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KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 03/31/2023 09:03 AM PG: 1 OF 20

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## DRIVEWAY EASEMENT AGREEMENT

THIS DRIVEWAY EASEMENT AGREEMENT (this "Agreement") is made as of March 29, 2023 ("Effective Date") by and between **FP5 LLC**, an Illinois limited liability company (together with its successors and permitted assigns, "FP5"), and **FP6 LLC**, an Illinois limited liability company (together with its successors and permitted assigns, "FP6"), and is as follows:

### RECITALS

A. FP5 is the owner of the real property more particularly described on Exhibit A attached hereto and incorporated herein (the "FP5 Property"), a portion of which is to be located in a shared driveway (the "Easement Property") to be constructed on the FP5 Property and the FP6 Property (as hereinafter defined), as more particularly described on Exhibit A-1 and depicted as the "Proposed Cleveland Driveway Easement" and "Proposed Hammerhead North Easement" (the "FP5 Easement Property"). Any subsequent owner of the FP5 Property shall assume the rights and obligations of FP5 set forth herein.

B. FP6 is the owner of the real property more particularly described on Exhibit B attached hereto and incorporated herein (the "FP6 Property"), a portion of which is to be located in the Easement Property, as more particularly described on Exhibit B-1 and depicted as the "Proposed Cleveland Driveway Easement" and "Proposed Hammerhead South Easement" (the "FP6 Easement Property"). Any subsequent owner of the FP6 Property shall assume the rights and obligations of FP6 set forth herein.

C. The Easement Property is more particularly described on Exhibit C attached hereto and incorporated herein.

D. FP5 has requested, and FP6 has agreed to convey, a non-exclusive permanent easement upon, over, through, and across the FP6 Easement Property for the purposes set forth herein.

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E. FP6 has requested, and FP5 has agreed to convey, a non-exclusive permanent easement upon, over, through, and across the FP5 Easement Property for the purposes set forth herein.

NOW, THEREFORE, in consideration of the grant of the foregoing recitals, which are incorporated herein, the easements contemplated herein and the mutual covenants, agreements and conditions herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FP5 and FP6 do hereby grant, covenant, promise and agree as follows:

## 1. DEFINITIONS

1.1 “Agreement” shall have the meaning set forth in the Preamble.

1.2 “Approve” (and variations thereof) shall mean the prior written consent of a Party or other applicable Person to the matter presented.

1.3 “Business Day” shall mean all calendar days except Saturdays, Sundays, and any day on which banking institutions in Illinois are authorized or obligated by law or executive order to close. If the last day for the performance of any act or the giving of any notice permitted or required under this Agreement is a day other than a Business Day, then the time period for performing such act or giving such notice shall be extended until the next Business Day.

1.4 “Default Rate” shall mean the lesser of (a) four (4) percentage points in excess of the “Prime Rate”, or (b) the highest rate permitted by law. The Default Rate under this Agreement shall change as often as, and when, the Prime Rate changes or changes in the law occur, as the case may be.

1.5 “Easement Property” shall have the meaning set forth in the Recitals.

1.6 “Effective Date” shall have the meaning set forth in the Preamble.

1.7 “Emergency” shall mean a condition requiring immediate repair, replacement or other action: (a) to prevent material damage to the Easement Property; (b) to prevent damage to property located adjacent to the Easement Property; (c) for the safety of any person using the Easement Property; or (d) to comply with Legal Requirements.

1.8 “Force Majeure Delays” shall mean delays due to any of the following: acts of war; insurrection; terrorist acts; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions; unusually severe weather; hidden conditions on the Easement Property unknown to the Party affected by such condition; inability to secure necessary labor, materials or tools; acts or the failure to act of any Governmental Authority; or any other causes (excluding financial difficulties) beyond the reasonable control and without the fault of the Party claiming the delay.

1.9 “Governmental Authority” shall mean any federal, state, county, municipal and local governmental and quasi-governmental body and authority, including the United States of

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America, the State of Illinois, the City of Chicago, the County of Cook and any political subdivision, public corporation, district or other political or public entity or departments thereof having or exercising jurisdiction over the Parties or the Easement Property.

1.10 “Legal Requirements” shall mean all applicable laws, ordinances, orders, judgments, rules, regulations, mandatory guidelines and other requirements of Governmental Authorities, applicable to the Easement Property.

1.11 “Maintenance Obligations” shall have the meaning set forth in Section 3.1.

1.12 “Mortgage” means a mortgage, deed of trust, or other lien (direct or indirect) on all or part of the Easement Property to secure an obligation made by the applicable Person.

1.13 “Mortgagee” means a mortgage, deed of trust, or other lien (direct or indirect) on all or part of the Easement Property to secure an obligation made by the applicable Person.

1.14 “Official Records” shall mean the official real estate records of the County of Cook.

1.15 “Parties” shall mean FP5 and FP6, collectively, and the term “Party” shall mean either FP5 or FP6, individually, as applicable.

1.16 “Permittees” shall mean, as to each Party, its respective, officers, directors, employees, agents, patrons, guests, customers, invitees, contractors, visitors, licensees, vendors, suppliers, lessees, tenants, members and concessionaires or other Persons associated with a Party, from time to time legally entitled to use the Easement Property.

1.17 “Person” shall mean any individual, partnership, corporation (including any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal or political subdivision thereof, or a state, or a political subdivision thereof.

1.18 “Prime Rate” shall mean the “prime rate” as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source, as the parties may mutually agree.

1.19 “Proceeds” shall mean the net amount of insurance proceeds received by any Person on account of damage to or destruction of the Easement Property or any portion thereof, net of the reasonable costs and expenses incurred by such Person in collecting said amounts (including reasonable attorneys’ and experts’ fees and expenses).

1.20 “Reimbursable Costs” shall have the meaning set forth in Section 3.2.

1.21 “Requesting Party” shall have the meaning set forth in Section 9.13.

1.22 “Responding Party” shall have the meaning set forth in Section 9.13.

## 2. EASEMENTS

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## 2.1 Easements for Ingress, Egress and Access.

2.1.1 FP5 hereby grants to FP6 for its own benefit and for the benefit of its Permittees, a non-exclusive perpetual easement for vehicular and pedestrian ingress, egress and access on, over, and across the FP5 Easement Property for the purpose of accessing any parking garage or parking area located on or below the FP6 Property, accessing the FP6 Property, and for ingress, egress and related uses, including the maintenance of each Parties' respective building façades and retaining walls.

2.1.2 FP6 hereby grants to FP5 for its own benefit and for the benefit of its Permittees, a non-exclusive perpetual easement for vehicular and pedestrian ingress, egress and access on, over, and across the FP6 Easement Property for the purpose of accessing any parking garage or parking area located on or below the FP5 Property, accessing the FP5 Property, and for ingress, egress and related uses, including the maintenance of each Parties' respective building façades and retaining walls.

2.2 Nature of Easements. All easements granted in this Agreement are appurtenant and not in gross, and any transfer or attempted transfer of any of said easements in gross or any attempt to otherwise sever any of said easements from the tenement benefited thereby shall be void and without force or effect. Unless otherwise provided herein, all easements are irrevocable. All easements granted hereunder shall exist by virtue of this Agreement without the necessity of confirmation by any other document. No grant of easement pursuant to this Agreement shall impose any greater obligation on any Party to construct or maintain its improvements other than as expressly provided in this Agreement.

2.3 Additional Documents. All easements granted under this Agreement shall exist by virtue of this Agreement, without the necessity of confirmation by any other document. However, upon the reasonable request of a Party, the other Parties shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is Approved by the other Parties. No grant of an easement pursuant to this Article 2 shall impose any greater obligation on any Party to construct or maintain the improvements on its property except as expressly provided in this Agreement.

2.4 No Walls, Fences or Barriers. Except as permitted by this Agreement, no temporary or permanent walls, fences or other barriers shall be constructed which materially and adversely interfere with the easements granted pursuant to this Agreement, unless such construction is necessary in connection with the maintenance and repair requirements under this Agreement.

2.5 Garage Overhead Doors. All garage overhead doors shall be no closer than twenty (20) inches from the boundary of the Easement Property bordering the owner of the garage.

2.6 Taxes. All Taxes applicable to the FP5 Easement Property shall be the responsibility of FP5. All Taxes applicable to the FP6 Easement Property shall be the responsibility of FP6.

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2.7 Restricted Uses. All Parties agree that they will not do or permit anything to be done on or to the Easement Property, or bring anything on to the Easement Property, or keep or dispose of anything at the Easement Property, that constitutes waste, that materially increases the rate of insurance to any Party, or that that creates a public or private nuisance, or that unreasonably disturbs or interferes with other permitted users of the Easement Property.

## 3. CONSTRUCTION AND MAINTENANCE

3.1 Maintenance. Each Party shall be solely responsible for the repair and maintenance of the portion of Easement Property it owns, and shall perform, or cause to be performed, all maintenance, repair, and replacement work as may be reasonably necessary to keep its portion of the Easement Property in good and serviceable condition and repair, suitable for its intended use. The obligations relative to repair, maintenance, and replacement of the Easement Property, along with the obligation to provide the insurance coverage described in Article 4, below, are collectively referred to herein as the "Maintenance Obligations" and include the following:

3.1.1 Repair. Repairing (including resurfacing), maintaining, replacing, and keeping in good condition at all times, the Easement Property, subject to normal wear and tear, casualty, and condemnation; provided that the Easement Property must always be have a concrete topping or similar material (e.g. concrete pavers) but not asphalt;

3.1.2 Cleaning. At all times removing papers, debris, filth, refuse, and any standing surface waters and washing or thoroughly sweeping paved areas to the extent necessary to keep the subject area in good order and repair;

3.1.3 Landscaping. Maintaining and replacing, if necessary, all landscape plantings, trees and shrubs located within the boundaries of its portion of the Easement Property, if any, in an attractive and thriving condition, trimmed and, to the extent feasible, weed-free; including providing water for landscape irrigation through a properly maintained system;

3.1.4 Obstructions. Keeping the Easement Property free from any obstructions that materially limit its use for the intended purposes unless such obstruction is permitted under the provisions of this Agreement;

3.1.5 Sidewalks. Maintaining, cleaning and replacing those sidewalks located within the boundaries of the Easement Property, if any;

3.1.6 Legal Requirements. Complying with, and causing all of its Permittees to comply with all applicable Legal Requirements; and

3.1.7 Other Maintenance. Performing such other acts that Grantor determines from time to time are reasonably necessary to preserve and protect its portion of the Easement Property in accordance with this Agreement.

3.2 Cost of Maintenance. No Party shall have any obligation to pay any costs of the other Party's performance of its Maintenance Obligations; provided, however, to the extent a Party incurs costs due to the acts or omissions of the other Party or any of its Permittees that cause the first Party to incur costs it would not otherwise have incurred but for such acts or omissions, the



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first Party shall have the right to obtain reimbursement from the non-performing Party (or such Permittees) for such additional costs (“Reimbursable Costs”). If a Party reasonably determines it has incurred costs that are Reimbursable Costs, such Party shall provide the non-performing party with an accounting of the amount of such costs. The non-performing Party shall pay (or cause its Permittees to pay) such Reimbursable Costs to the first Party in accordance with Section 7.2.

3.3 Cost of Construction of the Easement Property. The owner of the FP5 Property (“FP5 Owner”) shall be responsible for the initial construction of the Easement Property, which shall be designed in accordance with the terms of this Agreement, the detailed designs and specifications included in the Holdback Agreement (as hereinafter defined) and as may otherwise be mutually agreed to by the Parties (the “Driveway Construction”). Upon completion of the Driveway Construction in accordance with the detailed designs and specifications thereof, Holdback Agreement (as hereinafter defined), and any work letter entered into between the FP5 Owner and the owner of the FP6 Property (“FP6 Owner”), FP6 Owner shall reimburse FP5 Owner in accordance with the terms of that certain Driveway Easement Holdback Escrow Agreement dated on or about the date hereof between the FP5, purchasers of the FP5 Property, and FP6 Owner (the “Holdback Agreement”). If FP5 Owner does not complete Driveway Construction in the timeframes set forth in the Holdback Agreement, FP6 Owner shall have the option to assume all rights and obligations specified herein relating to the Driveway Construction as more particularly specified in the Holdback Agreement. If FP6 Owner exercises such option, FP5 Owner shall promptly deliver all materials related to the Driveway Construction to FP6 Owner and cooperate with the transition of the Driveway Construction rights and obligations. Upon completion of the Driveway Construction in accordance with the detailed designs and specifications thereof, Holdback Agreement, and any work letter entered into between the Parties, FP5 Owner shall reimburse FP6 Owner in accordance with the terms of the Holdback Agreement.

3.4 Cooperation. Each Party shall take all reasonable and necessary safety and security precautions in connection with its use of the Easement Property. In connection with the use of the Easement Property, each Party shall comply with, and shall cause all of its users to comply with, all applicable Legal Requirements. Each Party and its invitees shall not utilize the Easement Property, or any part thereof, in a manner inconsistent with, or that would materially and adversely interfere with, the other Party’s and its invitees’ use of the Easement Property. All work of a Party on the Easement Property, including the time and manner of performing the same (“Future Work”), shall not materially and adversely interfere with, the other Party’s and its invitees’ use of the Easement Property, and the Parties shall work in good faith to coordinate with the other Party to minimize any disruption caused by the Future Work. The Party performing any Future Work shall provide notice to the other Party not later than twenty (20) days prior to the performance of the Future Work, unless in the event of an emergency, in which case the Party performing such emergency Future Work shall provide notice to the other Party as soon as reasonably possible. The Parties shall reasonably cooperate to implement procedures for the Easement Property to ensure that the Easement Property is consistently maintained and uniformly developed for the harmonious use of the Parties.

3.5 Shared Systems. In the event any Party seeks to construct any systems, fixtures, or improvements benefitting the entire Easement Property (the “Shared Item”) on the FP5 Property or FP6 Property, such Party shall receive the consent of the other Party, which consent will not be unreasonably withheld, conditioned, or delayed. Upon completion of such Shared Item in

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accordance with law and the plans agreed to by the Parties in accordance with the granting of the consent, the non-constructing Party shall reimburse the constructing Party for the non-constructing Party's proportionate share (based on the use and benefit received by the non-constructing Party) of the actual, reasonable, out-of-pocket costs incurred in construction of the Shared Item.

3.6 Snow Melting System. A snow removal or snow melting system and boiler (the "Snow Melting System") shall be installed on the FP5 Property in connection with the Driveway Construction for the benefit of the Easement Property. FP5 agrees to repair, maintain, replace, and otherwise keep in good condition at all times, the Snow Melting System, subject to normal wear and tear and casualty. FP5 shall ensure that the Snow Melting System remains operational at all times from November 1<sup>st</sup> through April 15<sup>th</sup>; provided, however, that FP5 must also cause the Snow Melting System to be operational any other time snow or ice is affecting the Easement Property. In the event that the Snow Melting System is non-operational and any part of the Easement Property is affected by snow or ice, each Party shall be obligated to remove the snow or ice affecting their portion of the Easement Property. FP5 shall be reimbursed by FP6 for fifty percent (50%) of the actual, reasonable, out-of-pocket costs incurred by FP5 in the repair, maintenance, replacement, and operation of the Snow Melting System, in accordance with Section 7.2.

## 4. INSURANCE

4.1 Required Liability Coverages. Each Party shall maintain or cause to be maintained general liability insurance through a customary homeowner's insurance policy insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of its respective portion of the Easement Property, and their tenants, agents, contractors, employees, licensees, customers and invitees, which insurance shall include contractual liability coverage. The insurance policy shall be carried by a reputable insurance company or companies qualified to do business in Illinois, with single limit liability coverage of not less than \$2,000,000. Such amounts of insurance shall be increased from time to time as the Parties may reasonably agree. Such insurance may be carried under a "blanket" or "umbrella" policy or policies covering other properties of the party. Each Party shall, upon written request from any other Party, but not to exceed twice annually, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section.

## 5. INDEMNITY

5.1 FP5 Indemnification. FP5 shall protect, indemnify, defend and hold FP6, its Permittees and its direct and indirect owners, parents, subsidiaries, successors, assigns, officers, directors, shareholders, participants, affiliates, employees, representatives, invitees, tenants, legal representatives, customers, guests, agents and contractors free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs, resulting from arising out of or related to (a) any and all claims made for personal injury, death or property damage occasioned by an alleged accident occurring after the date hereof on the FP5 Easement Property, and (b) the breach of any provision of this Agreement by FP5 and/or its Permittees and its owners, parents, subsidiaries, successors, assigns, officers, directors, shareholders, participants, affiliates, employees, representatives,

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invitees, tenants, legal representatives, agents and contractors; provided, however, that such indemnity shall not apply to the extent such claims, liabilities and expenses result from the negligence or willful misconduct of said indemnitee. The provisions of this Section 5.1 are not intended to prevent or limit any causes of action or remedies existing by statute, law or equity. In the event a claim is raised against a particular owner of the FP5 Property under this Section 5.1, the indemnification obligations set forth herein shall survive any termination of this Agreement and/or the sale or transfer of such owner's interest in the FP5 Property raised during the period in which such owner owned the FP5 Property.

5.2 FP6 Indemnification. FP6 shall protect, indemnify, defend and hold FP5, its Permittees and its direct and indirect owners, parents, subsidiaries, successors, assigns, officers, directors, shareholders, participants, affiliates, employees, representatives, invitees, tenants, legal representatives, customers, guests, agents and contractors free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs, resulting from arising out of or related to (a) any and all claims made for personal injury, death or property damage occasioned by an alleged accident occurring after the date hereof on the FP6 Easement Property, and (b) the breach of any provision of this Agreement by FP6 and/or its Permittees and its owners, parents, subsidiaries, successors, assigns, officers, directors, shareholders, participants, affiliates, employees, representatives, invitees, tenants, legal representatives, agents and contractors; provided, however, that such indemnity shall not apply to the extent such claims, liabilities and expenses result from the negligence or willful misconduct of said indemnitee. The provisions of this Section 5.2 are not intended to prevent or limit any causes of action or remedies existing by statute, law or equity. In the event a claim is raised against a particular owner of the FP6 Property under this Section 5.2, the indemnification obligations set forth herein shall survive any termination of this Agreement and/or the sale or transfer of such owner's interest in the FP6 Property raised during the period in which such owner owned the FP6 Property.

## 6. CASUALTY AND RESTORATION

### 6.1 Restoration Obligation.

6.1.1 Obligation to Repair. In the event of a casualty that results in damage or destruction to a portion of the Easement Property, the Party owning the portion of the Easement Property so damaged (the "Repairing Party"), shall restore, repair, rebuild or replace the damaged or destroyed portions of the Easement Property substantially to their condition immediately prior to the casualty event, as soon as reasonably practicable. In the event of a casualty that results in damage or destruction to a portion of both the FP5 Easement Property and the FP6 Easement Property (a "Dual Casualty"), the Parties shall reasonably coordinate with each other in restoring, repairing, rebuilding, or replacing the damaged or destroyed portions of the Easement Property substantially to their condition immediately prior to the Dual Casualty, as soon as reasonably practicable. In the event of a Dual Casualty, the Parties shall be responsible for the pro rata portion of all costs required to repair the damage that occurred on their portion of the Easement Property.

6.1.2 Election Not to Repair. If the Repairing Party fails pursuant to Section 6.1.1 to or elects not to promptly commence and thereafter diligently pursue and complete the proper restoration, repair, rebuilding or replacement of such damaged or destroyed portions of the



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Easement Property as required hereunder, then the other Party (the “Non-Repairing Party”) may give written notice to Grantor that such failure or election not to restore, repair, rebuild or replace (as the case may be) indicating that if such work is not commenced, or recommenced, within thirty (30) days after receipt of such notice Non-Repairing Party intends to undertake such work on behalf of the Repairing Party, and if the Repairing Party does not commence, or recommence, such work within five (5) days after receipt of such notice, then the Non-Repairing Party shall have a limited non-exclusive easement to enter upon the Easement Property and perform such reasonably necessary restoration, repair, rebuilding or replacement for the use and enjoyment of the Non-Repairing Party and its Permittees, which easement shall terminate upon completion of such restoration, repair, rebuilding or replacement. The cost of any such restoration, repair, rebuilding or replacement performed by the Non-Repairing Party in accordance with this Article 6 shall be the responsibility of the Repairing Party; provided, however, such costs shall be the responsibility of Non-Repairing Party if such damages or destruction is a direct result of the negligence or willful misconduct of the Non-Repairing Party. All amounts invoiced by the Repairing Party to the Non-Repairing Party or Non-Repairing Party to the Repairing Party under this Article 6 shall be reasonable and shall be provided by invoice accompanied with reasonable backup information. Payment shall be made in accordance with Section 6.1.3.

6.1.3 Reimbursements. To the extent entitled to reimbursement in accordance with Section 6.1.2, the Non-Repairing Party shall reimburse the Repairing Party or the Repairing Party shall reimburse the Non-Repairing Party, as applicable, within thirty (30) days of the date of written request to the reimbursing Party. Notwithstanding the foregoing, if an Emergency occurs that requires the immediate restoration, repair, rebuilding or replacement of such damaged or destroyed portions of the Easement Property or equipment or facilities located therein, Section 7.4 shall govern.

## 6.2 Condemnation.

6.2.1 Determination of Condemnation. The taking of portions of the Easement Property by the exercise of the power of eminent domain (“Condemnation”) shall be deemed to be a casualty, and the awards for that taking shall be deemed and treated to be Proceeds from insurance on account of the casualty in accordance with Section 6.1. The Parties shall work to restore the remaining portion of the Easement Property as close as reasonably possible to a complete unit of like quality and character as existed prior to the Condemnation in accordance with Section 6.1.

## 7. DEFAULTS AND REMEDIES

7.1 No Termination for Default. No default by any Party under this Agreement shall entitle any other Party to cancel, rescind or otherwise terminate this Agreement.

7.2 Payments. Any sums payable by a Party to any other Party under the terms of this Agreement shall be paid on or before the thirtieth (30<sup>th</sup>) day after receipt of notice of such payment obligation (together with reasonable supporting documentation) and such amount shall bear interest at the Default Rate from and after the sixteenth (16<sup>th</sup>) day after receipt of notice to and including the date of payment thereof.

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7.3 Enforcement. The Parties shall all rights available to them at law and in equity with regard to this Agreement. Failure of a Party to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter. For avoidance of doubt, only a Party shall have the right to enforce this Agreement.

7.4 Self-Help. If any Party shall fail to perform its Maintenance Obligations (the "Maintaining Party"), the other Party (the "Non-Maintaining Party") shall have the right, but not the obligation, after giving the Maintaining Party at least thirty (30) days' prior written notice of its election to do so (but in the event of Emergency, only such notice as is reasonable under the circumstances shall be required) to perform such obligations on behalf of and for the account of the Non-Maintaining Party, unless the Non-Maintaining Party within said period either cures the failure in question or, if the nature of the failure is such that more than thirty (30) days is required to cure same, commences curative measures within said period and diligently prosecutes the same to completion within a reasonable time. The reasonable costs and expenses of the Maintaining Party in performing any obligations permitted under this Section shall be reimbursed by the Non-Maintaining Party upon demand of the Maintaining Party within fifteen (15) days after such demand is made.

7.5 Lien. If, at any time, a Party (the "Defaulting Party") fails within thirty (30) days after notice or demand to perform any of its obligations pursuant to the provisions of this Agreement then, in addition to any other rights or remedies the other party (the "Non-Defaulting Party") may have, the Non-Defaulting Party shall have a right to file a lien against the portion of the FP5 Property or FP6 Property, as applicable, owned by the Defaulting Party. Such lien shall arise immediately upon the recording of a notice by the Non-Defaulting Party with the Cook County Clerk's Recording Office 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 lien shall continue in full force and effect until such sum of money and any accrued interest thereon (the "Default Amount") shall have been paid in full. Upon such payment in full, the Non-Defaulting Party shall release its lien upon payment in full. Notwithstanding the foregoing, the Non-Defaulting Party's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the portion of the property owned by the Defaulting Party.

7.6 Injunctive Relief: Other Remedies. If any Party or Permittee violates or threatens to violate any of the terms, restrictions, covenants and conditions herein, the other Party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to commencement of any action, at least five (5) days' written notice of any such violation shall be given to the other Party or other Person responsible therefor. Subject to Article 4, the rights and remedies given to any Party shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any such Party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any such Party shall not impair such Party's standing to exercise any other right or remedy.

## 8. MORTGAGEE PROTECTION

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8.1 Right to Encumber. Each Party shall have the right to encumber its ownership interest in the Easement Property, subject to this Agreement, by any Mortgage; provided that any such Mortgages recorded subsequent to this Agreement shall be subject to the terms of this Agreement.

8.2 Default; Prior Claims and Obligations. The provisions, easements, conditions, restrictions, and covenants hereof shall be binding and effective against any Person whose title is acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise; provided, however, that a Mortgagee that takes title to an interest in the Easement Property pursuant to foreclosure of its Mortgage, or any purchaser at a foreclosure or trustee's sale under a Mortgage, shall take such interest free of any claims, obligations or charges under this Agreement resulting from events occurring prior to such taking title, including any obligation to repair or restore (or to contribute to the repair or restoration of) any damage or destruction to the Easement Property or any portion thereof occurring prior to the taking of title to such interest in the Easement Property by such Mortgagee or purchaser, but any insurance Proceeds received in connection therewith shall be applied to restoration in accordance with this Agreement. Any such Mortgagee shall otherwise remain responsible with respect to obligations under this Agreement that relate to the period after taking of title to any interest in the Easement Property.

8.3 Title by Foreclosure. Except as otherwise set forth herein, all of the provisions contained in this Agreement shall be binding on and for the benefit of any Person who acquires title to the FP5 Easement Property (or any portion thereof) or FP6 Easement Property (or any portion thereof), as applicable, by foreclosure, trustee's sale, deed in lieu of foreclosure or other exercise of remedies under such Mortgages.

## 9. MISCELLANEOUS

9.1 Term. This Agreement shall be effective upon the Effective Date and shall continue in perpetuity.

9.2 Amendments. This Agreement may be modified or amended in whole or in part only by recording an amendment in the Official Records, duly executed and acknowledged by the Parties. No modification or amendment of this Agreement shall require any consent or Approval of any Party's Permittees, nor shall any Person other than the Parties have any right to enforce any provisions hereof.

9.3 Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect to which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.4 Rule Against Perpetuities. To the extent that any provision of this Agreement would otherwise be invalid or unenforceable due to a violation of the rule against perpetuities, the same shall be construed and interpreted so that it shall have effect, as though it were expressly stated that the happening of any contingency or event must take place, if at all, within the maximum period permitted therefor in order not to violate said rule.

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9.5 Authority; No Conflicts. Each Party represents and warrants to the other Party that such Party (i) has the requisite power and authority to execute and deliver this Agreement and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated hereby to be performed by such Party and (ii) is not a party to any other agreement that could reasonably be expected to conflict with such Party's obligations under this Agreement.

9.6 Change of Circumstances. Except as otherwise expressly provided in this Agreement, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Agreement.

9.7 Force Majeure Delays. Each Party shall be excused from performing any of its obligations or undertakings provided for in this Agreement, except any of their respective obligations to pay any sums of money under applicable provisions hereof, in the event and for so long as the performance of such obligation or undertaking is prevented, delayed or hindered by Force Majeure Delays, provided that any such excused Party shall use reasonable efforts to mitigate the damages of such excused performance.

9.8 Covenants Running with the Land. The terms of this Agreement and all easements granted hereunder shall constitute covenants running with the land and shall bind the FP5 Easement Property and the FP6 Easement Property and the owners thereof and inure to the benefit of and be binding upon each Party.

9.9 Gender and Number. Wherever the context of this Agreement so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.10 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Agreement are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

9.11 Notices. All notices, demands, requests, consents, Approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail with a return receipt requested, postage prepaid, or sent by nationally recognized overnight express carrier or delivered by hand. Notices shall be sent to the addresses set forth in Exhibit A and Exhibit B, as applicable; provided, however, that a Party shall have the right from time to time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving fifteen (15) days written notice thereof, similarly given, to the other Parties. Notices sent shall be effective upon receipt; provided, however, that (i) notices sent by overnight courier shall be deemed to be received the next Business Day after such notice is sent, (ii) notices sent by registered or certified mail shall be deemed to be received on the third Business Day after such notice is sent, and (iii) the non-receipt of any communication as the result of any change of address of which the sending Party was notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. If any date or any period provided in this Agreement ends

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on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the first Business Day following such Saturday, Sunday, or legal holiday.

9.12 Incorporation of Exhibits. Those exhibits attached to this Agreement are by this reference incorporated herein.

9.13 Estoppel Certificates. Each Party (the "Responding Party"), at any time and from time to time upon not less than twenty days' prior written notice from any other Party (the "Requesting Party"), shall execute and deliver to the Requesting Party, or, at the Requesting Party's request, to any Mortgagee or a bona fide purchaser under an agreement of sale or similar document, a certificate setting forth the following: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications); (b) whether, to the Responding Party's Knowledge, the Requesting Party has paid all amounts payable under this Agreement when due and payable; and (c) whether, to the Responding Party's Knowledge, there are then existing any defaults by the Requesting Party in the performance of its obligations under this Agreement (and, if so, specifying same). As used in this Section 9.13, "Knowledge" shall mean the knowledge of the Responding Party upon a good faith inquiry.

9.14 No Partnership. Neither anything contained in this Agreement, nor any acts of the Parties, shall be deemed or construed by any Person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Parties.

9.15 No Third Party Benefited. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any Person except to the extent expressly provided herein.

9.16 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

9.17 No Merger. Neither this Agreement nor and portion hereof shall be extinguished by merger through the operation of law alone, but only by a recorded instrument specifically so providing.

9.18 Successors and Assigns. This Agreement shall, except as otherwise provided herein, be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

9.19 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

9.20 No Waiver. No waiver of any default by any Party shall be implied from any omission by any other Party to take any action in respect of such default, whether or not such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this



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Agreement. The consent or Approval by any such Party to or of any act or request by any other Party requiring consent or Approval shall not be deemed to waive or render unnecessary the consent or Approval to or of any subsequent similar acts or requests.

9.21 Attorneys' Fees. If any Party hereto shall obtain legal counsel and bring an action against any other Party by reason of the breach of any covenant, provision or condition hereof, or otherwise arising out of this Agreement, then either Party may request that the court or arbitrator render a determination (in the same proceeding in which judgment on the merits of the claim is made) on the issue whether one Party was a "Prevailing Party" with respect to the totality of the final judgment (and not on the basis of the individual elements of the claim) and if one Party is so determined to be a Prevailing Party, the other Party shall pay the Prevailing Party's enforcement costs, as they may be, and reasonable attorneys' and experts costs and fees incurred in connection therewith.

9.22 Interpretation. This Agreement shall be construed in accordance with its fair meaning and not strictly for or against any Party, as the Parties were equally responsible for negotiating and drafting the language of this Agreement. "Including" means "including without limitation".

9.23 Limitation of Liability. Each Party's advisors, trustees, directors, officers, employees, beneficiaries, shareholders, participants and agents shall not be personally liable in any manner or to any extent under or in connection with this Agreement.

9.24 Integration. This Agreement and the Exhibits attached hereto constitute the entire agreement among the Parties with respect to the subject matter hereof.

9.25 Mitigation of Damages. In all situations arising out of this Agreement, each Party and operator, if any, shall attempt to avoid and mitigate the damages and interference resulting from the conduct of any other Party.

9.26 Further Assurances. Subject to the other express provisions of this Agreement, the Parties will cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and the parties agree (a) to furnish, or cause to be furnished, upon request to each other such further non-privileged information, (b) to execute and deliver, or cause to be executed and delivered, to each other such other documents and (c) to do, or cause to be done, such other acts and things, all as the requesting party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated by this Agreement. Notwithstanding any other provision of this Agreement, under no circumstances shall any Party be required to take any action that would reasonably be expected to materially adversely affect the value of their property or otherwise unreasonably interfere with such Party's use and enjoyment of such property as permitted in this Agreement.

[Signatures appear on the following page]

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IN WITNESS WHEREOF, FP5 and FP6 have executed this Agreement as of the date first written above.

**FP5**

**FP5 LLC**, an Illinois limited liability company:

By: RB  
Name: Robert Bruno  
Its: President

**FP6**

**FP6 LLC**, an Illinois limited liability company:

By: RB  
Name: Robert Bruno  
Its: President

Property of Cook County Clerk's Office

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STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

I, Elizabeth C Tyrka, a Notary Public in and for said County and State, do hereby certify that Robert Buono, as president of the manager of FP5 LLC, an Illinois limited liability company, 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 signed and delivered the said instrument as his free and voluntary act, and the free and voluntary act of said limited liability company, for the purposes and therein set forth.

Given under my hand and official seal, this 20 day of March, 2023

Elizabeth C Tyrka  
Notary Public

My Commission Expires: Aug 07, 2023

Property of Cook County Clerk's Office



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## Exhibit A

### FP5 Property Legal Description

THAT PART OF LOTS 3, 4 AND 6, TAKEN AS A TRACT AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 2; THENCE SOUTH 00°31'45" EAST ALONG THE EAST LINE OF LOTS 2 AND 3 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°39'46" WEST 140.00 FEET; THENCE SOUTH 00°31'45" EAST 41.33 FEET; THENCE NORTH 89°39'46" EAST 140.00 FEET TO THE EAST LINE OF LOT 4; THENCE NORTH 00°31'45" WEST ALONG THE EAST LINE OF LOTS 3 AND 4 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING, ALL IN ASSESSOR'S DIVISION OF LOTS 1, 2 AND 3 IN BLOCK 5, IN CANAL TRUSTEE'S SUBDIVISION IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 2338 N Cleveland Avenue, Chicago, IL 60614

Tax PINs: 14-33-104-100-0000



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Exhibit A-1

FP5 Easement Description

[See Attached]

Property of Cook County Clerk's Office

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## GREMLEY & BIEDERMANN

A DIVISION OF  
**PLCS Corporation**

LICENSE NO. 184-005332

PROFESSIONAL LAND SURVEYORS

4505 NORTH ELSTON AVENUE, CHICAGO, IL 60630

TELEPHONE: (773) 685-5102 EMAIL: INFO@PLCS-SURVEY.COM

### Plat of Survey

GRAPHIC SCALE



(IN FEET)  
1" = 16'



#### LEGEND

- ⊙ Storm CB
- ⊙ San Storm Combo MH
- ⊙ Electric Mounted Wall Light
- ⊙ Sign Post
- ⊙ Unclassified Manhole

THAT PART OF LOTS 3, 4 AND 6, TAKEN AS A TRACT AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 2; THENCE SOUTH 00°31'45" EAST ALONG THE EAST LINE OF LOTS 2 AND 3 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°39'46" WEST 140.00 FEET; THENCE SOUTH 00°31'45" EAST 41.33 FEET; THENCE NORTH 89°39'46" EAST 140.00 FEET TO THE EAST LINE OF LOT 4; THENCE NORTH 00°31'45" WEST ALONG THE EAST LINE OF LOTS 3 AND 4 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING, ALL IN ASSESSOR'S DIVISION OF LOTS 1, 2 AND 3 IN BLOCK 5, IN CANAL TRUSTEE'S SUBDIVISION IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY AREA = 5,786 SQUARE FEET OR 0.1328 ACRES, MORE OR LESS.

#### PROPOSED CONDUIT EASEMENT:

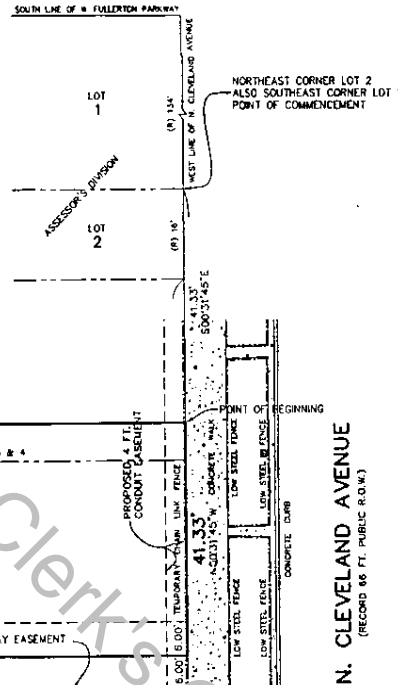
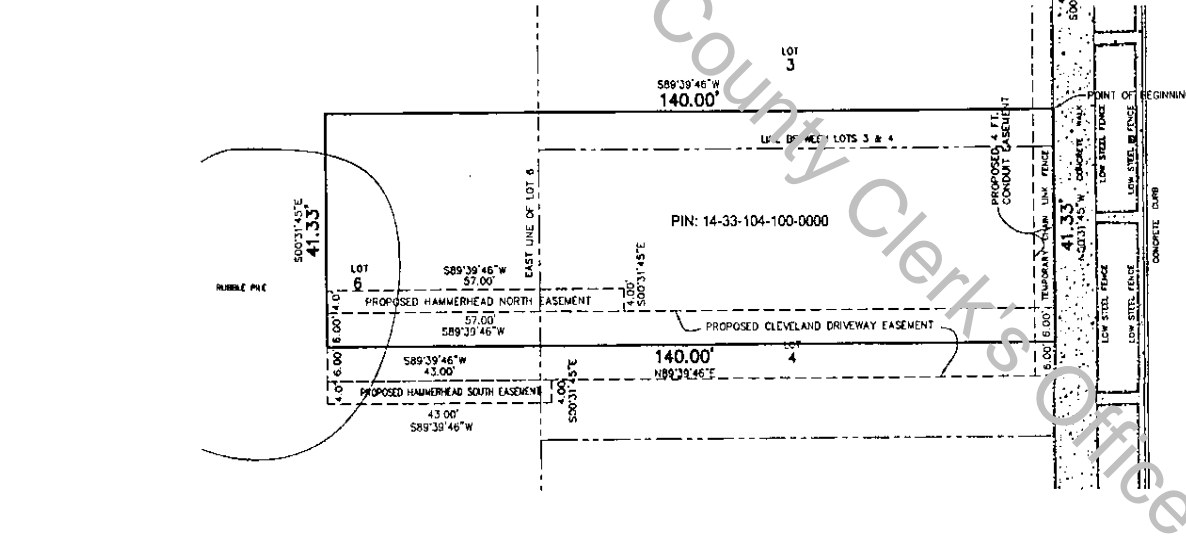
THE EAST 4.00 FEET OF THE FOLLOWING DESCRIBED TRACT: THAT PART OF LOTS 3, 4 AND 6, TAKEN AS A TRACT AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 2; THENCE SOUTH 00°31'45" EAST ALONG THE EAST LINE OF LOTS 2 AND 3 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°39'46" WEST 140.00 FEET; THENCE SOUTH 00°31'45" EAST 41.33 FEET; THENCE NORTH 89°39'46" EAST 140.00 FEET TO THE EAST LINE OF LOT 4; THENCE NORTH 00°31'45" WEST ALONG THE EAST LINE OF LOTS 3 AND 4 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING, ALL IN ASSESSOR'S DIVISION OF LOTS 1, 2 AND 3 IN BLOCK 5, IN CANAL TRUSTEE'S SUBDIVISION IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PROPOSED CLEVELAND DRIVEWAY EASEMENT:

THE SOUTH 6.00 FEET OF THE FOLLOWING DESCRIBED TRACT: THAT PART OF LOTS 3, 4 AND 6, TAKEN AS A TRACT AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 2; THENCE SOUTH 00°31'45" EAST ALONG THE EAST LINE OF LOTS 2 AND 3 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°39'46" WEST 140.00 FEET; THENCE SOUTH 00°31'45" EAST 41.33 FEET; THENCE NORTH 89°39'46" EAST 140.00 FEET TO THE EAST LINE OF LOT 4; THENCE NORTH 00°31'45" WEST ALONG THE EAST LINE OF LOTS 3 AND 4 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING, ALL IN ASSESSOR'S DIVISION OF LOTS 1, 2 AND 3 IN BLOCK 5, IN CANAL TRUSTEE'S SUBDIVISION IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PROPOSED HAMMERHEAD NORTH EASEMENT:

THE NORTH 4.00 FEET OF THE SOUTH 10.00 FEET OF THE WEST 57.00 FEET OF THE FOLLOWING DESCRIBED TRACT: THAT PART OF LOTS 3, 4 AND 6, TAKEN AS A TRACT AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 2; THENCE SOUTH 00°31'45" EAST ALONG THE EAST LINE OF LOTS 2 AND 3 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°39'46" WEST 140.00 FEET; THENCE SOUTH 00°31'45" EAST 41.33 FEET; THENCE NORTH 89°39'46" EAST 140.00 FEET TO THE EAST LINE OF LOT 4; THENCE NORTH 00°31'45" WEST ALONG THE EAST LINE OF LOTS 3 AND 4 A DISTANCE OF 41.33 FEET TO THE POINT OF BEGINNING, ALL IN ASSESSOR'S DIVISION OF LOTS 1, 2 AND 3 IN BLOCK 5, IN CANAL TRUSTEE'S SUBDIVISION IN SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.



RECERTIFIED MARCH 23, 2023 PER ORDER #2023-31052 [RL]  
 REVISED ADDED PROPOSED EASEMENT SEPTEMBER 30, 2022 (BB)

AUGUST 25, 2022 #2022-30213 (BB)

ORDERED BY: [REDACTED]	CHECKED: [REDACTED]
ADDRESS: 515 WEST FULLERTON PARKWAY CHICAGO	DRAWN: [REDACTED]

**GREMLEY & BIEDERMANN**  
 A DIVISION OF  
**PLCS CORPORATION**  
 LICENSE NO. 184-005332  
 PROFESSIONAL LAND SURVEYORS  
 4505 NORTH ELSTON AVENUE, CHICAGO, IL 60630  
 TELEPHONE: (773) 685-5102 EMAIL: INFO@PLCS-SURVEY.COM

ORDER NO. <b>2021-28641-008</b>	DATE NOVEMBER 8, 2021	PAGE NO. 1 of 1
SCALE 1" = 16 FEET		

G:\CAD\2021\2021-28641\2021-28641-008 PARCEL 5.dwg

**SURVEY NOTES:**

SURVEYOR'S LICENSE EXPIRES November 30, 2024

Note (RAM) denotes Record and Measured distances respectively.

Distances are marked in feet and decimal parts thereof. Compare all points BEFORE building by same and at once report any differences BEFORE damage is done.

For easements, building lines and other restrictions not shown on survey plat refer to your abstract, deed, contract, title policy and local building line regulations.

NO dimensions shall be assumed by scale measurement upon this plat.

Monumentation or witness points were not set at the client's request.

Unless otherwise noted hereon the Bearing, Elevation Datum and Coordinate Datum if used is ASSUMED

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STATE OF ILLINOIS)  
 COUNTY OF COOK)SS TO: CHICAGO TITLE INSURANCE COMPANY

WE, GREMLEY & BIEDERMANN, INC. HEREBY CERTIFY THAT WE HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THE PLAT HEREON DRAWN IS A CORRECT REPRESENTATION OF SAID SURVEY CORRECTED TO A TEMPERATURE OF 62° FAHRENHEIT.

THE FIELD WORK WAS COMPLETED ON MARCH 23, 2023.

SIGNED ON MARCH 24, 2023.

BY: *[Signature]*

PROFESSIONAL ILLINOIS LAND SURVEYOR NO. 2802  
 THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

ROBERT G. BIEDERMANN  
 2802  
 PROFESSIONAL  
 LAND  
 SURVEYOR  
 STATE OF  
 ILLINOIS