areas thereof (but excluding any Unit) and the right to perform Maintenance as and when needed, using reasonable efforts to minimize damage caused by such Maintenance; provided, however that the responsibility to repair any damage as a result of performing Maintenance under this Declaration shall be limited to restoring the damaged area to the building standard condition existing immediately prior to such damage.

12.2 **Latent Defects.** Notwithstanding anything to the contrary contained in this Declaration, if, and to the extent that, the K/L Parcel Owner determines in good faith that any latent defects arising from or in connection with the initial construction of any of the Buildings or any of the other

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Improvements may affect all or any portion of the (i) Structural Supports for any Building, (ii) Parking Area, (iii) Shared Equipment, or (iv) Common Improvements any of, or within, any of the Improvements (“**Latent Defects**”), then, the K/L Parcel Owner shall give the Owner of the Building containing such Latent Defects written notice describing in reasonable detail the Latent Defects. The Owner of such Building shall have thirty (30) days or such greater period as is reasonable to implement the repairs or replacements to remedy such Latent Defects (“**Latent Defect Repairs**”); provided, however, if such Latent Defects creates, or is reasonably likely to create, an Emergency Situation, then, the Owner of such Building shall commence, and take reasonable measures to complete the Latent Defect Repairs within a reasonable time given the nature of such Latent Defects. If the Owner of the Building containing such Latent Defects fails to implement the required Latent Defect Repairs within the time period(s) described in this Section 12.2, then, the K/L have the unilateral right, but not the obligation, to be exercised in its good faith discretion, without the consent of any of the other Owners, any Unit Owners, any Condominium Association or any other party, to (x) determine the necessity for, and scope and nature of, any repairs or replacements for the Latent Defect Repairs, (y) retain the Architect and other third party engineers and consultants to advise the K/L Parcel Owner on this subject (as an Operating Expense) and to prepare plans and specifications for the remediation of such Latent Defects, and (z) to contract for, supervise, direct and cause to be implemented any such Latent Defect Repairs. All expenses of Latent Defect Repairs not paid by insurance proceeds or third parties shall be deemed Operating Expenses and the Owner of the Building containing such Latent Defects shall pay to the K/L Parcel Owner 100% of the costs incurred by the K/L Parcel Owner in performing such remediation. For the avoidance of doubt, the cost of Latent Defect Repairs by the K/L Parcel Owner shall not include the cost of replacement of any personal property, furnishings, fixtures, or equipment which are not considered Shared Equipment or Shared Facilities, and which remain the duty of each Owner separately to insure. The rights of the K/L Parcel Owner under this Section 12.2 shall be binding upon the Owners and shall not be negated by any contrary finding of fact, decision, settlement, or order of any arbitration proceeding or lawsuit that determines the existence of Latent Defects or apportions fault or costs of remedying such Latent Defects. Latent Defect Repairs shall not be deemed Alterations. Any challenge to the good faith determination of the K/L Parcel Owner under this Section 12.2 shall be an Arbitrable Dispute, to be decided solely in accordance with the standards set forth in Article 14, provided that an Owner has elected to refer the matter to arbitration within ten (10) business days after receipt of a notice from the K/L Parcel Owner marked “Final Determination as to Latent Defects”, and if such Owner does not make referral to arbitration within such time period, then the determination of the K/L Parcel Owner shall be final and not subject to arbitral or judicial review.

12.3 Damage Affecting Only Certain Parcels. If any portion of the (i) Structural Supports for any of the Improvements, (ii) Parking Area or any of the parking spaces within the Property, (iii) Shared Equipment, or (iv) Common Improvements of, or within, any of the Improvements is damaged by fire or other casualty and if such damage occurs within one Owner’s Parcel only and does not affect any other Owner’s Parcel or Owned Facilities, then any such damage shall be repaired and restored by the Owner of such Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article 11 hereof, be entitled to any insurance proceeds (including deductible amounts and self-insurance amounts) paid by the insurance company pursuant to such Owner’s insurance policy by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage and retain any excess not required for such repair and restoration; provided, however, that the right of any Owner to receive such excess, if any, shall be subject to the provisions of Section 24.12 and the Mortgages encumbering such Portion.

If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any insurance settlement, repair or restoration obligation hereunder, and such failure adversely and materially affects an Easement in favor of the other Owner or Owners or services to be

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furnished the other Owner or Owners, then (i) the Creditor Owner or Creditor Owners may give written notice to the Defaulting Owner specifying the respect or respects in which such insurance settlement, repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then the Creditor Owner or Creditor Owners may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation, the Creditor Owner or Creditor Owners may immediately perform such repair or restoration and may take all appropriate steps to carry out the same.

The Creditor Owner or Creditor Owners in so performing such repair and restoration shall, in accordance with Article 20 hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage for application to the cost and expense of any such repair or restoration, and shall also be entitled to reimbursement upon demand from Defaulting Owner for all reasonable costs and expenses incurred by Creditor Owner or Creditor Owners in excess of said insurance proceeds. Repair and restoration under this Section 12.3 shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the other Owners' consent if such consent would not otherwise be required under Article 17, and Section 17.1(D)(iii) shall not apply. Any such repair and restoration under this Section 12.3 shall be performed in a manner so that the damaged Portion is rebuilt in a manner such that it is functionally equivalent to the condition of said damaged Portion prior to the casualty, unless prohibited by Law or unless all Owners otherwise agree, and subject to the approval of the Mortgagees of the Affected Owners.

12.4 **Joint Damage.** If any portion of the (i) Structural Supports for any of the Improvements, (ii) Parking Area and/or any parking spaces within the Property, (iii) Shared Equipment, or (iv) any Common Improvements are damaged by fire or other casualty and if the provisions of Section 12.3 hereof are not applicable, the insurance proceeds paid with respect to the losses arising from such damage shall be delivered to the Depository in accordance with the terms of Article 20 to pay for the repair and restoration of such portions. The repair and restoration of such Portions shall be the joint responsibility of the Owners whose respective Parcels, Portions, or Facilities are affected as a result of such damage (the "Affected Owners") pursuant to the replacement cost value of the Improvements located within such Owner's Parcel. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Affected Owners by a contractor or contractors jointly selected by the Affected Owners, from contractors who are licensed to do business in the State of Illinois and who have substantial experience in the construction and renovation of properties of similar age and type of construction, in the downtown Chicago area.

Participation by an Affected Owner in selecting an Architect or contractor shall be limited to the selection of the Architect preparing plans and specifications for, and the contractor performing repair or restoration of, its actual areas or Facilities damaged. In the event the Affected Owner and their Mortgagees, if required, fail to agree upon the selection of a contractor or contractors, the Affected Owners shall request the advice of the Architect. If, after receiving the Architect's advice, the Affected Owners and their Mortgagees cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be an Arbitrable Dispute.

The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Affected Owners otherwise agree upon another person or entity to prepare them in accordance with instructions given by all Affected Owners, which plans and specifications shall be subject to the reasonable approval of the Mortgagees. Such plans and specifications shall provide for the damaged portion of the Parking Area to be rebuilt as nearly identical as commercially practicable to the damaged portion of the Parking Area as constructed prior to the damage, unless prohibited by Law or unless the Affected Owners otherwise agree, subject to the approval of their Mortgagees and subject to the consent of other Owners under Section 17.1(B) where required. The Architect (or other architect or engineer

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preparing the plans and specifications) shall furnish to each of the Affected Owners, and the Mortgagees, a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Affected Owners otherwise agree (subject to the approval of their Mortgagees, provided, however, such approval of the Mortgagees shall be required only if the approximate cost of the repair and restoration is greater than \$1,000,000.00, any contractor or contractors shall work under the supervision of the Architect (or other architect or engineer preparing the plans and specifications), and the Architect (or other architect or engineer preparing the plans and specifications) is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Affected Owners (whose approval shall not be unreasonably withheld, conditioned or delayed) and their Mortgagees, as such repair and restoration progresses, to disburse in accordance with Article 20 hereof, the insurance proceeds (including deductible and self-insured amounts) held by the Depository and any other monies deposited with the Depository, pursuant to Section 12.5 hereof for application against the cost and expense of any such repair and restoration.

12.5 Cost of Repairs. If the cost and expense of performing any repair and restoration provided for in Section 12.4 hereof shall exceed the amount of available insurance proceeds paid by reason of the damage, including deductible and self-insured amounts (self-insured amounts being those amounts, if any, not required to be insured by a third party insurer pursuant to Section 11.7), then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be borne by the Owners: first, in such proportion as may be required by the provisions of Section 11.1(A) providing for allocation of applicable replacement costs of Facilities, and for the Net Capitalized Cost of Replacement of Easement Facilities, until such costs are recouped, and second, in proportion to the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements, as applicable, and Owned Facilities. If an Owner has not carried the insurance required under Article 11 and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

12.6 Deposit of Costs. In any instance of repair or restoration pursuant to Sections 12.4 or 12.5, hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, unless a construction contract providing for the performance of such repair and restoration at a stipulated sum or a guaranteed maximum price has theretofore been executed. If said estimate, stipulated sum guaranteed maximum price or actual amount incurred in performing repair or restoration exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to Section 12.5. An Owner self-insuring any risk as permitted, if any, under Section 11.7 shall deposit with the Depository the entire cost and expense attributable to such Owner, and not just excess costs. Any Owner maintaining deductible amounts shall deposit the deductible amounts. In lieu of depositing its share of such excess amount or such self-insured, if any, or deductible amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, an Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners, the Depository and the Mortgagees. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed, or an irrevocable, unconditional loan commitment, satisfactory to the other Owners and the Mortgagees, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess, self-insured, if any, or deductible amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses, in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of

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repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual cost and expenses of the work.

If an Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 12.6, or fails to deliver the security provided for above within ten (10) days after receipt of the any of the other Owners' written demand therefor, then the Creditor Owner or Creditor Owners may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner or Creditor Owners for such payment and the Creditor Owner's or Creditor Owners' reasonable costs and expenses incurred in connection with such payment.

12.7 Excess Insurance Proceeds. Upon completion of the repair and restoration of any damage as provided in Section 12.4 any remaining insurance proceeds paid by reason of such damage shall be refunded to each Owner in proportion to the ratio that the insurance proceeds contributed by such Owner or by such Owner's insurance company bears to the total insurance proceeds made available for the repair and restoration or, if the insurance is provided by a single policy covering the Improvements, then the ratio of such insurance proceeds attributed to such Owner's Portion to such total insurance proceeds made available for such repair and restoration. For purposes of this Section 12.7, insurance proceeds include deductible amounts and amounts contributed by a self-insured Owner, if any.

12.8 Intentionally Omitted.

12.9 Cost Defined. For purposes of this Article 12, architects' and engineers' fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

ARTICLE 13

LIENS, DEBTS, INTEREST AND REMEDIES

13.1 Failure to Perform. If, at any time, any Owner fails within ten (10) days after notice or demand to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Declaration or any other time period expressly provided for such payment to be made (thereby becoming a Defaulting Owner) then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) a lien against the Defaulting Owner's Parcel, and (ii) for a default under Article 12, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to the Defaulting Owner's Parcel, or otherwise under insurance policies carried pursuant to Article 11 hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 13. Such liens shall arise immediately upon the Recording of a notice by the Creditor Owner and may be enforced by a proceeding in equity to foreclose such lien through a judicial foreclosure in like manner as a mortgage of real property in the State of Illinois. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon ("**Default Amount**") shall have been paid in full. A Creditor Owner shall release its lien upon payment in full. Notwithstanding the foregoing, a Creditor Owner's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the Parcel owned by the Defaulting Owner.

13.2 No Diminution of Lien.

(A) No conveyance or other divestiture of title shall in any way affect or diminish any lien arising pursuant to this Article 13, and any lien which would have arisen against any

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property pursuant to this Article 13 had there been no conveyance or divestiture of title shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

(B) If at any time any Owner as a Creditor Owner has Recorded a notice of lien under Section 13.1 of this Declaration against any other Owner's Parcel, which lien has not been foreclosed, released, or satisfied in full, and if such Parcel or any part or interest is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of sale of such Part or part or interest the lesser of (i) an amount sufficient to satisfy that portion of the unpaid Default Amount and (ii) the entire proceeds from the sale, minus any amount paid to satisfy the Prior Lien. Following any such sale, the Creditor Owner shall continue to have (x) a lien on the Defaulting Owner's Parcel, and (y) the rights with respect to the proceeds of any subsequent sales of such Defaulting Owner's Parcel, as provided in this Article 13, to secure repayment of any remaining portion of the Default Amount secured by the lien that applies to such Defaulting Owner's Parcel. If the amount secured by such lien is being contested in a judicial action or is the subject of arbitration under Article 14, then the proceeds which a Creditor Owner could apply to satisfy its lien shall be deposited by the Defaulting Owner with the Depositary or other escrowee acceptable to the Creditor Owner and held for disbursement at the joint order of the applicable Owners or as directed by court order or by the arbitrator in such arbitration. Further, if at any time after any Parcel or part thereof has been submitted to the Act, and if a Creditor Owner has Recorded a notice of lien under Section 13.1 of this Declaration against a Unit, which lien has not been exercised, released or satisfied in full, and if such Unit is thereafter sold, then the Creditor Owner shall be entitled to receive from the proceeds of sale of such Unit the lesser of (I) an amount sufficient to satisfy that portion of the unpaid Default Amount for which such Unit Owner is liable, as provided in Section 24.6, and (II) the entire proceeds from the sale of such Unit, minus any amount paid to satisfy the Prior Lien on such Unit. The Creditor Owner shall notify the respective Owner of the Recordation, foreclosure, release or satisfaction of liens against Units. Any Owner of a Parcel or portion thereof subject to the Act shall notify the Creditor Owner in advance of any sale of a Unit known to such Owner against which such lien exists, and the Creditor Owner shall issue an Estoppel Certificate under Section 18.1 of this Declaration. Following any such sale, the Creditor Owner shall continue to have a lien on such Unit and the rights with respect to the proceeds of any subsequent sales of such Unit, as provided in this Article 13, to secure repayment of any remaining portion of the Default Amount secured by the lien that applies to such Unit.

13.3 **Mortgagee's Subrogation.** The holder of a mortgage or trust deed on all or any Parcel shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article 13 affecting the property secured by its mortgage upon payment by it of the amount secured by such lien.

13.4 **Interest Rate.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by Bank of America or any successor thereto as its base or prime or reference rate of interest, or if a base or reference rate is not announced or available, then interest shall accrue at the annual rate of eighteen percent (18%).

13.5 **Cumulative Remedies.** The rights and remedies of an Owner provided for in this Article 13 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. An Owner may enforce, by a proceeding in equity for mandatory injunction, another Owner's obligation to execute or Record any

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document which such other Owner is required to execute under or pursuant to this Declaration. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder or at law and equity; provided, however, no Owner shall be entitled to "economic loss" (including lost profits, if or however characterized as damages) or special or consequential damages from the other Owner as a result of any breach by the other Owner of its obligations under this Declaration.

13.6 **No Set-Off.** Each claim of any Owner arising under this Declaration shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

13.7 **Period of Limitation.** Actions to enforce any right, claim or lien under this Declaration shall be commenced within three (3) years immediately following the date the cause of action accrued or is first known of by the claimant, whichever is later, or such other shorter period as may be provided by Law.

13.8 **Attorneys' Fees.** A Defaulting Owner shall pay the reasonable attorneys' fees and court costs (including appeals of any judgment or order) paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration. In the case of an appeal, attorneys' fees shall be payable after the decision in such appeal.

13.9 **Self-Help.** Without limiting any other rights or remedies of an Owner, including any other self-help provision of this Declaration which grants an Owner the right to perform an obligation which another Owner has failed to perform, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral, to perform the obligation which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorneys' fees, including appeals from judgments or orders) paid or incurred by the Creditor Owner in performing such obligation which the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Declaration for non-performance of an obligation, such provision shall control the provisions of this Section 13.9.

ARTICLE 14

ARBITRATION

All questions, differences, disputes, claims or controversies arising among or between Owners under this Declaration:

(A) constituting a monetary claim involving an amount as to any one claim not exceeding \$10,000,000.00; or

(B) expressly made an Arbitrable Dispute or subject to arbitration under this Article 14 by the terms of this Declaration; or involving any of the following matters:

(i) selection of an insurance company or apportionment of insurance premiums under Section 11.2 hereof;

(ii) appointment of a contractor or contractors pursuant to Section 12.4 or 16.4 hereof;

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- (iii) replacement of the Architect pursuant to Section 21.1 hereof;
- (iv) other failure to agree on a matter described in Sections 19.1, 21.1 or 23.4 which this Declaration expressly requires the Owners to jointly decide or agree upon;
- (v) disputes arising generally under Articles 11, 12, 16 or 17; or
- (vi) matters otherwise not constituting Arbitrable Disputes but which are incidental to and not easily divisible from an Arbitrable Dispute being submitted to Arbitration,

which (with respect to any of such matters) shall not be resolved within sixty (60) days after it shall arise (or such other shorter or longer time period expressly provided in this Declaration), shall be submitted for arbitration to one (1) arbitrator for proceedings to be conducted in Chicago, Illinois in accordance with its then existing Commercial Arbitration Rules for expedited arbitration of the American Arbitration Association; or such other organization or rules that are the successors thereto; provided, however, in the event that the Arbitrable Dispute involves a monetary claim involving an amount as to any one claim or group of claims exceeding \$1,000,000.00, but not involving any one monetary claim involving an amount exceeding \$10,000,000.00, then such matters shall be submitted to arbitration to a panel of three (3) arbitrators rather than just one (1) arbitrator.

Each Owner who is a party to the arbitration shall cause the arbitrator to be selected within ten (10) days, and proceedings shall commence within thirty (30) days after selection of the arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules. In the case of disputes under clauses (B)(i), (ii) or (iii) above, or where the subject for arbitration is otherwise the joint selection or appointment of an individual, company or other entity to perform professional or other services, the decision of the arbitrator shall be limited to the individuals, companies and other entities proposed by the Owners in their attempt to agree or from those included in an approved list submitted by the Owners. In the case of any other matter which the parties fail to agree upon which this Declaration expressly requires the Owners to jointly decide or agree upon, the decision of the arbitrator shall be limited to the terms (or a compromise of such terms) or within the scope of the terms proposed by each of the Owners in the negotiations of the issue and the provisions of this Declaration, if any, which require the arbitrator to make a particular finding. Any award issued by the arbitrator shall take into account and be consistent with any standards, terms or conditions contained in this Declaration expressly governing the subject of the dispute, except in those instances where the arbitrator is required to select an individual, company or entity from those selected by the Owners and none meets such standard, terms or conditions.

Such arbitration may be initiated by any Owner. The Owner initiating arbitration shall notify the Mortgagees of the filing of a claim and demand in arbitration within five (5) days thereafter. Owners may not seek injunctive relief in the arbitration. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne equally by the Owners involved in the arbitration; provided that the arbitrator may include in its award any of the fees and costs of arbitration. Any award of the arbitrator shall be final and binding upon the Owners and judgment thereon shall be entered by any court of competent jurisdiction. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in Section 13.4. Where a dispute involves both matters which are Arbitrable Disputes and matters which are not Arbitrable Disputes which are not incidental to the Arbitrable Dispute and not easily divisible from it, the dispute shall be submitted to arbitration.

Notwithstanding anything contained in the foregoing, with respect to any Arbitrable Dispute under Section 10.11 (Latent Defects), the jurisdiction and decision of the arbitrators shall be limited to

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finding whether (i) the determination by the K/L Parcel Owner as to the nature and scope of the Latent Defects or necessity for correction is against the manifest weight of evidence and (ii) if applicable, whether the Latent Defect Repairs proposed by the K/L Parcel Owner would reasonably remediate the Latent Defects they are addressing so that the use and enjoyment of the subject Improvements is functionally retained or re-established, taking into consideration the difficulty, time and cost of achieving complete remediation or adopting other remediation options (and for this purpose, excluding all considerations of loss of market value) caused by Latent Defects.

ARTICLE 15

UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and as long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, flood, civil commotion, strikes, pandemics, lockouts, unavailability of labor or materials to projects generally in the Chicago metropolitan area, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in the Chicago metropolitan area (other than inability to make payment of money) ("**Unavoidable Delay**") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereinafter in this Article the "**Non-Performing Owner**") shall notify the other affected Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of the other affected Owners, keep such other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay. If non-performance is due to an Unavoidable Delay affecting the Non-Performing Owner which does not affect such other Owner's self-help remedy provided for elsewhere in this Declaration and which is otherwise exercisable for such non-performance, then notwithstanding such Unavoidable Delay, such other Owner shall still be entitled to the self-help remedy exercisable only under reasonable circumstances with respect to those obligations to have been performed by the Non-Performing Owner which are the subject of Unavoidable Delay.

ARTICLE 16

CONDEMNATION

16.1 **In General.** In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of any Portion by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 16, the "**Award**") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of such Portion shall be performed, in accordance with the requirements of this Article 16. The Owners shall cooperate with one another to maximize the amount of the Award.

16.2 **Payment of Award to Depositary; Temporary Taking Awards.** All Awards resulting from the taking of all or any Portion, other than damages resulting from a taking for the temporary use of space as hereinafter described, shall be paid to the Depositary by the Owners, regardless of the Owner who received the Award, except as otherwise provided in Section 16.3, and the Depositary shall disburse the Award as hereinafter provided. In the event of a taking of temporary use of any space not including the K/L Parcel Easement Facilities, the J Parcel Easement Facilities, or the I Parcel Easement Facilities, described in Paragraph A of the respective definition thereof, or affecting services described in Section

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8.1 or 8.2 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective Portion.

16.3 Taking of Only One Parcel. In the event of a taking (other than a temporary taking) of a part of the K/L Parcel Easement Facilities, J Parcel Easement Facilities, and I Parcel Easement Facilities described in Paragraph A of the respective definitions thereof, or Owned Facilities, then, subject to the provisions of Section 16.6, the Owner of such Parcel or Owned Facilities in which the taking occurred shall repair and restore the remainder of its Parcel or Owned Facilities, to form an architectural and functional whole, if the failure to do so would adversely and materially affect an Easement in favor of another Owner essential to such other Owner's operations or the services to be furnished such other Owner under Article 8. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the Parcel or Owned Facilities, in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration, in accordance with the provisions of Article 20 and to retain any excess not required for such repair and restoration; provided, however, that the right of any particular Owner to receive such excess, if any, shall be subject to the provisions of Section 24.12 and to Mortgages encumbering such Parcel. If the cost of repair or restoration is estimated to be less than \$100,000, then the Award need not be paid to the Depository.

If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration which adversely and materially affects an Easement essential to another Owner's operations in favor of such other Owner or the services to be furnished the other Owners under Article 8, then (i) a Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then a Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation (other than an Emergency Situation involving solely an economic loss) a Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 20 hereof, be entitled to withdraw any Award and any other monies held by the Depository as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from Defaulting Owner for all costs and expenses incurred by Creditor Owner in excess of the Award and other monies. Repair and restoration under this Section 16.3 constitute Alterations, except that the Owner performing repair and restoration shall not be required to obtain the other Owners' consent if it would not otherwise be required under Article 17.

16.4 Repair and Restoration by All Owners. In the event of a taking other than (i) a temporary taking described in Section 16.2, (ii) a taking described in Section 16.3, or (iii) a taking of all or substantially all of the Building, or all of the Parcels, then, subject to the provisions of Section 16.6, the affected Owners shall cooperate to repair and restore the remainder of the Building, as applicable, in accordance with plans and specifications approved by all affected Owners and their Mortgagees. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of the affected Owners by a contractor or contractors jointly selected by the affected Owners (subject to the approval of their Mortgagees, except as hereinafter provided). In the event the affected Owners (with approval of their Mortgagees, when required above) fail to agree upon the selection of a contractor or contractors, the affected Owners shall request the advice of the Architect. If after receiving the Architect's advice, the affected Owners (with approval of their Mortgagees, when required above) cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute.

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The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the affected Owners shall otherwise agree, all subject to the approval of their Mortgagees. Such plans and specification shall provide for repair and restoration of the remainder of the Building, as applicable, to form an architectural and functional whole, with such changes in the Building, as applicable, as shall be required by reason of such taking.

If, as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 2 through 6 hereof and for the furnishing of services under Article 8 hereof. The Architect will furnish to each of the affected Owners (but only if and to the extent such affected Owner's approval is required) and the affected Mortgagees a set of such plans and specifications for their approval. Unless the affected Owners otherwise agree (subject to the approval of their Mortgagees), the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the affected Owner or Owners in whose portion of the Parcel such repair and restoration is being performed and the Mortgagees of such Parcel, as such repair and restoration processes, to disburse, in accordance with Article 20 hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

16.5 **Excess Award.** The Award for any taking described in Section 16.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 16.6 hereof). Any excess of the Award over the cost of repair and restoration shall then be allocated to an Owner in the same ratio that the apportionment of the Award to such Owner (including other parties with an interest in such Owner's portion of the Property) bears to the apportionment of the Award to the other Owners (including parties with an interest in the other Owners' respective portions of the Property); provided, however, that the right of an Owner to receive its share of any such excess shall be subject to the provisions of Section 24.12. If there is no apportionment in any judicial or administrative proceeding, the Owners shall petition for such apportionment, if possible. Otherwise, the Owners shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

16.6 **Demolition.** If, as a result of a taking (other than a temporary taking or a taking described in Section 16.7 hereof), any of the Owners reasonably determines that its Portion can no longer be repaired or restored or operated on an economically feasible basis, then such Owner shall notify the other Owners of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its Portion as may be required by Sections 16.3 and 16.4 hereof. However, such Owner not repairing or restoring shall demolish, repair or restore its Portion to the extent, if any, as may be necessary, to (i) Maintain that part of the Parking Area located within its Portion, and (ii) provide essential services set forth in this Declaration, Easements essential to the operations of the other Owners or structural support for the Portions, as applicable. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 16.4 hereof are applicable. In the event that any Owner has elected not to repair or restore its Portion in accordance with this Section 16.6, then such Owner (the "Electing Owner") shall sell and convey to the remaining Owners its right, title and interest in and to its Portion of the Electing Owner at a price equal to the then current fair market value of the Electing Owner's Portion as determined by a current appraisal thereof. In the event that the Owners cannot agree upon the selection of an appraiser, then each Owner shall obtain their own appraisal from a MAI certified appraiser. If the current fair market value of any particular Electing Owner's Portion, as determined by the two appraisers differs by less than five percent (5%), then the price to be paid by the remaining Owners shall be the average of those two fair market values determined by the two appraisers. However, if the difference in the current fair market value of the Electing Owner's Portion as

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determined by those two appraisers is five percent (5%) or more, then the determination of the current fair market value of the Electing Owner's Portion shall be an Arbitrable Dispute.

16.7 **Allocation of Award.** In the event of a taking of all or substantially all of the Portions, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners, subject to the rights of their respective Mortgagees, in accordance with said apportionment; provided, however, that the right of an Owner to receive its share of any award and payment shall be subject to the provisions of Section 24.12.

16.8 **Condominium.** If at any time any portion of the Property is submitted to the Act, then to the fullest extent permitted by Law, the provisions of Article 12 hereof shall be controlling over the provisions of Section 13.1 of the Act (765 ILCS 605/14.1) and Condominium Declaration insofar as the provisions of the Act or Condominium Declaration limit (i) the obligation of the Unit Owners to repair or restore a Portion in the event of a taking or (ii) the use of the Award as provided in Article 12.

ARTICLE 17

ALTERATIONS

17.1 **Permitted Alterations.**

(A) An Owner (hereinafter, in this Article 17, "**Altering Owner**") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article 17, "**Alterations**") to its Parcel, provided that such Alterations comply with all of the provisions of this Article 17. Alterations shall also include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this Article 17. Replacement of Facilities may be made by an Altering Owner without consent of other Owners, subject to the provisions of Section 8.8. The provisions of this Article 17 governing Alterations do not negate or diminish other provisions of this Declaration having to do with additions, improvements or alterations expressly required or permitted in Articles 7, 8, 9, 12 and 16 hereof, which are governed by such provisions only and not this Article 17 unless also designated in such Articles as "Alterations" to be governed by this Article 17. Notwithstanding anything contained in this Article 17 or any other provision of this Declaration, Declarant agree and acknowledge that any activities relating to construction on or other development of the I Parcel prior to the I Parcel Inclusion Date shall not constitute "**Alterations**" (as such term is defined in this Section 17.1).

(B) Alterations shall not be made without the prior written consent of the other affected Owners unless otherwise expressly permitted by this Declaration if such Alterations will:

(i) during their performance or upon their completion, unreasonably diminish the benefits afforded to another Owner by an Easement or unreasonably interrupt such other Owner's use or enjoyment of any Easement;

(ii) during their performance or upon their completion, degrade or diminish services to another Owner under Article 8;

(iii) materially increase the costs or expenses for which another Owner is or would be responsible pursuant to Article 8 hereof;

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(iv) disrupt, interfere with, or otherwise materially affect (x) those portions of the Parking Area over which one or more Owners have been granted an Easement pursuant to this Declaration, or (y) use of any of the parking spaces located within any other Improvements;

(v) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports in violation of Article 7; or

(vi) consist of or results in discharge, release, emission, deposit, treatment, transport, production, incorporation, disposal, leakage, transfer or escape of Hazardous Material, in a manner which fails to comply with any applicable Law if another Owner could be adversely affected by such Alterations;

(C) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require (in the Altering Owner's reasonable opinion or the reasonable opinion of any other Owner) the consent of such other Owner, then, before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such other Owner a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 17.1. and request that such other Owner consent to the proposed Alterations. If such other Owner consents to such Alterations or, in any case where consent is required, does not respond (with approval, disapproval, request for additional information or time or statement of conditions for approval or disapproval) within thirty (30) days after receipt of plans and specifications, the Altering Owner shall give such other Owner a second request for such other Owner's consent. The second request shall (i) be accompanied by a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 17.1, and (ii) state in bold-face print that **"THIS IS A SECOND REQUEST FOR CONSENT. FAILURE BY THE RECIPIENT TO RESPOND TO THIS REQUEST FOR CONSENT SHALL BE CONCLUSIVELY DEEMED TO CONSTITUTE THE RECIPIENT'S CONSENT TO THE PROPOSED ALTERATIONS"**. If such other Owner does not respond to such second request (with approval, disapproval, request for additional information or time or with a statement of conditions for approval or disapproval within thirty (30) days after receipt of the second request, then, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. Within the thirty (30)-day response period (as such thirty (30)-days may be extended by a second request), such other Owner may request (x) additional information with respect to the proposed Alterations, in which case such other Owner will be granted an additional twenty-one (21) days to respond from the date such other Owner receives such additional information or (y) an extension of the time to respond, which extension of time shall not exceed twenty-one (21) days from the date of the request. The Owner whose consent is requested will not unreasonably delay its response, having in mind the scope and complexity, of the proposed Alterations.

An Altering Owner may also at any time request confirmation from another Owner that its consent is not required with respect to proposed Alterations, if such Alterations do not require its consent, and such confirmation shall be given within ten (10) days after the request is made. Failure to respond during such ten (10) day period shall be deemed confirmation that no consent is required.

If (i) in the good faith opinion of another Owner (the **"Objecting Party"**), the Altering Owner has violated or will violate the provisions of Section 17.1(A) or (B) and (ii) the Altering Owner does not otherwise have the right to proceed to make the subject Alterations pursuant to this Section 17.1(C), then, the Objecting Party believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 17.1(A) or (B) hereof,

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and shall specify the respect or respects in which its provisions are or will be violated. If the Objecting Party in good faith asserts a violation of Section 17.1(A) or (B), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to the rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 17.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(D) The K/L Parcel Owner, J Parcel Owner and, subsequent to the I Parcel Inclusion Date, the I Parcel Owner, in making Alterations, shall (i) perform all work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all Laws, including, without limitation, the City of Chicago Building Code, and (iii) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its Portion of the Building in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would disturb an Occupant or Occupants of the other Portion of the Building, as applicable, but such Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property) normally incidental to construction. The foregoing restriction on damages shall not restrict an Owner's right to seek and obtain injunctive relief from unreasonable disturbances. An Altering Owner may perform work during any hours permitted by applicable Law. However, if requested by an Owner who would otherwise suffer unreasonable disturbance, the Altering Owner shall not unreasonably refuse to perform work outside normal business hours and shall pay all costs associated with work at times other than normal business hours, including overtime and delay costs.

17.2 **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of any other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of such other Owner. An Altering Owner shall send copies of any building permits to another Owner at such other Owner's request. If joinder by such other Owner not making Alterations is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify, and hold harmless such other Owner from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) arising out of such other Owner's execution of the application, permit or other instrument. If an Owner fails to execute said application or instruments when required hereunder to do so, and there is no dispute among the Owners concerning the affected Alterations, the Altering Owner is hereby irrevocably appointed attorney-in-fact of the other Owners (such power of attorney being coupled with an interest and hence, irrevocable) to execute said application or instruments on behalf of such other Owners.

17.3 **No Liens.** An Owner performing any work required or provided for under this Declaration shall use reasonable efforts to include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the other Owners, and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act set forth in 770 ILCS 60/0.01 et seq. (said Act and any successors thereto, the "Mechanics' Lien Act") shall only be enforceable against the Portion owned by the Altering Owner, or (ii) agrees that, to the extent permitted by Law, no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to the extent legally enforceable, to comply with the provisions of Section 20 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

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ARTICLE 18

ESTOPPEL CERTIFICATES

18.1 **Estoppel Certificates.** Each Owner shall, from time to time, within ten (10) days after written request from any other Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee which has complied with the notice provisions of Section 23.12(B) hereof, execute, acknowledge and deliver to the requesting party, a certificate ("**Estoppel Certificate**") stating:

(A) That the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying such modifications;

(B) Whether, to the knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Declaration (or grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;

(C) Whether there are any sums (other than payments for Operating Expenses owed under Exhibit 8.5 which in the aggregate are less than \$100,000 and are not overdue) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amounts thereof;

(D) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to Article 8 hereof the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof but has not yet charged to such requesting Owner, and if there be any such work, specifying the nature and extent thereof and the projected amount to be paid by the requesting Owner;

(E) The nature and extent of any setoffs, claims, counterclaims or defenses then being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder), or otherwise known by the Owner, against the enforcement of the requesting Owner's rights hereunder;

(F) The total amount of all liens being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder) by the Owner executing the Estoppel Certificate under the provisions of this Declaration describing the applicable provision or provisions and the details of any such lien claim;

(G) Whether the Owner executing the Estoppel Certificate has requested that a matter be submitted to arbitration, which matter has not been discharged, released or otherwise resolved, and if so, a copy of any such notice or notices shall be delivered with the Estoppel Certificate;

(H) The nature of any arbitration proceeding or finding under Article 14 made within the ninety (90) days preceding the date of such Estoppel Certificate;

(I) The current address or addresses to which notices given to the Owner executing such Estoppel Certificate are required to be mailed under Article 22 hereof; and

(J) Such other facts or conclusions as may be reasonably requested.

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At any time a Parcel or any part of a Parcel has been submitted to and remains subject to the Act, Estoppel Certificates may only be requested by the Condominium Association for such Parcel or portion thereof (as applicable) and not a Unit Owner (and the Condominium Association shall not request any Estoppel Certificates in connection with a sale or financing of an individual residential Unit or other transaction involving an individual residential Unit; and Estoppel Certificates requested of a such an Owner shall be given by such Condominium Association and shall bind all Unit Owners thereof). If the requesting party is a Mortgagee or prospective Mortgagee, the Owner on whose property it holds or intends to hold a Mortgage will be deemed the "requesting Owner." If the requesting party is a prospective transferee of an Owner, such Owner will be deemed the "requesting Owner." Notwithstanding anything contained in this Article 18 to the contrary, if the Owner to whom a request for an Estoppel Certificate is made fails, within ten (10) business days from the date such Owner receives a request for an Estoppel Certificate, to deliver an Estoppel Certificate to the requesting party, then, such failure by such Owner shall be conclusively deemed to constitute a statement by such Owner that:

- (i) The terms and provisions of this Declaration are unmodified and are in full force and effect;
- (ii) No sums (other than payments for Operating Expenses owed under Exhibit 8.5 which, in the aggregate, are less than \$10,000) are due from the other Owner;
- (iii) The Owner to whom a request for an Estoppel Certificate is made has performed or is performing no work which is entitled to charge the other Owner;
- (iv) The Owner to whom a request for an Estoppel Certificate is made is entitled to no setoffs, claims, counterclaims or defenses against the enforcement of the other Owner's rights under this Declaration; and
- (v) The Owner to whom a request for an Estoppel Certificate is made has no liens nor is capable of asserting any liens under the provisions of this Declaration.

ARTICLE 19

DEPOSITARY

19.1 **Appointment of Depositary.** A depositary (the "**Depositary**") shall be appointed, at or before such time as the duties of Depositary are to be performed, in the manner hereir after provided to receive insurance proceeds and condemnation Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. The Depositary shall be appointed by the Owners for whose benefit monies are being held jointly, and shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois or other bank or trust company agreed to by the Owners. Any such Owner may at any time propose a Depositary, and if such Owners fail to agree on a Depositary within ten (10) days after receipt of the proposal by such Owner, the disagreement shall become an Arbitrable Dispute. The Depositary shall be entitled to receive from each of such Owners said Owner's equitable share of the Depositary's reasonable fees and expenses for acting as Depositary, as such share is agreed to by such Owners, and may retain said fees and expenses, free of trust, from monies held by it. Any such Owner may propose to the other such Owners how such fee shall be allocated among the Owners, and if the Owners fail to agree on a cost sharing arrangement within ten (10) days after receipt of such an Owner's proposal, such disagreement shall become an Arbitrable Dispute. Any Depositary appointed to act hereunder shall execute an agreement with such Owners accepting said appointment, and any such agreement shall be in a form acceptable to the K/L Parcel Owner in its reasonable discretion.

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19.2 **Liability of Depository.** The Depository shall not be liable or accountable for any action taken or disbursement made in good faith by the Depository, except that arising from its own negligence. The Depository's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depository shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation Award or Awards unless the Depository shall have been given an express written authorization from the affected Owners; provided that if only certain Owners are entitled to said insurance proceeds or condemnation Award or Awards, then said Owners may authorize the Depository to so proceed. In addition, the Depository may rely conclusively on any certificate furnished by the Architect to the Depository in accordance with the provisions of Section 20.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

19.3 **Interest on Deposited Funds.** The Depository shall have no obligation to pay interest on any monies held by it, unless the Depository shall have given an express written undertaking to do so, or unless all of the Owners for whose benefit monies are being held have requested, and the Mortgagees of said Owner have concurred in connection with a specified deposit of funds with the Depository, that the Depository undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depository and said Owners, then the Depository, within thirty (30) days after request from any Owner given to the Depository and to such other Owners, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within ninety (90) days from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depository on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Declaration shall not be mingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes herein provided.

19.4 **Indemnification of Depository.** In consideration of the services rendered by Depository, the Owners collectively and severally hereby agree to indemnify and hold harmless the Depository from any and all damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Depository's duties hereunder or in the defense of any claim or claims made against Depository by reason of its appointment hereunder, except where due to the negligence of the Depository or actions not taken in good faith by the Depository. Where the Depository is only disbursing funds for certain Owners, and the other Owners are not involved in the deposit or overseeing of disbursement of funds, such other Owners shall not be obligated to indemnify and hold harmless the Depository in connection with such duties of the Depository.

19.5 **Resignation of Depository.** The Depository may resign by serving not less than sixty (60) days prior written notice on all of the Owners and Mortgagees. Within thirty (30) days after receipt of such notice, the Owners jointly shall, in the manner set forth in Section 19.1, appoint a substitute who qualifies under Section 19.1 hereof (if there are duties to be performed at such time by a Depository or funds are held by the resigning Depository), and the Depository shall prepare a final accounting of all funds received, held and disbursed by it and shall transfer all funds, together with copies of all records, held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If such Owners shall fail to appoint a substitute within said thirty (30) days, and there are funds held by the

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resigning Depository, the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, which qualifies under Section 15.1 hereof.

ARTICLE 20

DISBURSEMENTS OF FUNDS BY DEPOSITARY

20.1 Disbursement Requests.

(A) Each request by the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any Award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the Architect or another Person having knowledge of the facts reasonably acceptable to the Owners and their Mortgagees, dated not more than ten (10) days prior to the date of the request for any such disbursement, stating the following in its professional judgment based on periodic observations of the work:

(i) That the sum requested has either (x) been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of more than one (1) Owner (in which event the certificate shall specify the amount paid by each respective Owner), or (y) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof the respective amounts so paid or due to each of said persons in respect thereof and the amount of any retentions, and shall state the process of the work up to the date of said certificate and any other information required by the Mechanics' Liens Act and any title insurer affording coverage against mechanics' liens;

(ii) That the sum requested, plus all sums previously disbursed, less retentions, does not exceed the cost of the work actually in place up to the date of such certificate plus the cost of materials supplied and actually stored on site;

(iii) That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and

(iv) Other information which may from time to time be required by the Mortgagees which is customarily required by mortgagees of comparable mixed use commercial/residential/garage buildings, or as may be agreed to by the Owners.

(B) Upon:

(i) compliance with the provisions of Section 20.1(A), and

(ii) receipt of contractors' and subcontractors' sworn statements required under the Mechanics' Liens Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by the title insurer affording coverage against mechanics' liens from the persons named in the sworn statement, and

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(iii) approval by the title insurer, the Owners and the Mortgagees of the lien waivers and other documentation, and the willingness of such title insurer to issue an endorsement (satisfactory to the Owners and the Mortgagees) insuring over possible mechanics' lien claims relating to work in place and the continued priority of the liens in favor of the Mortgagees, the Depository shall out of the monies so held by the Depository, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any Owner or Mortgagee or the Depository may require that disbursements be made through the customary form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Architect to the Depository in accordance with the provisions of this Section 20.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

20.2 **No Lien or Consent by Contractor.** No contractor, subcontractor materialman, engineer, architect or any other person whatsoever, other than the Owners and the Mortgagees shall have any interest in or right to or lien upon any funds held by the Depository. The interested Owners, with the consent of the Mortgagees, may jointly at any time provide in writing for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time the Owners, with the consent of the Mortgagees, shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with said instructions, and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

ARTICLE 21

ARCHITECT

21.1 **Appointment of Architect.** When and if required by the provisions of this Declaration, the Owners shall collectively appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act collectively hereunder) experienced in the design and operation of structures similar to the buildings on the Property to serve under and pursuant to the terms and provisions of this Declaration (the "**Architect**"). The Architect shall, upon its appointment, execute an agreement with the Owners in the form required by the Owners, which agreement shall also incorporate those services necessary to implement the provisions of this Declaration and shall provide that the Owners may cause the then serving Architect to be replaced without cause upon thirty (30) days prior written notice. The Owners jointly may replace the Architect for any reason. Unless and until such time as the Owners collectively replace the Architect, the Architect shall be bKL Architecture LLC. Any Owner also may cause any Architect to be replaced, and the other Owners shall be deemed to have consented to such replacement, only if such Owner demonstrates to the other Owners that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently. A Mortgagee shall have the right to approve the replacement of the Architect, if required by the terms of its Mortgage. If all Owners do not collectively desire to replace the Architect, then the Owner desiring replacement of the Architect shall serve notice upon the other Owners requesting the removal of the then-serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform fairly, diligently or competently. If, in the opinion of any other

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Owner receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 21.1, the Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owners of its objection in writing within ten (10) days after receipt of such notice from the requesting Owner. If, within ten (10) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences (subject to any required approval of their Mortgagees), or if the Owners fail to agree on the form of agreement, then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not serve any purpose other than the purpose of determining whether an Owner is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days prior written notice to the Owners.

21.2 **Notice of Submission of Dispute to Architect.** In any instance when the Architect serving pursuant to Section 21.1 is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and their Mortgagees. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner or its Mortgagees, an opportunity to furnish information or data or to present such party's views. The Architect shall not be liable for any advice given by it hereunder, or for any other action taken by it hereunder, in good faith and in the absence of negligence. No advice given by the Architect under this Declaration shall be binding on the Owners, and an Owner may accept or reject such advice.

21.3 **Replacement of Architect.** If any new Architect is appointed hereunder, and if the Architect being replaced is then engaged in the resolution of any dispute or matter theretofore submitted hereunder, or if the Architect being replaced is then engaged in the preparation of any plans and specifications or in the supervision of any work required hereunder or pursuant hereto, then, if the Owners so choose, subject to the consent of their Mortgagees, the Architect being replaced shall continue to act as Architect with respect, and only with respect, to such pending dispute or matter or the completion of such preparation of plans and specifications or supervision of any such work.

21.4 **Architect's Fees.** The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and each Owner involved in the work shall pay its equitable share of such fees. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Parking Area, as applicable, or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of such repair, restoration or demolition as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If not otherwise provided in this Declaration, the Owners shall agree on the equitable share owed by each Owner. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the other Owner for any such payment.

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ARTICLE 22

INTENTIONALLY OMITTED

ARTICLE 23

NOTICES AND APPROVALS

23.1 **Notice to Parties.** Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "notice") that an Owner is required, permitted or desires to give or make or communicate to any other Owner shall be in writing and shall be deemed to have been given (i) if and when personally delivered (including messenger service), or (ii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, or (iii) on the first business day after being deposited with a commercially recognized national overnight delivery service, and addressed to a party at its address set forth below or to such other address the Owner to receive such notice may have designated to all other Owners by notice in accordance herewith:

If to the K/L Parcel Owner: 445 East Waterside Drive Owner LLC
30 South Wacker Drive
Suite 2400
Chicago, Illinois 60606
Attention: Theodore Weldon III

If to the J Parcel Owner: 211 North Harbor Drive Owner LLC
30 South Wacker Drive
Suite 2400
Chicago, Illinois 60606
Attention: Theodore Weldon III

If to the I Parcel Owner: IJKL LLC
30 South Wacker Drive
Suite 2400
Chicago, Illinois 60606
Attention: Theodore Weldon III

and to any Mortgagee which has complied with the notice provisions of Section 24.12 hereof.

Any Owner may designate a different address from time to time, provided however it has given at least ten (10) days advance notice of such change of address. Failure to give notices to any Owner's or Mortgagee's counsel whom such Owner or Mortgagee has requested that copies be delivered to shall not render notice to an Owner or Mortgagee invalid or ineffective. If any of the aforesaid Owners shall cease to be the "Owner" of its Parcel and the succeeding Owner of that Parcel shall fail to give a notice of change of address, then notices may be sent to any one of the following: (i) to the last Owner of record disclosed to the Owner giving notice, (ii) to "Owner of Record" at the street address for that Owner's Parcel, as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or City of Chicago department or agency having jurisdiction over City of Chicago addresses, or (iii) to the grantee at the address shown in that last Recorded conveyance of the Parcel in question.

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23.2 **Multiple Owners.** If at any time the interest or estate of the K/L Parcel Owner, J Parcel Owner and the I Parcel Owner shall be owned by more than one Person (hereinafter collectively referred to as “multiple Owners”), the multiple Owners shall give to the other Owners a written notice, executed and acknowledged by all of the multiple Owners, in form proper for Recording, which shall (x) designate one Person, having an address in the State of Illinois to whom shall be given, as agent for all of the multiple Owners, all notices thereafter given to the multiple Owners, and (y) designate such Person as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder.

If and when any Parcel or part thereof is submitted to the Act, then from and after such date the Board of Directors of the subject Condominium Association or such Board of Directors on behalf of the Unit Owners of such Parcel (or part, as the case may be) is hereby designated as the sole agent for all of the Unit Owners of such Portion for purposes of (x) and (y) above. Thereafter, until such designation is revoked by written notice given by all of their multiple Owners or their successors in interest, any notice, and any summons, complaint or other legal process or notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and notices given in connection with arbitration proceedings are hereafter in this Article 23 collectively referred to as “legal process”), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple Owners at the same time that such notice or legal process is given to, or served upon, such agent. If the multiple Owners shall fail so to designate in writing one such agent to whom all notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any notice or legal process may be given to, or served upon, any one of the multiple Owners as agent for all of the multiple Owners and such notice or legal process shall be deemed to have been given to or served upon, each and every one of the multiple Owners at the same time that such notice or legal process is given to, or served upon, any one of them, and each of the multiple Owners shall be deemed to have appointed each of the other multiple Owners as agent for the receipt of notices and the service of legal process as stated above. The term “multiple Owners” as used in this Section 23.2 shall not include Unit Owners; provided, however that notice to or from Unit Owners shall be governed by Section 23.6 of this Declaration.

ARTICLE 24

GENERAL

24.1 **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owners to promote the efficient operation of each Parcel and the harmonious relationship among the Owners, and to protect the value of each Owner’s Parcel, estate or interest therein. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Declaration, except such information as an Owner may reasonably deem confidential or privileged or which may be the subject of litigation or which such Owner is prohibited from revealing pursuant to court order or Law. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) such other instruments, documents, materials and information as another Owner may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted, or increase the obligations or liabilities of, the other Owners hereunder.

24.2 **Severability.** The illegality, invalidity or unenforceability under law of any covenant, restriction or condition or any other provision of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the remaining provisions of this Declaration.

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24.3 **Headings.** The headings of Articles and Sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles or Sections.

24.4 **Amendments to Declaration.**

(A) The K/L Parcel Owner shall have the right to (i) amend this Declaration to further define and describe that portion of the K/L-I Parcel Tri-Party Amenity Areas, located, or to be located, in the I Parcel Improvements, as provided in Section 2.4(A); (ii) amend this Declaration to further define and describe that portion of the K/L-I Parcel Bi-Party Amenity Areas located, or to be located, in the I Parcel as Improvements as provided in Section 2.4(B); and (iii) amend the Improvement Plans to reflect the construction, size, components and configuration of the I Parcel Improvements on the I Parcel Inclusion Date.

(B) The I Parcel Owner shall have the right to amend this Declaration to further define and describe that portion of the J-I Parcel Tri-Party Amenity Areas located, or to be located, in the I Parcel Improvements as provided in Section 3.4(B).

(C) Any two Owners shall have the right, without the consent of the other Owner, to amend this Declaration from time to time, but only if, and to the extent (i) such amendment applies and affects only the Parcels owned by such two Owners and (ii) such amendment does not increase the obligations or reduce the rights of the third Owner and otherwise does not adversely affect such third Owner or the Parcel owned by such third Owner. An amendment of this Declaration complying with the conditions set forth in clauses (i) and (ii) of this Section 24.4(C) shall be (x) shall be required to be executed only by such two Owners and any Mortgagee under any Mortgage of either or both of the Parcels owned by such two Owners and (y) shall be effective upon Recordation of such amendment.

(D) Except as provided in Section 24.4(A) (B) and (C) or as otherwise provided in this Declaration, this Declaration may be amended or terminated only by an instrument signed by the K/L Parcel Owner, J Parcel Owner and I Parcel Owner, and consented to by the Mortgagees to the extent their Mortgages are to be subordinate to such amendment or termination. So long as any Parcel is submitted to the Act, the respective Condominium Association administering such Parcel shall, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners in such Parcel, which amendments or termination shall be binding on all such Unit Owners. Any amendment to or termination of this Declaration shall be Recorded.

24.5 **Perpetuities and Other Invalidity.** The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for the term of this Declaration, which shall be perpetual to coincide with the perpetual Easements provided for under this Declaration (or if the law (including any rule against perpetuities or other statutory or common law rule) prescribes a shorter period, then upon expiration of such period. If the law prescribes such shorter period, then upon expiration of such shorter period, said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by Law, for successive periods of twenty (20) years), subject to amendment or termination as set forth in Section 23.4.

24.6 **Condominium Association Acting for Unit Owners.** Upon submission of any Parcel or part thereof to the Act, all rights, approvals, Easements and benefits under this Declaration appurtenant to or enjoyed by that respective Parcel shall be exercised only by the Board of Directors of the subject

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Condominium Association or such Board of Directors on behalf of the Unit Owners of such Parcel (or part thereof, as the case may be), except for Easements which by their nature are exercisable only by Unit Owners individually. Any action to enforce rights, approvals, obligations, Easements, burdens and benefits under this Declaration on behalf of such Unit Owners or the Condominium Association shall be taken on behalf of all such Unit Owners and the respective Condominium Association solely by the respective Board of Directors of the Condominium Association by its duly authorized officers acting pursuant to authority granted by Law, the respective Condominium Declaration or resolution of the Board of Directors of the respective Condominium Association. All obligations of the respective Condominium Owner under this Declaration shall be the obligations jointly and severally of both the Condominium Association and the Unit Owners collectively so long as the respective property is subject to the Act; provided, however, that no individual Unit Owner (or the holder of any Mortgage on such owner's Unit) shall be liable for any obligation of the respective Owner in excess of a percentage of such liability equal to the percentage interest in the common elements in the respective property attributable to such Unit as shown in the respective Condominium Declaration. In any case, such liability of a Unit Owner shall be subject to the provisions of Section 24.1. Upon payment of such amount for which a Unit Owner may be liable (i) any lien arising against such Unit Owner's Unit on account of such claim shall be deemed released against such Unit Owner's Unit without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner and at the expense of such Unit Owner, the Creditor Owner who has Recorded notice of such lien shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit. When a Unit is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit shall be joint and several. Notices under Section 23.1 to a Unit Owner or Unit Owners shall be effective if given either to the respective Condominium Association or to such Unit Owners, and notices from a Unit Owner or Unit Owners shall be given by the respective Condominium Association.

24.7 **Abandonment of Easements.** Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building, as applicable, subject to an Easement, unless the Owner benefited by such Easement states in writing its intention to abandon the Easement, provided the consent of such Owner's Mortgagees shall also be required with respect to any such abandonment.

24.8 **Applicable Laws.** The parties hereto acknowledge that this Declaration and all other instruments in connection herewith have been negotiated, executed and delivered in the City of Chicago, County of Cook and State of Illinois. This Declaration and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Illinois, including without limitation, matters affecting title to all real property, described herein.

24.9 **Intentionally Omitted.**

24.10 **No Third-Party Beneficiary.** This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity, as a third party beneficiary (except the Mortgagees) under any Laws or otherwise.

24.11 **Incorporation.** Each provision of the Recitals to this Declaration and each Exhibit and Appendix attached hereto is hereby incorporated in this Declaration and is an integral part hereof.

24.12 **Notice to Mortgagees; Rights of Mortgagee.**

(A) The term "Mortgage" as used in this Declaration shall mean any mortgage (or any trust deed) of a fee interest in a Parcel given primarily to secure the repayment of money owed by the mortgagor. The term "Mortgagee" as used herein shall mean the mortgagee from

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time to time under any such Mortgage (or the beneficiary under any such trust deed); provided, however, no mortgage or trust deed on an individual Unit (other than a mortgage initially placed on an entire Portion or all Units therein) shall be included within the definition of "Mortgage" nor shall the holder thereof be included within the definition of "Mortgagee" thereby granting such Mortgagee rights to consent to or approve matters arising under this Declaration unless explicitly and specifically stated in this Declaration to the contrary.

(B) If a Mortgagee shall have served on the Owners, by personal delivery, or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every notice required to be given to the Owner whose property is security for such Mortgagee's Mortgage at the same time as and whenever such notice shall thereafter be given to such Owner, at the address last furnished by such Mortgagee. The address of any existing Mortgagee shall be as set forth in its consent attached hereto. After receipt of such notice from a Mortgagee, no notice thereafter given to such Owner shall be deemed to have been given unless and until a copy thereof shall have been so given to the Mortgagee. If a Mortgagee so provides or otherwise requires, and notice thereof is given by the Mortgagee as provided above:

(i) The proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner shall, to the extent Mortgagee has rights thereto and upon notice from a Mortgagee, be delivered to such Owner's Mortgagee to be disbursed by the Mortgagee to the Depository, in accordance with the provisions of this Declaration.

(ii) If an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Declaration with respect to arbitration, such appointment or action as otherwise would have been permitted by that Owner may be taken by its senior Mortgagee and such appointment and action shall be recognized in all respects by the other Owners.

(C) A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Declaration by the Owner whose property is security for the Mortgagee's Mortgage within any applicable cure period provided for such breach to such mortgagor Owner plus an additional period of twenty (20) days after notice to the Mortgagee of expiration of the cure period allowed the mortgagor Owner before any other Owners may exercise any right or remedy to which it may be entitled as a Creditor Owner, except exercise of a self-help right in an Emergency Situation.

24.13 Coordination with Tenants. Unless an Owner otherwise agrees in writing in each case, and except in an Emergency Situation, each Owner shall coordinate all requests and contacts between residents and tenants of the Improvements on its Parcel and the other Owners relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Declaration, or with respect to any other matters arising under or pursuant to this Declaration; provided, however, any such coordination shall not render such Owner liable either to such tenants or the other Owners for acts of such tenants or other Owners.

24.14 Waiver of Mechanic's Liens by Owners. The Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claim of or right to liens which such Owners may have under the Illinois Mechanic's Lien Act against, or with respect to the Parcel or improvements owned by any other Owner or any part thereof, or with respect to the estate or interest of any person whatsoever in the Parcel or improvements owned by any other Owner, or any part thereof, or

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with respect to any material, fixtures, apparatus, or machinery, furnished or to be furnished thereto pursuant to this Declaration, by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or sub-contractors, for any labor, services, material, fixtures, apparatus, machinery, improvements, repairs or alterations in connection with such Parcel or the improvements thereon, other than with respect to any of the foregoing furnished pursuant to Article 7 or Article 8 of this Declaration. The parties agree that, to the extent permitted by Law, the legal effect of this Declaration is that no mechanic's lien or claim may be filed or maintained by any Owner under the Illinois Mechanic's Lien Act with respect to any Parcel or improvements owned by any other Owner, except as set forth above with regard to Articles 7 and 8 of this Declaration. The provisions of this Section 24.14 are not intended to waive any lien created under Article 13.

24.15 Binding Effect. The Easements, covenants and restrictions created under this Declaration shall be irrevocable and perpetual in nature, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

24.16 Special Amendment.

(A) The K/L Parcel Owner shall have the right and power, to be exercised without the consent of any other Owner, any Condominium Association, any Unit Owner or any other Person, to Record a special amendment ("**Special Amendment**") to this Declaration at any time and from time to time which amends this Declaration for any of the following purposes:

- (i) to correct clerical or typographical errors in this Declaration;
- (ii) to correct errors in this Declaration, to clarify by the addition, deletion or modification of legal descriptions the size or scope of any Easements or other rights granted by or in this Declaration, to make corresponding changes to any Exhibits attached to this Declaration, or to comply with any applicable zoning regulation, agreement or stipulation;
- (iii) to cause this Declaration to comply with the requirements of Mortgagees (provided such modifications do not materially adversely affect the rights of other Owners); or
- (iv) to change, amend or modify any of the terms or conditions of this Declaration based upon K/L Parcel Owner's determination, made in good faith, that such change, amendment or modification is in the best interests of the Property and is consistent with the intent and purposes of this Declaration.

A Special Amendment made by the K/L Parcel Owner may also contain such complementary and supplemental grants and reservations of Easements as may be necessary, in order to effectuate the maximum use of the Easements, and Maintenance, operation and administration of the Property or that are otherwise in the best interest of the Property. In furtherance of the foregoing, a power coupled with an interest is hereby reserved, and granted to the K/L Parcel Owner to vote in favor of, make, or consent to a Special Amendment on behalf of the other Owners as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Parcel or portion thereof, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of and a consent to the reservation of, the power to the K/L Parcel Owner and its successors and assigns to vote in favor of, make, execute and Record Special Amendments.

(B) So long as any entity comprising the Declarant as of the Effective Date owns any direct or indirect interest in the Property or any part thereof, should any prospective Mortgagee under a Mortgage of the K/L Parcel or the I Parcel, or any part thereof, require a modification or modifications of

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this Declaration, which modification or modifications will not cause an increased cost or expense to any Owner whose Portion is not subject to the Mortgage of such Mortgagee or in any other way materially and adversely change the Easements granted to, or the rights and obligations of, any Owner, then and in such event, such Owner agrees that this Declaration may be so modified and agrees to execute whatever documents are reasonably required therefor and deliver the same to the other Owners within ten (10) days following written requests therefor by the other Owners or prospective Mortgagee. This Section 24.16(B) shall be deemed deleted from this Declaration and of no further force or effect on the I Parcel Inclusion Date.

ARTICLE 25

LIMITATION OF LIABILITY

25.1 **Limitation of Liability.** The liability under this Declaration of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in such Owner's Parcel or Owned Facilities (including insurance and condemnation proceeds attributable to such Parcel and Owned Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and any security, such as a letter of credit or bond provided pursuant to this Declaration, and no other assets of such Owner. Assets of an Owner which is a partnership, corporation or limited liability company do not include the assets of the partners, shareholders or members of such partnership, corporation or limited liability company Owner, and the negative capital account of a partner in a partnership, or a member in a limited liability company, which is an Owner and an obligation of a partner to contribute capital to the partnership, or a member to contribute capital to the limited liability company which is an Owner shall not be deemed to be assets of the partnership or limited liability company which is an Owner. At any time during which an Owner is trustee of a trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability, shall be asserted or be enforceable against it or any of the beneficiaries under said trust Declaration by reason of any of the covenants or conditions contained herein.

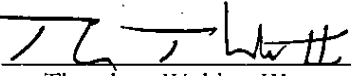
25.2 **Transfer of Ownership.** If an Owner shall sell, assign, transfer, convey or otherwise dispose of its Parcel (other than as security for a loan to such Owner), then (a) such Owner shall be entirely freed and relieved of any and all covenants and obligations arising under this Declaration which accrue under this Declaration with respect to such Parcel from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Parcel, and (b) the Person who succeeds to Owner's interest in such Parcel shall be deemed to have assumed any and all of the covenants and obligations arising under this Declaration of such Owner both theretofore accruing or which accrue under this Declaration from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of such interest in such Parcel.

[SIGNATURE PAGE FOLLOWS]

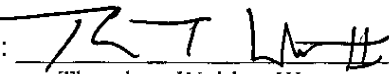
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IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and Recorded the day and year first above written.

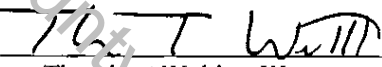
211 North Harbor Drive Owner LLC,
a Delaware limited liability company

By: 
Name: Theodore Weldon III
Title: Authorized Signatory

445 East Waterside Drive Owner LLC,
a Delaware limited liability company

By: 
Name: Theodore Weldon III
Title: Authorized Signatory

IJKL LLC,
a Delaware limited liability company

By: 
Name: Theodore Weldon III
Title: Authorized Signatory

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Frances N. Lennix, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Theodore Weldon III, Authorized Signatory, of 211 North Harbor Drive Owner LLC, a Delaware limited liability company, who is personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of March, 2022

Frances N Lennix
Notary Public

My commission expires 01/07/2023



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Frances N. Lennix, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Theodore Weldon III, Authorized Signatory, of 445 East Waterside Drive Owner LLC, a Delaware limited liability company, who is personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of March 2022

Frances N Lennix
Notary Public

My commission expires 01/07/2023



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Frances N. Lennix, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Theodore Weldon III, Authorized Signatory, of IJKL LLC, a Delaware limited liability company, who is personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of March, 2022

Frances N Lennix

Notary Public

My commission expires 01/07/2023



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CONSENT OF MORTGAGEE

The undersigned, CIBC BANK USA, an Illinois chartered bank, as administrative agent on behalf of itself and certain other lenders (“Lender”) is the holder of the following (jointly and severally referred to in this Consent of Mortgagee as the “Mortgages”)

- (i) Construction Mortgage Security Agreement, Assignment of Leases and Rents and Fixture Filing dated February 21, 2020 and recorded February 24, 2020 as Document Number 2005501178 made by 211 North Harbor Drive Owner LLC, a Delaware limited liability company; and
- (ii) Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated February 21, 2020 and recorded February 24, 2020 as Document Number 2005501181 made by 445 East Waterside Drive Owner LLC, a Delaware limited liability company.

Lender, as Administrative Agent for certain other lenders (together with its and their respective successors and permitted assigns), holder of the Mortgage securing the Loan, as defined in Article 1.1 of the Declaration to which this Consent is attached, hereby consents to the execution and Recording of the attached Declaration of Covenants, Conditions, Restrictions and Easements (the “Declaration”), it being agreed that the Mortgages and other documents securing the above-referenced notes are subject and subordinate to the Declaration. The address of the undersigned is:

120 S. LaSalle St.
Chicago, IL
60603

This Consent is intended to and shall be deemed to constitute a notice from Lender to the Owners for purposes of Section 24.12(B) hereinabove in the Declaration entitling Lender to receive copies of notices.

IN WITNESS WHEREOF, the Lender has caused this Consent to be signed by its duly authorized officer this 10 day of MARCH, 2022.

CIBC BANK USA, and Illinois state chartered bank

By: [Signature]
Name: Caroline Lake
Title: Officer

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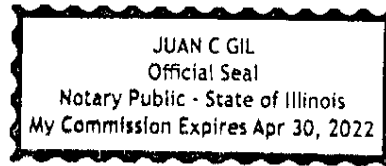
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, JUAN C GIL, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Caroline Lake, the Officer of CIBC Bank USA, an Illinois state chartered bank ("**Lender**"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act of Lender for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10 day of MAY, 2022.

[Signature]
Notary Public

My commission expires Apr 30, 2022



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EXHIBIT 1.1(A)

SURVEY

[ATTACHED]

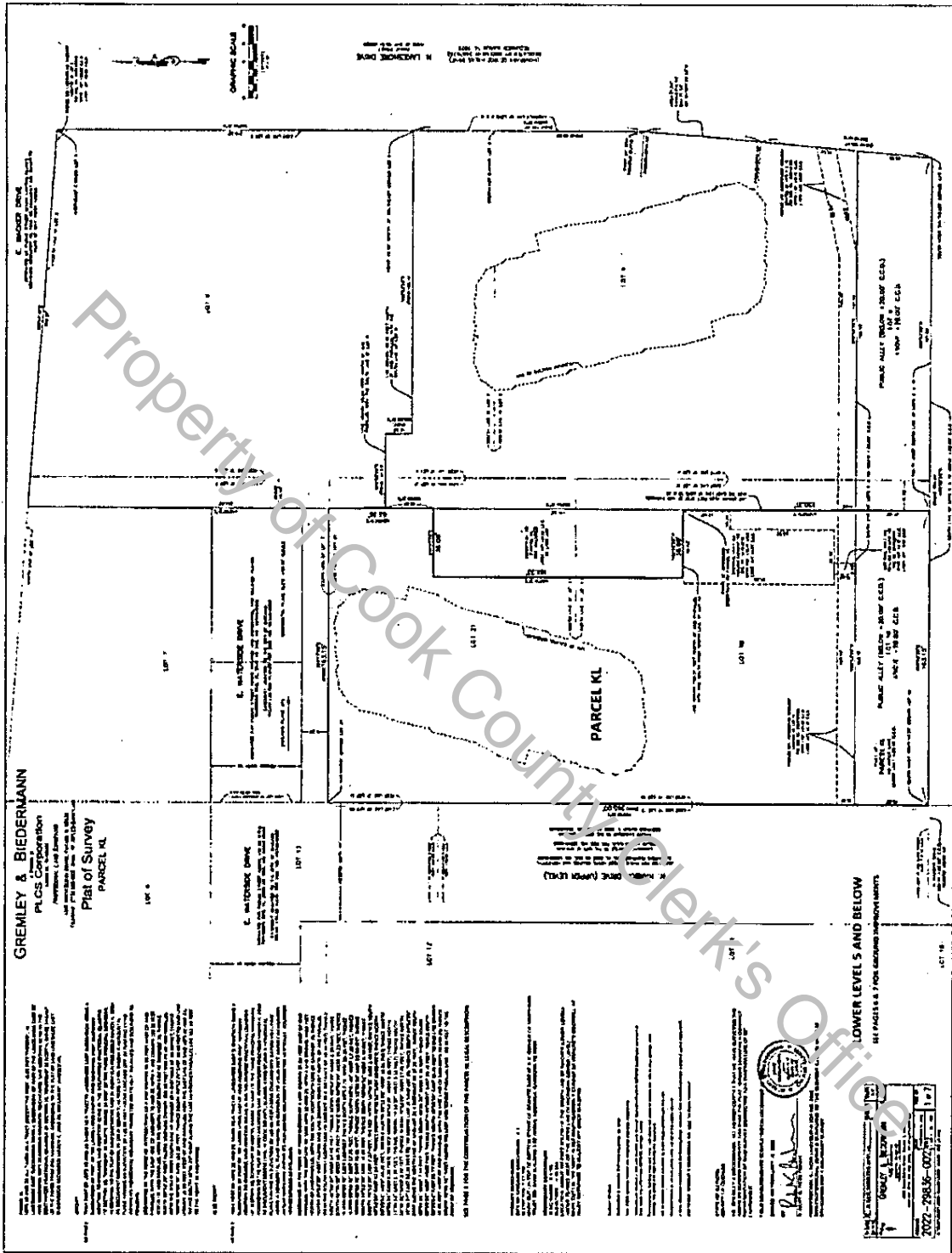
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COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

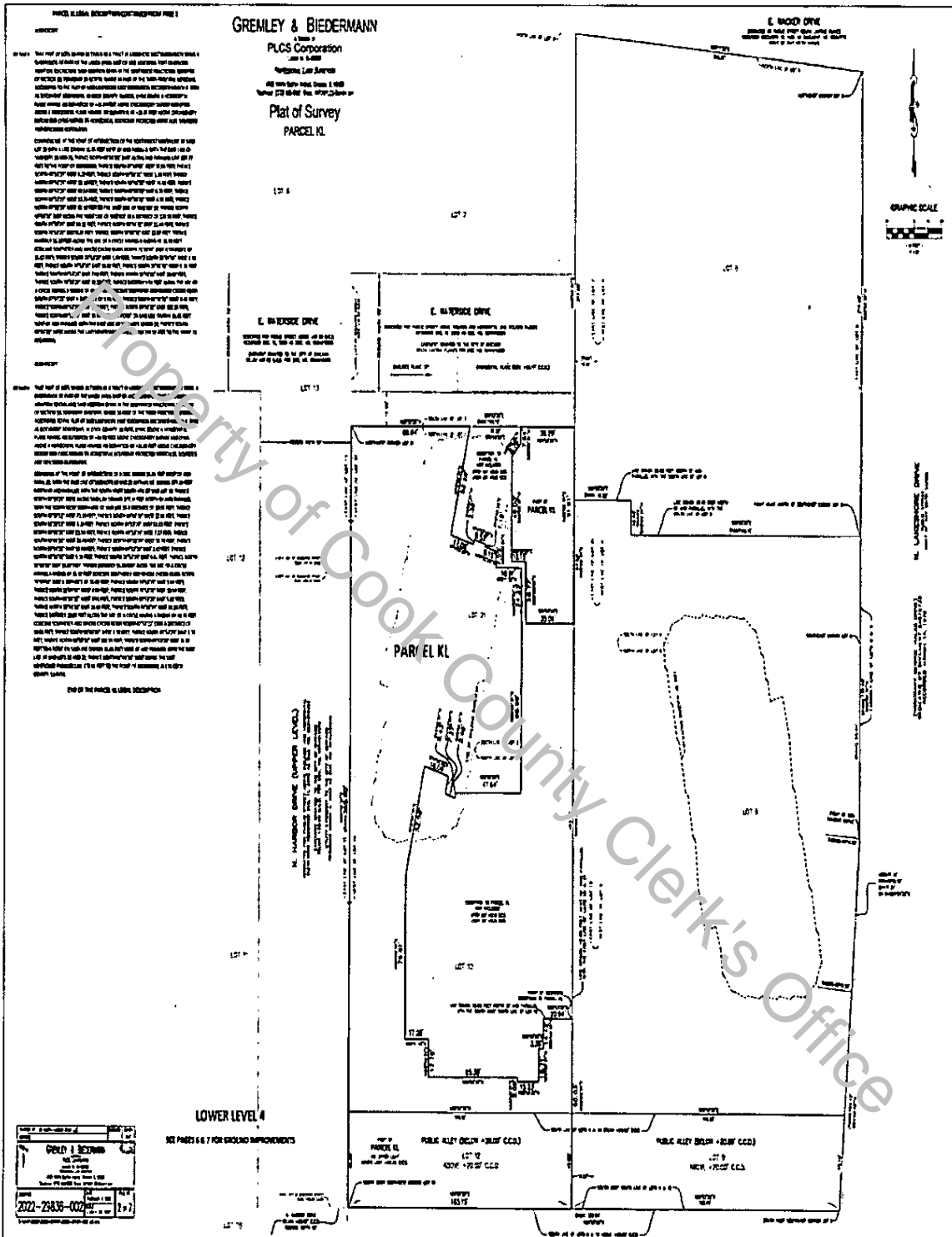
COOK COUNTY CLERK OFFICE
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118 N. CLARK ST. ROOM 120
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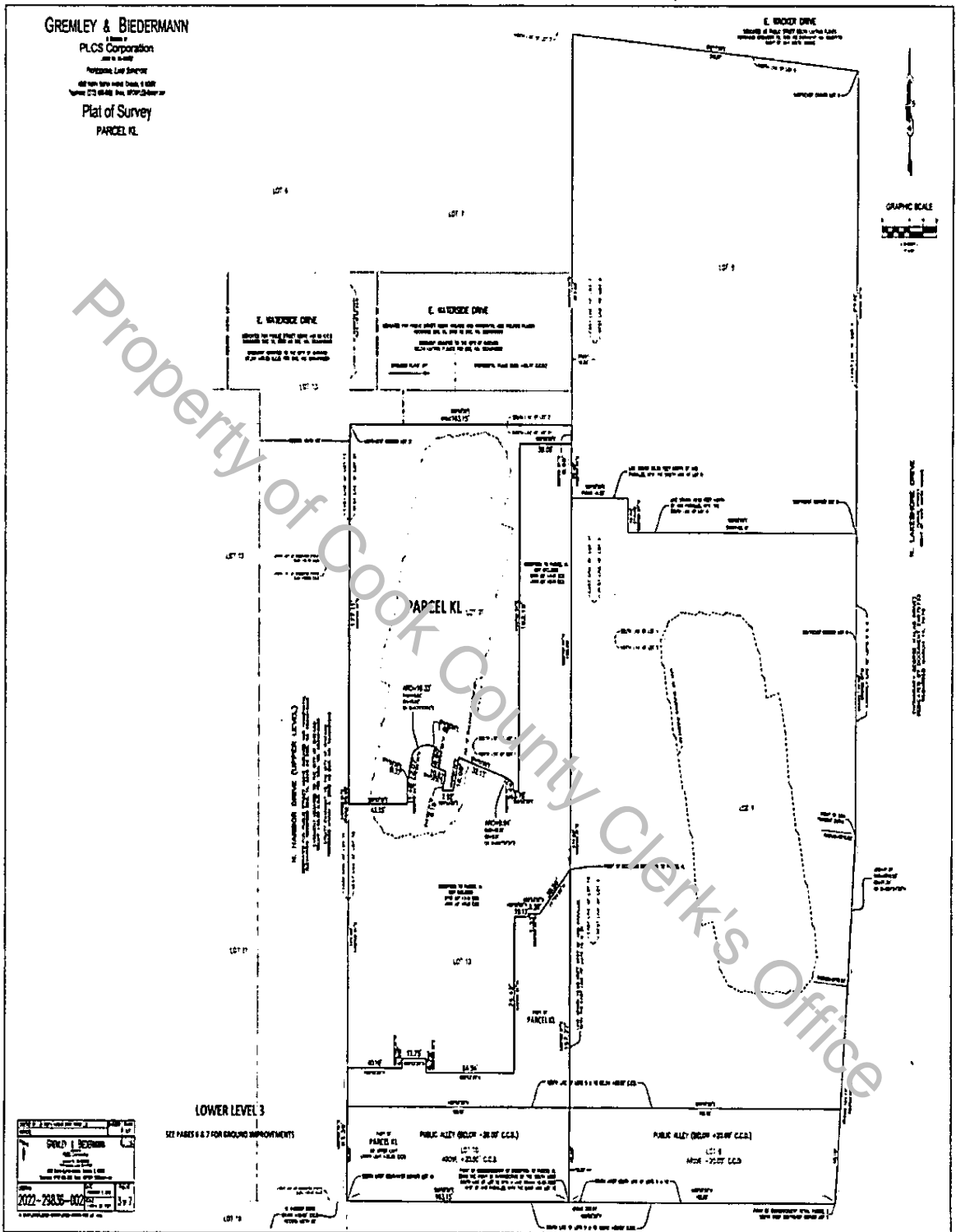
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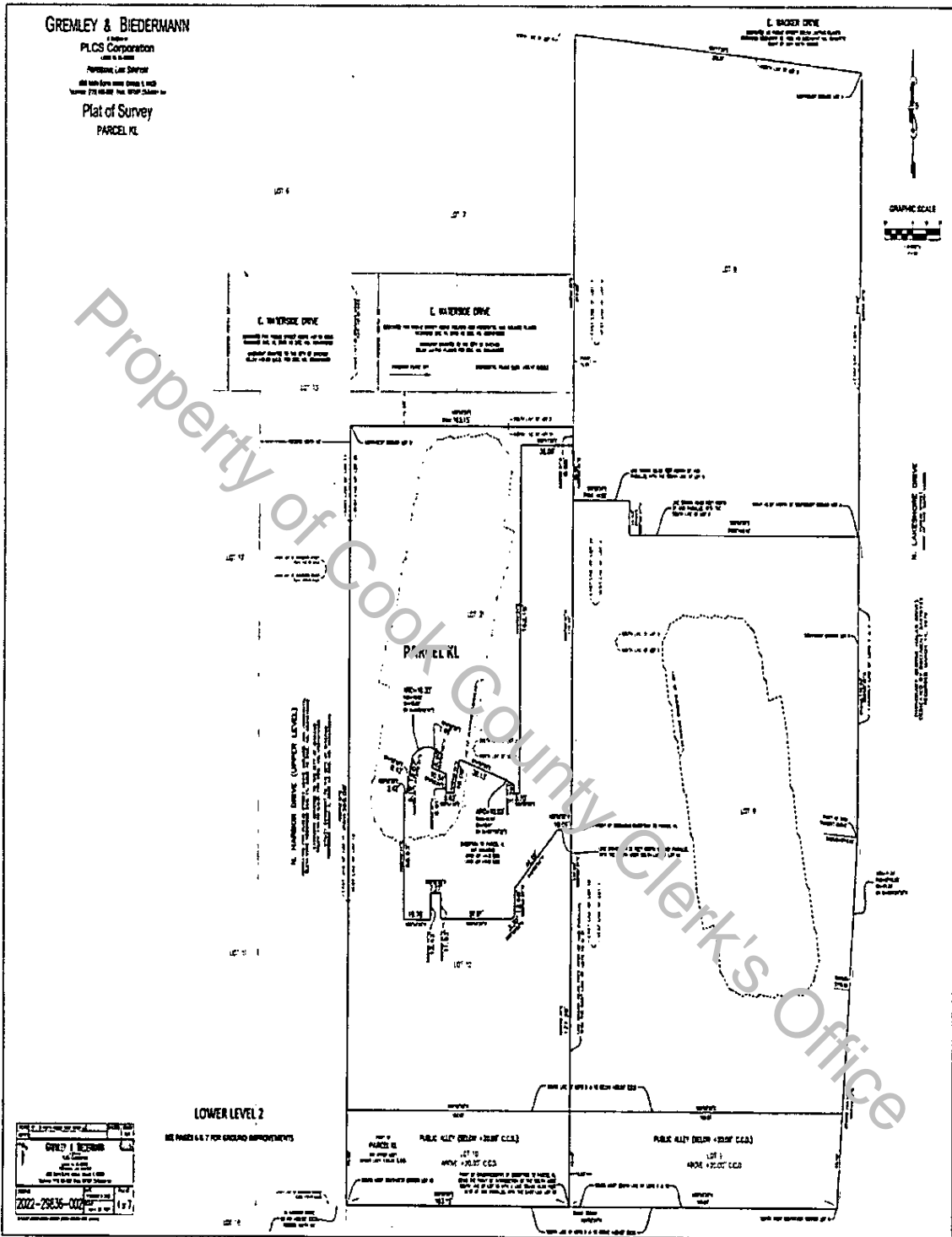
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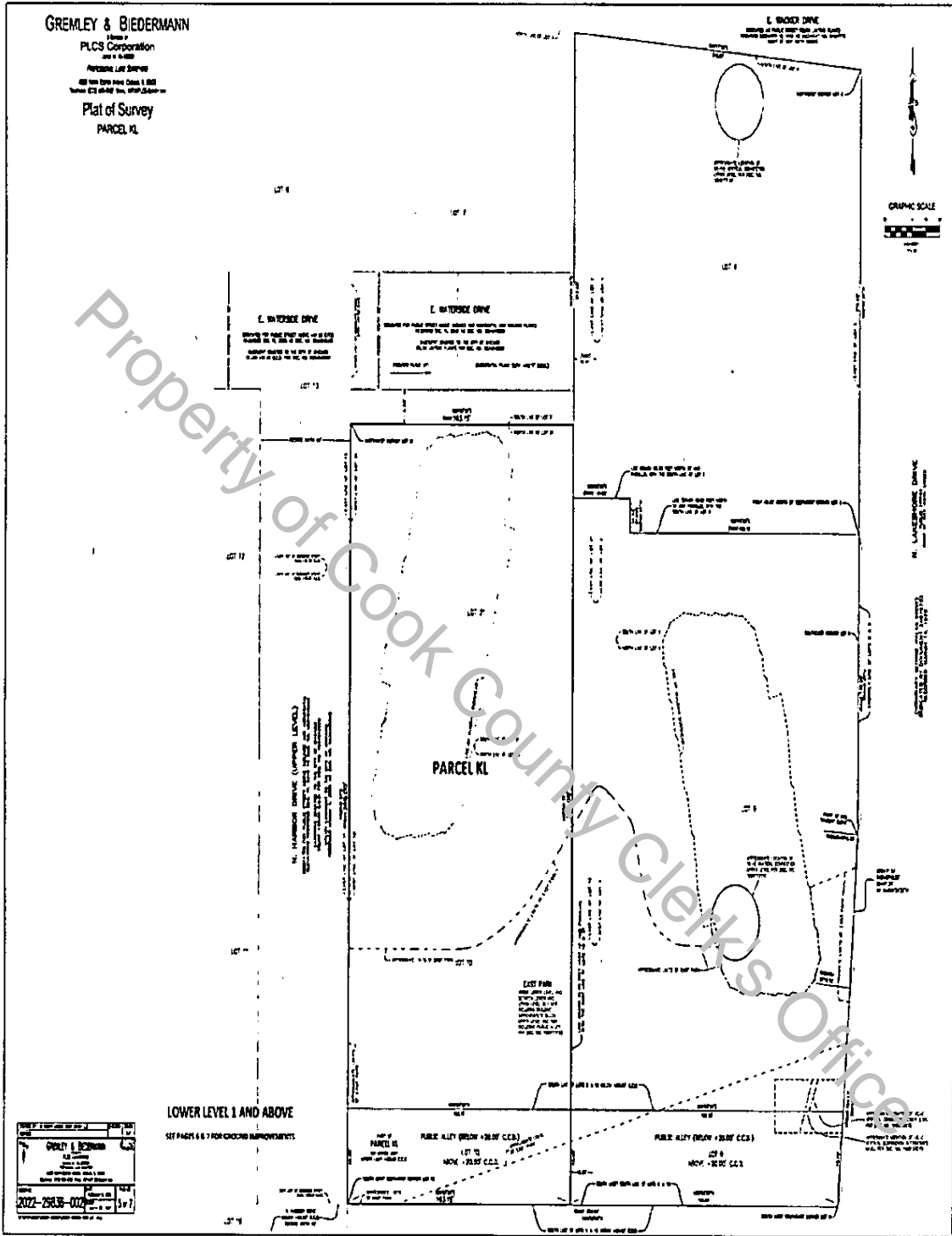
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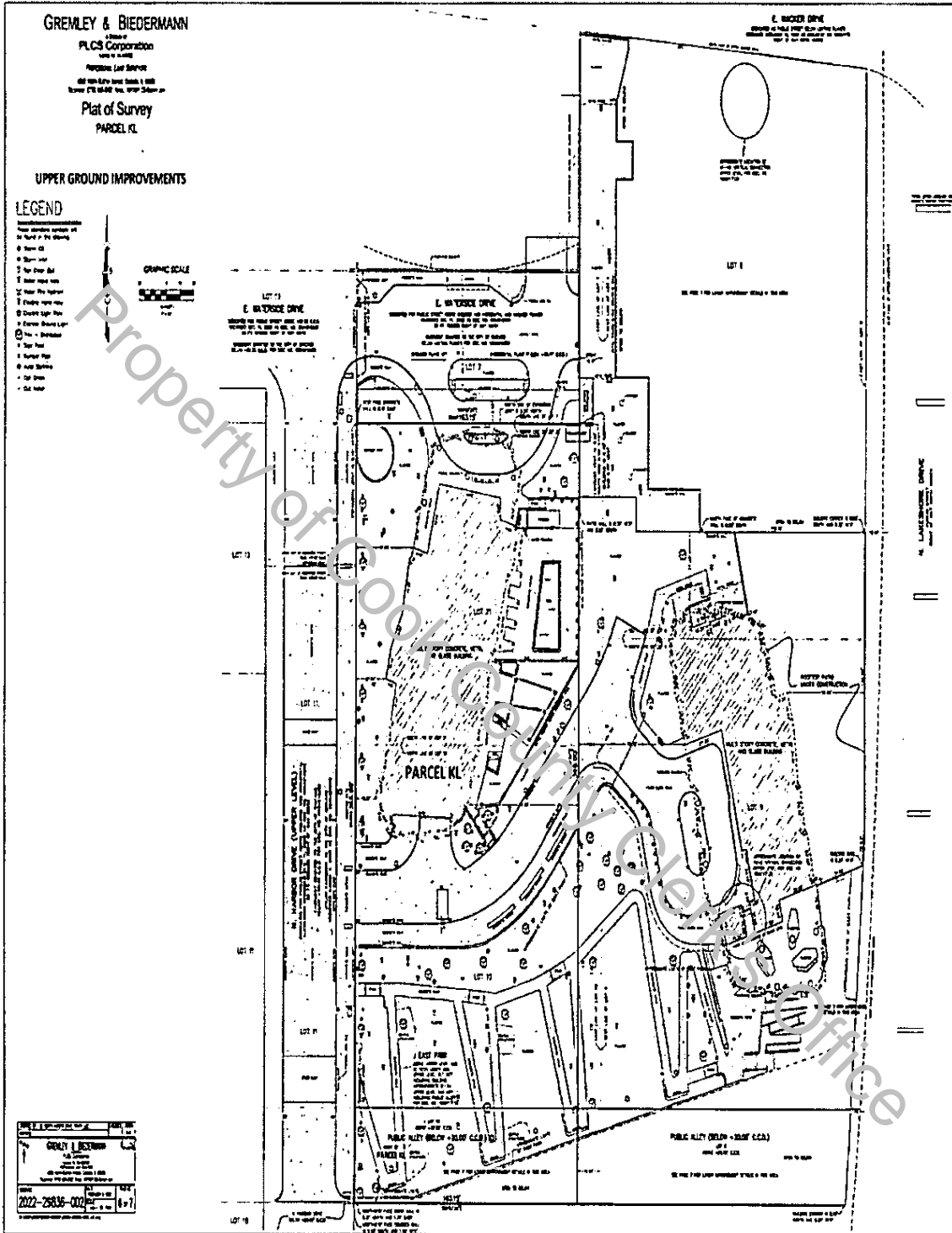
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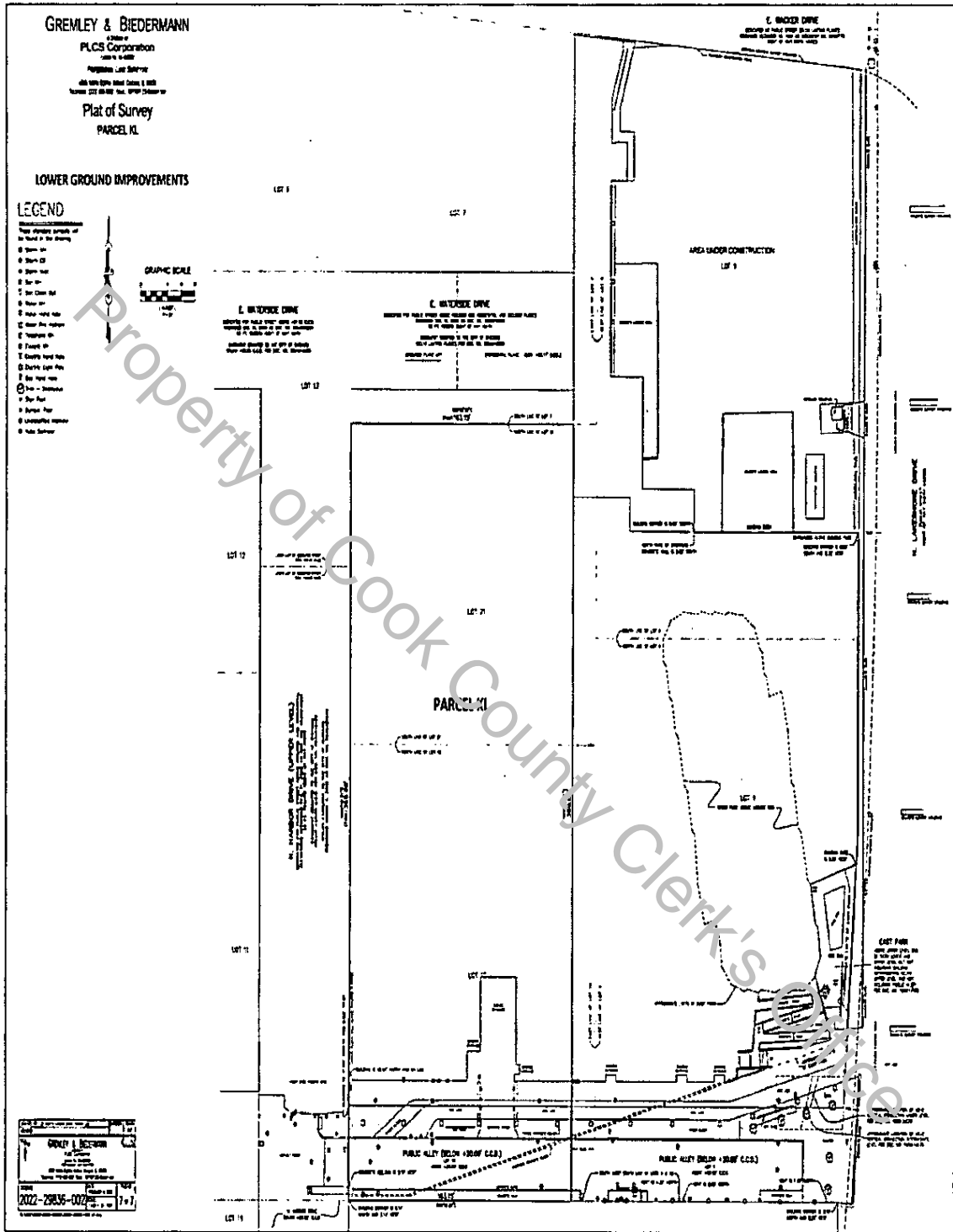
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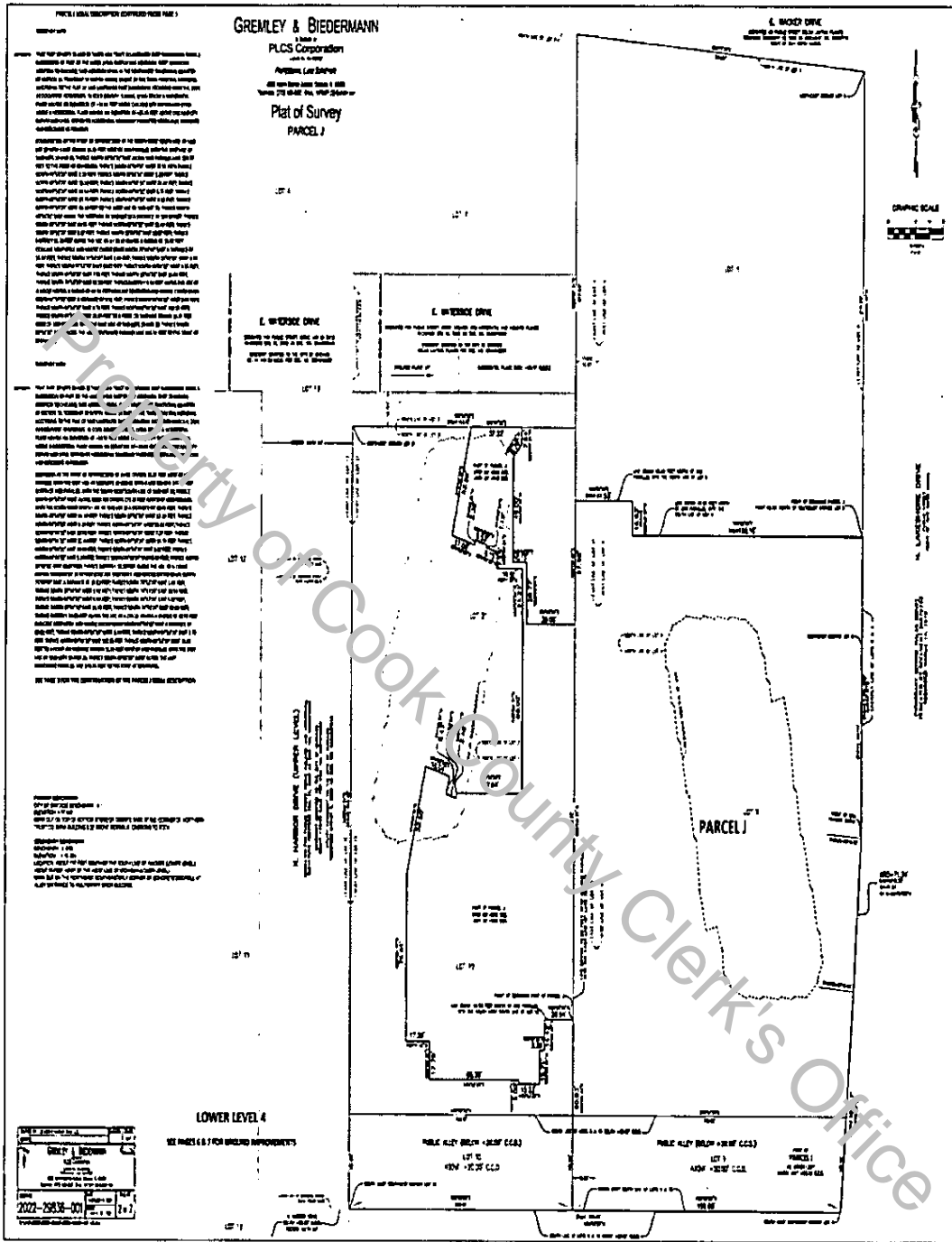
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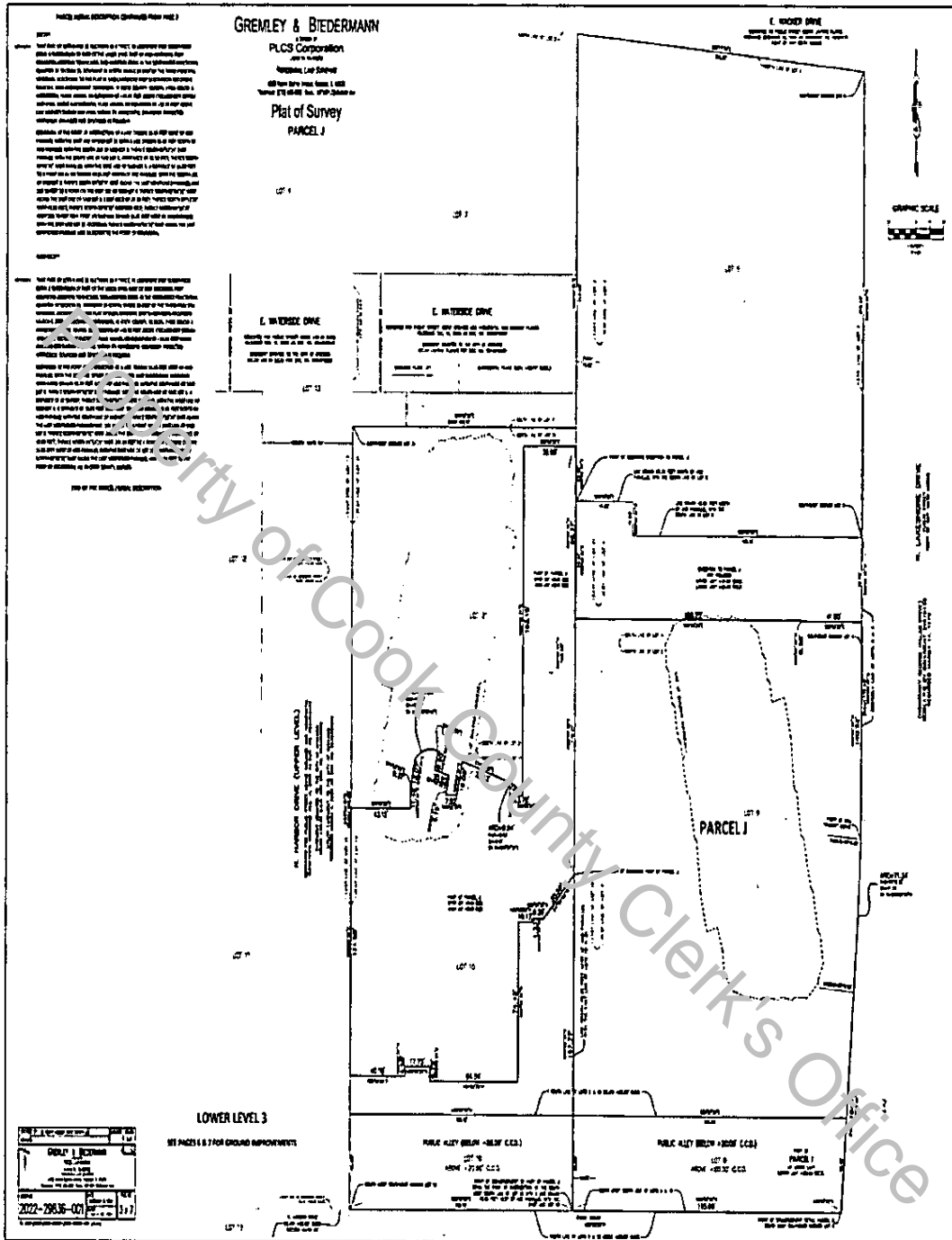
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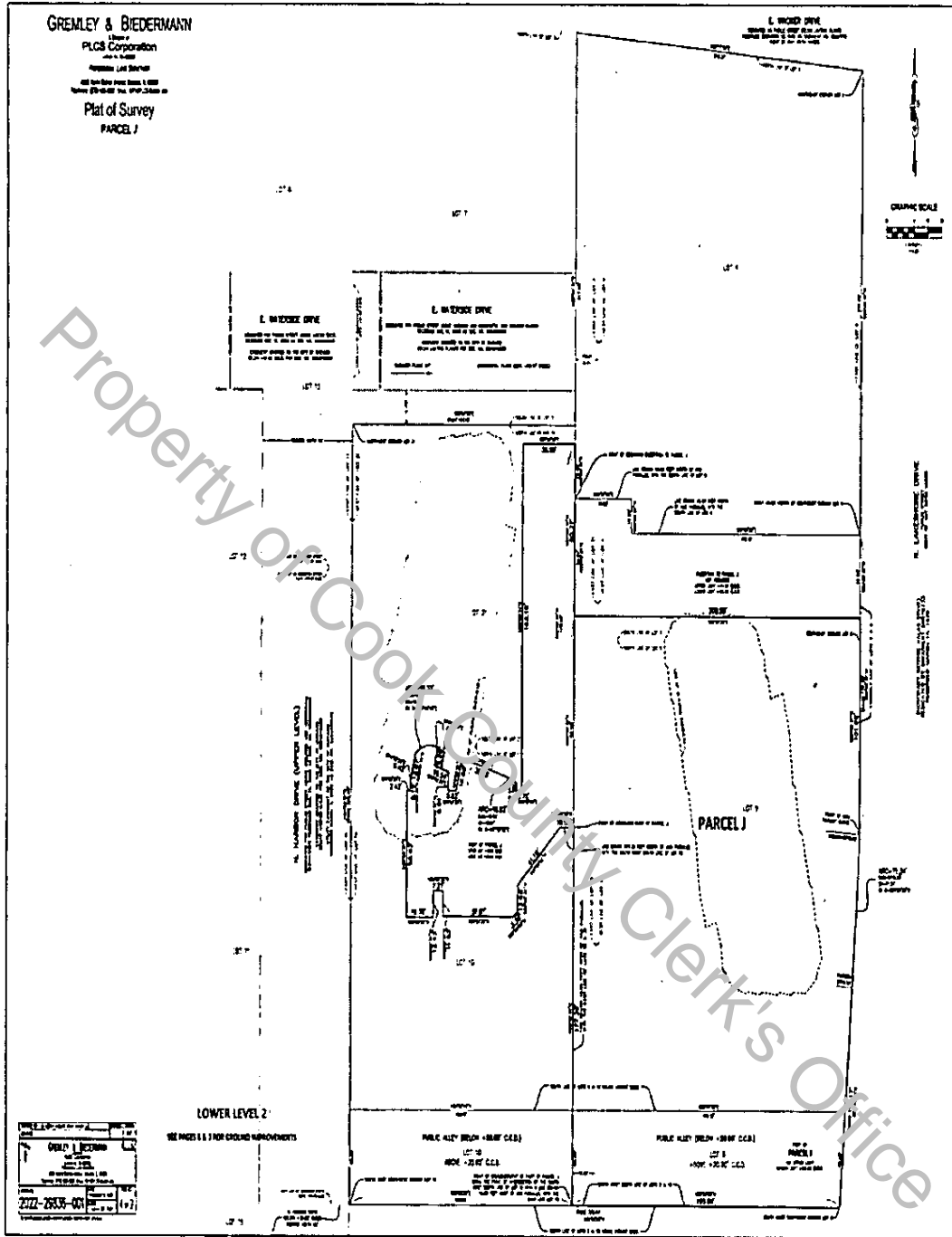
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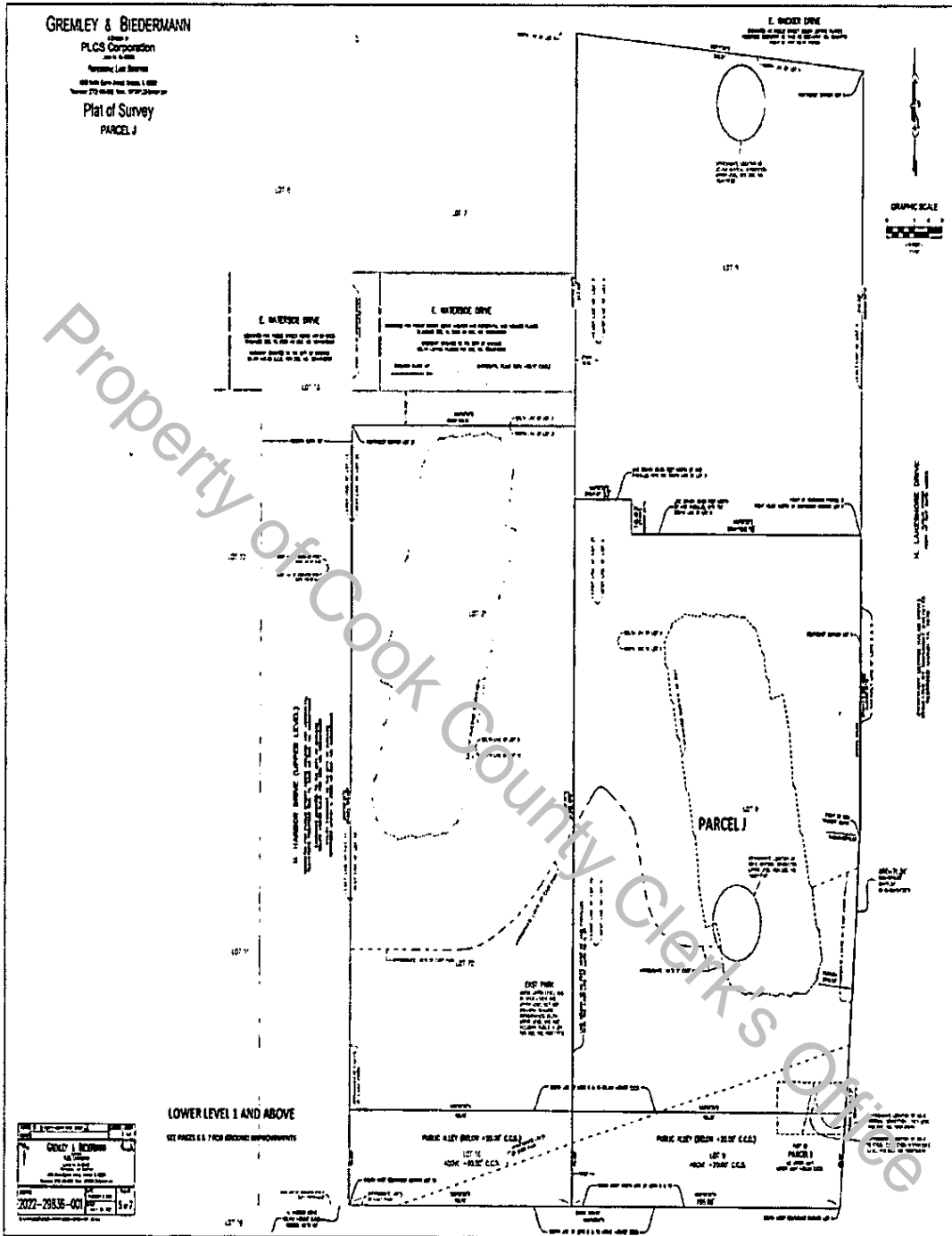
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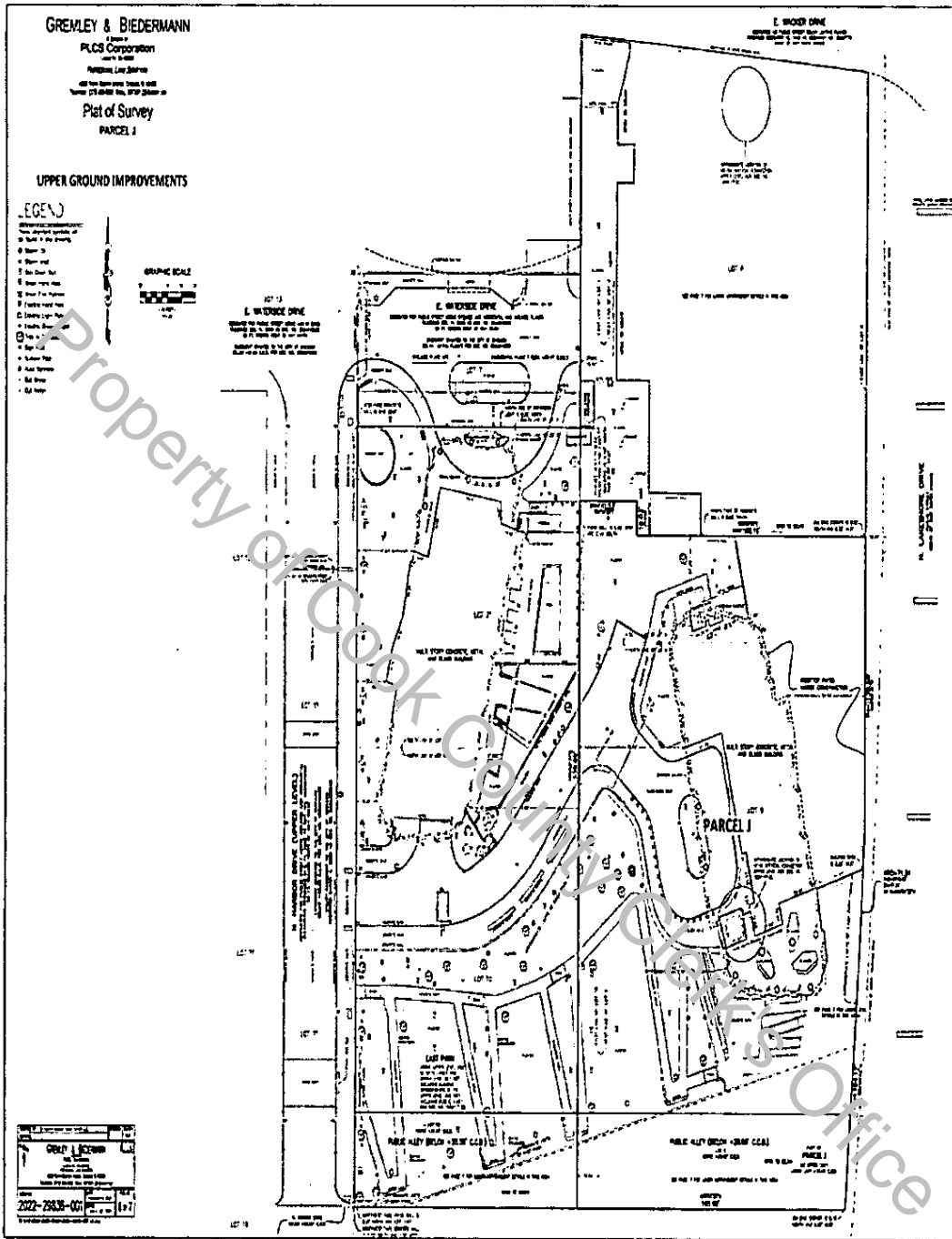
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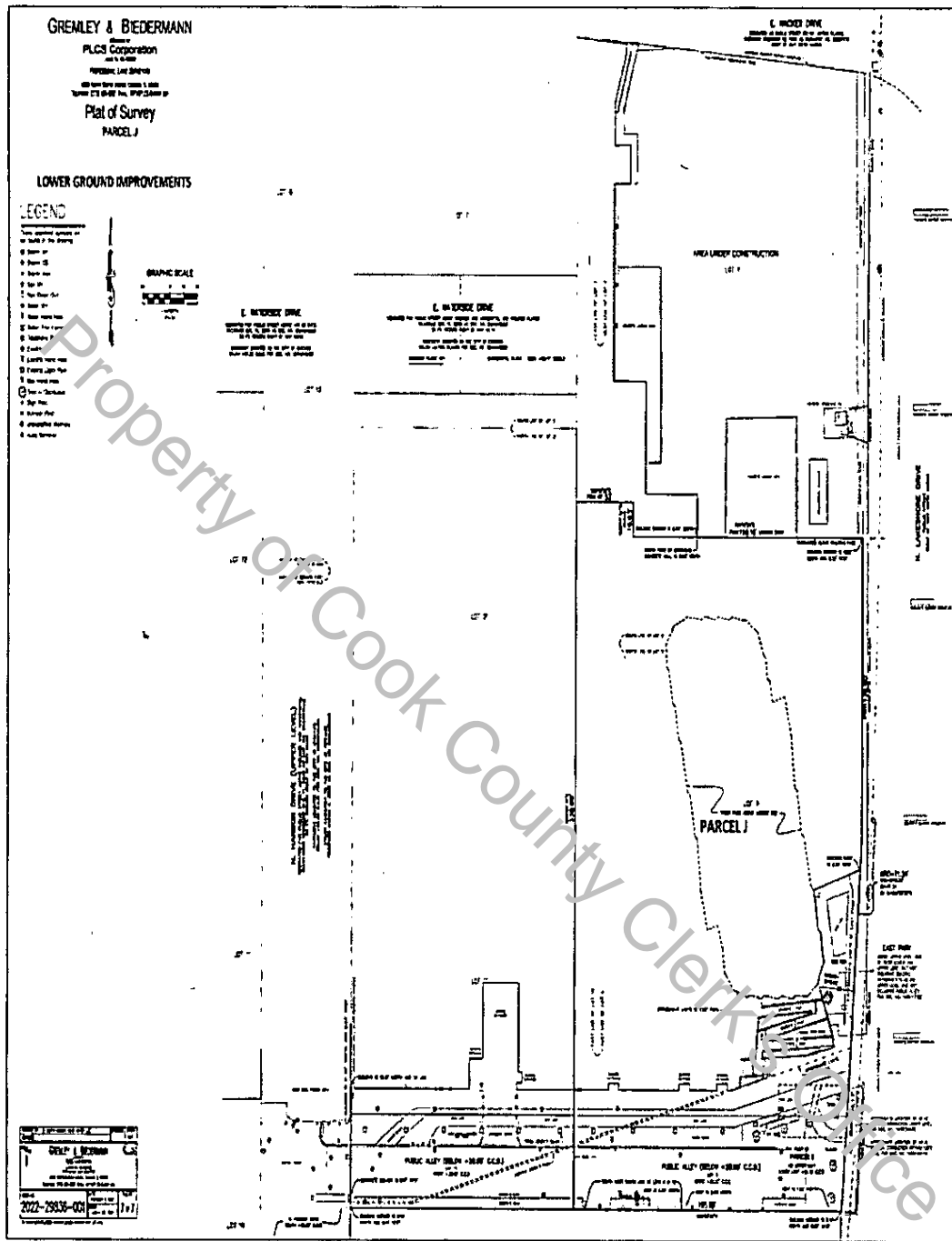
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