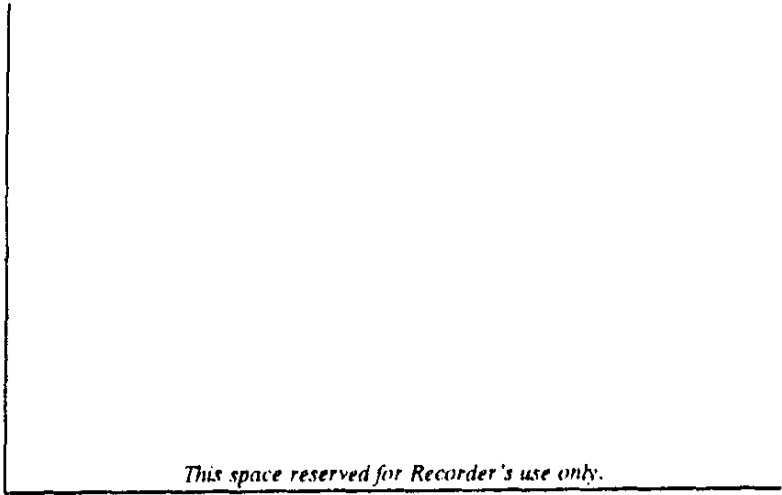


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COOK COUNTY CLERK'S OFFICE  
100 N. WASHINGTON ST. CHICAGO, IL 60601



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**BETH-ANNE  
EASEMENT AND OPERATING  
AGREEMENT**

Property of Cook County Clerk's Office

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This Document Prepared by and  
after Recording Return to:

Richard F. Klawiter, Esq.  
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Chicago, Illinois 60601

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**LIST OF EXHIBITS TO  
BETH-ANNE HOSPITAL  
CHICAGO, ILLINOIS  
EASEMENT AND OPERATING AGREEMENT**

EXHIBIT LETTER	TITLE OR DESCRIPTION
A	Beth-Anne Residences Parcel Legal Description and Depiction
B	Beth-Anne Foundation Parcel Legal Description and Depiction
C-1	Non-Exclusive Easement for Ingress and Egress and Parking Spaces from Beth-Anne Residences for the benefit of Beth-Anne Foundation in Beth-Anne Subdivision
C-2A	Easement for Ingress and Egress from Beth-Anne Residences for the benefit of Beth-Anne Foundation in Beth-Anne Subdivision
C-2B	Easement for Ingress and Egress from Beth-Anne Residences for the benefit of Beth-Anne Foundation in Beth-Anne Subdivision
C-2C	Easement for Ingress and Egress from Beth-Anne Residences for the benefit of Beth-Anne Foundation in Beth-Anne Subdivision
C-2D	Easement for Ingress and Egress from Beth-Anne Residences for the benefit of Beth-Anne Foundation in Beth-Anne Subdivision
C-3	Easement for Structural Support from Beth-Anne Residences for the benefit of Beth-Anne Foundation in Beth-Anne Subdivision

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## EXHIBIT LETTER

## TITLE OR DESCRIPTION

- D-1A Easement for Ingress and Egress and Parking Spaces from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth-Anne Subdivision
- D-1B Easement for Pedestrian Ingress and Egress from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth-Anne Subdivision
- D-2A Easement for Ingress and Egress from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth-Anne Foundation
- D-2B Easement for Ingress and Egress from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth-Anne Foundation
- D-3 Easement for Structural Support from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth-Anne Subdivision
- D-4 Easement for Use and Maintenance of Signs from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth Anne Subdivision
- D-5 Easement for Use of Loading Area from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth-Anne Subdivision
- D-6 Non-Exclusive Easement for Ingress and Egress from Beth-Anne Foundation for the benefit of Beth-Anne Residences in Beth-Anne Subdivision



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EXHIBIT  
LETTER

TITLE OR DESCRIPTION

D-7

Easement for Security Facilities from  
Beth-Anne Foundation for the Benefit  
of Beth-Anne Residences in Beth-Anne  
Subdivision

E

General Utilities Reciprocal Easements

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BETH-ANNE  
CHICAGO, ILLINOIS

EASEMENT AND OPERATING AGREEMENT

THIS EASEMENT AND OPERATING AGREEMENT (this "Agreement") is made and entered into as of the 20th day of January, 1998 by and among BETH-ANNE FOUNDATION, an Illinois not for profit corporation and BETH-ANNE RESIDENCES, an Illinois not for profit corporation.

RECITALS:

1. The terms used in the Recitals, if not otherwise defined in the Recitals or in the immediately foregoing paragraph, have the meanings set forth in Article 1 hereof.
2. The Beth-Anne Plat of Subdivision effected a subdivision of the property generally bounded by Division Street on the North, Thomas Street on the South, Lavergne Avenue on the West, and Lamont Avenue on the East, in the City of Chicago, County of Cook, State of Illinois (the "Property").
3. The Beth-Anne Plat of Subdivision subdivided the Property into the following Lots: Lots 1-6, 7, 7\*, 7A, 7B, 8, 8\*, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8J, 8J\*, 8K, 8L\*, 8M, 9 and 10.
4. Beth-Anne Residences (the "Residences Parcel Owner") is or will be the legal title holder of Lots 8, 8\*, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8J, 8J\*, 8K, 8L\* and 8M of the Property, as legally described and depicted on Exhibit A attached hereto and made a part hereof (the "Residences Parcel").
5. Beth-Anne Foundation (the "Foundation Parcel Owner") is the legal title holder of the balance of the Property, namely, Lots 1-6, 7, 7\*, 7A, 7B, 9 and 10, as legally described and depicted on Exhibit B attached hereto and made a part hereof (the "Foundation Parcel").
6. The Residences Parcel and Lots 7, 7\*, 7A and 7B of the Foundation Parcel comprise a portion of the property formerly known as St. Anne's Hospital (the "Building").
7. The Residences Parcel is being rehabilitated pursuant to a capital advance in the amount of \$10,036,200.00 made by HUD pursuant to the provisions of Section 202 of the Housing Act of 1959, as amended, 12 U.S.C. Section 1701q ("Section 202") and is known as Project No. 071-EE-067. As security for the foregoing, and to insure that the provisions of Section 202 are adhered to, HUD is requiring that the Residences Parcel Owner execute the Loan Documents which create a first lien on the Residences Parcel superior to all other consensual liens and

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encumbrances, including any lien(s) created by this Agreement, which the parties hereto expressly acknowledge.

8. The Building is that part of the former St. Anne's Hospital building located within Lots 7, 7\*, 7A, 7B, 8, 8\*, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8J, 8J\*, 8K, 8L\* and 8M depicted in the Beth-Anne Plat of Subdivision and is or will be generally comprised of the following improvements: (i) the Residences Parcel consisting of five (5) levels and 125 residential apartment units on floors 2 through 6 of the Building, which Residences Parcel is located over, and supported by, the Foundation Parcel; and (ii) the Foundation Parcel, including (a) a ground floor, consisting of a lobby and other office space and (b) elevator shaft enclosures for elevators providing vertical transportation of persons and material between the Foundation Parcel and the Residences Parcel.

9. Pursuant to a Purchase and Sale Agreement, Beth-Anne Foundation will convey to Beth-Anne Residences the Residences Parcel, together with any and all necessary Easements appurtenant thereto as provided in this Agreement.

10. Neither the Foundation Parcel nor the Residences Parcel is or will be structurally or functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of the Foundation Parcel and the Residences Parcel.

11. The Owners desire by this Agreement to provide for the efficient operation of each respective portion, estate and interest in and to the Building and the Property, to assure the harmonious relationship among the Owners of each such respective portion, estate or interest in the Building and the Property, and to protect the respective values of each such portion, estate and interest in the Building and the Property, by creating (i) certain Easements, covenants and restrictions against and affecting the Residences Parcel which will be binding upon the Residences Parcel Owner and which will inure to the benefit of the Foundation Parcel Owner, and (ii) certain Easements, covenants and restrictions against and affecting the Foundation Parcel, which will be binding upon the Foundation Parcel Owner and which will inure to the benefit of the Residences Parcel Owner.

**NOW, THEREFORE**, in consideration of the foregoing and the covenants and agreements of the parties hereto, it is hereby agreed as follows:

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## I

### DEFINITIONS

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

**AFFECTED OWNERS** - As defined in Section 9.4.

**AGREEMENT** - This Easement and Operating Agreement, together with all Exhibits, amendments and supplements hereto.

**ALTERATIONS** - As defined in Article 14.

**ALTERING OWNER** - As defined in Article 14.

**ARBITRABLE DISPUTE** - Any dispute arising under this Agreement which is expressly designated as an Arbitrable Dispute in the text of this Agreement.

**ARCHITECT** - As defined in Article 18.

**ASSESSOR** - As defined in Section 17.1.

**AWARD** - As defined in Section 13.1.

**BETH-ANNE PLAT OF SUBDIVISION** - Plat of Subdivision delineating the boundaries of the Property, including the Residences Parcel and the Foundation Parcel, and including the various elevations of the horizontal planes separating the Residences Parcel and the Foundation Parcel, recorded with the Office of the Recorder on May 22, 1997 as Document No. 97365855.

**BUILDING** - As defined in Recital 6.

**CAPITAL ADVANCE** - An agreement between HUD and the Residences Parcel Owner providing for the payment to the Residences Parcel Owner of the sum of \$10,036,200.00 for the rehabilitation of the Residences Parcel pursuant to certain terms and conditions contained therein and in the Loan Documents.

**CREDITOR OWNER** - An Owner (A) to whom payment of money or other duty or obligation is owed under this Agreement by the other Owner who has failed to make such payment or to perform such duty or obligation as and when required hereunder, or (B) who has exercised any self-help remedy provided for in this Agreement.

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**DEFAULTING OWNER** - An Owner who has failed to perform any of its duties or obligations as and when required under this Agreement or to make payment of money owed under this Agreement to the other Owner.

**DEPOSITORY** - The person or entity from time to time acting pursuant to Article 16. So long as HUD is an Owner, Mortgagee or fee simple owner of the Residences Parcel, the appointment of a Depository and the payment of funds to or by the Depository shall require the advance written approval of HUD, as provided in the Agreement.

**EASEMENT FACILITIES** - A collective reference to Residences Easement Facilities and Foundation Easement Facilities.

**EASEMENTS** - A collective reference to any and all easements provided for, declared, granted, reserved or created pursuant to the terms and provisions of this Agreement (and including easements provided for in this Agreement which are reserved or granted by deed).

**EMERGENCY SITUATION** - A situation impairing or imminently likely to impair structural support of any Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Building or any property in, on, under, within, upon or about the Building or substantial economic loss to an Owner. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

**ESTOPPEL CERTIFICATE** - As defined in Section 15.1.

**FACILITIES** - Any annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment (including, without limitation, heating, ventilating, vent stacks, air conditioning and plumbing equipment), fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring, and the like used in providing services from time to time in any part of the Building, including, without being limited to, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, and any replacements thereof.

**FIRST MORTGAGE** - As defined in Section 20.12.

**FOUNDATION EASEMENT FACILITIES** - The Facilities located in the Residences Property (A) primarily benefiting the Foundation Parcel or (B) necessary for the Foundation Parcel Owner to perform its obligations under Section 5.1 of this Agreement, but in either case

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excluding. (1) Facilities, the Maintenance for which the Residences Parcel Owner is expressly responsible and (2) Foundation Owned Facilities.

**FOUNDATION OWNED FACILITIES** - Facilities owned by the Foundation Parcel Owner and located in the Residences Parcel.

**FOUNDATION PARCEL** - As defined in Recital 3 and as described in Exhibit B hereto.

**FOUNDATION PARCEL OWNER** - As defined in Recital 3.

**HUD** - The United States of America, acting by and through the Secretary of Housing and Urban Development.

**IMPACTED OWNER** - As defined in Section 6.2.

**IMPOSITIONS** - All taxes and other governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against the Property or Building, the improvements located therein, or any part thereof or any interest therein, including, without limiting the generality of the foregoing, all general and special real estate taxes and assessments or taxes assessed specifically in whole or in part in substitution of general real estate taxes or assessments, any taxes levied or a charge upon the rents, revenues or receipts therefrom which may be secured by a lien on the interest of an Owner therein, all ad valorem taxes lawfully assessed upon the Property, the Building or the improvements located therein, all utility and other charges incurred by an Owner in the operation, maintenance, use, occupancy and upkeep of the Property, the Building or the improvements thereon and any other charges lawfully made for improvements that may be secured by a lien on any portion of the Building.

**INDEMNIFYING OWNER** - As defined in Section 6.1.

**INDEMNITEE** - As defined in Section 6.1.

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

**LIENING OWNER** - As defined in Section 6.2.

**LOAN DOCUMENTS** - Any and all documents securing the Residences Parcel Owner's repayment obligations under the Capital Advance to the Residences Parcel Owner including, but not limited to, a (i) Capital Advance Agreement, (ii) Mortgage Note, (iii) Mortgage, (iv)

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Regulatory Agreement, (v) Use Agreement, (vi) Security Agreement, (vii) UCC Financing Statements, and (viii) such other documents as may be executed by the Residences Parcel Owner in connection with the Capital Advance.

**LOTS** - Subdivided portions of the Property.

**MAINTENANCE** - Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, restoration and replacement when necessary or desirable of the Building or Facilities and includes the right of access to and the right to remove from the Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Agreement.

**MECHANICS' LIEN ACT** - As defined in Section 14.3.

**MORTGAGE** - As defined in Section 20.12.

**MORTGAGEE** - As defined in Section 20.12.

**NON-PERFORMING OWNER** - As defined in Article 12.

**OBJECTING PARTY** - As defined in Section 14.1

**OWNED FACILITIES** - A collective reference to Foundation Owned Facilities and Residences Owned Facilities.

**OWNER(S)** - The Foundation Parcel Owner and the Residences Parcel Owner.

**PARCEL(S)** - The Residences Parcel or the Foundation Parcel, or both.

**PERMITTEES** - The Owners, all Persons entitled by lease or license to use or occupy space within the Building, and their respective beneficiaries, officers, directors, employees, agents, partners, shareholders, contractors, invitees and licensees.

**PERSON** - Individuals, partnerships, associations, corporations, limited liability companies, trusts, land trusts, and any other form of business or not for profit organization, or one or more of them.

**PROPERTY** - As defined in Recital 2.

**PURCHASE AND SALE AGREEMENT** - The Purchase and Sale Agreement dated January 25, 1995 by and between the Foundation Parcel Owner and the Residences Parcel Owner.

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**RECORDER** - The Recorder of Deeds of Cook County, Illinois.

**RESIDENCES EASEMENT FACILITIES** - Facilities located in the Foundation Parcel (A) primarily benefiting the Residences Parcel or (B) necessary for the Residences Parcel Owner to perform its obligations under Section 5.2 of this Agreement, but in either case excluding (1) Facilities, the Maintenance for which either the Foundation Parcel Owner is expressly responsible and (2) Residences Owned Facilities.

**RESIDENCES OWNED FACILITIES** - Facilities owned by the Residences Parcel Owner and located in the Foundation Parcel."

**RESIDENCES PARCEL** - As defined in Recital 2 and as legally described in Exhibit A.

**SECRETARY** - The Secretary of Housing and Urban Development, Washington D.C.

**STRUCTURAL SUPPORTS** - All construction elements (including, without limitation, structural members, footings or foundations, slabs, columns, beams, braces and trusses) which are load bearing or which are necessary for the structural integrity of any portion of the Building.

**UTILITY COMPANY** - Any person, including governmental bodies, furnishing water, electricity, sewer, gas, steam, telephone or cable television service or other services or materials generally known as utilities.

1.2 **Construing Various Words and Phrases.** Wherever it is provided in this Agreement 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;" (iv) "Will" and "shall" shall each be construed as mandatory; and (v) The word "in" with respect to an easement granted or reserved "in" a particular Parcel shall mean "in," "to," "over," "within," "through," "upon," "across," "under," and any one or more of the foregoing. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Agreement and all references to Exhibits shall refer to the Exhibits attached to this Agreement. The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to this Agreement 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 Agreement for convenience only and shall not be used to construe the meaning of any part of this Agreement.



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2

## EASEMENTS APPURTENANT TO FOUNDATION PARCEL

2.1 In General. For the purposes of this Article 2, the following shall apply:

1. The Residences Parcel Owner is the grantor of the Easements described in this Article 2. The grants of Easements in this Article 2 shall bind and be enforceable against the Residences Parcel Owner and its successors and assigns.

2. The Foundation Parcel Owner is the grantee of the Easements specifically granted to the Foundation Parcel Owner under this Article 2. The Easements shall benefit the Foundation Parcel Owner and its successors, assigns and Permittees.

3. The grant of an Easement by the Residences Parcel Owner to the Foundation Parcel Owner shall bind and burden the Residences Parcel, which shall, for the purpose of this Article 2, be deemed to be the servient tenement. Where only a portion of the Residences Parcel is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

4. The grant of an Easement to the Foundation Parcel Owner is appurtenant to and shall benefit the Foundation Parcel, which shall, for the purpose of this Article 2 with respect to such Easement, be deemed to be the dominant tenement. Where only a portion of the Foundation Parcel is so benefitted, only that portion shall be deemed to be the dominant tenement.

5. Unless otherwise expressly provided in this Agreement, all Easements granted to the Foundation Parcel Owner are irrevocable and perpetual in nature.

6. In exercising an Easement granted under this Article 2, the Foundation Parcel Owner shall minimize the impact of its exercise on the Residences Parcel Owner, taking into consideration the economic impact of any disruption on the Residences Parcel Owner, and shall comply with the provisions of Section 14.1(5) whether or not the work being performed, or exercise of the Easement, constitutes "Alterations."

7. The Residences Parcel Owner may (1) in connection with the Maintenance, repair or restoration of the Residences, or (2) in an Emergency Situation, or (3) to prevent a dedication of or accruing of rights by the public in and to the use of the Residences Parcel: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, across and through any of the Easements, but only to the minimal extent and for the shortest time period

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reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. The Residences Parcel Owner may, from time to time, impose (1) reasonable limitations on the other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Residences Parcel described in this Article 2, including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which the other Owner or Permittee may use such Easement and (2) reasonable security controls consistent with the Residences Parcel Owner's operation of the Residences Parcel and any security system for the Property. In imposing limitations or controls, the Residences Parcel Owner shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the imposing Owner's own needs and requirements.

8. Any disputes concerning the existence, location, nature and scope of any of the Easements granted or reserved under this Article 2 shall constitute Arbitrable Disputes.

9. Any exclusive Easement granted under this Agreement shall in all events be subject to the concurrent use by the Owner of the servient estate as and to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

2.2 **Ingress/Egress and Parking.** The Residences Parcel Owner hereby grants to the Foundation Parcel Owner a non-exclusive Easement for ingress and egress only for Persons and vehicles in, over, on, across and through Lot 8J of the Residences Parcel and for use of the parking area as depicted on Exhibit C-1, subject to the rules and regulations promulgated therefor by the Residences Parcel Owner. The Residences Parcel Owner hereby grants to the Foundation Parcel Owner a non-exclusive Easement for ingress and egress only for Persons, materials and equipment in, over, on, across and through those portions of Lots 8A, 8B, 8C and 8H as depicted on Exhibits C-2(A)-(D)).

2.3 **Structural Support.** The Residences Parcel Owner hereby grants to the Foundation Parcel Owner a non-exclusive Easement in all Structural Supports, if any, located in or constituting a part of the Residences Parcel for the support of (A) the Foundation Parcel, and (B) any Facilities or areas located in the Residences Parcel with respect to which the Foundation Parcel Owner is granted an Easement and (C) any Foundation Owned Facilities, all as depicted on Exhibit C-3.

2.4 **Use of Facilities.** The Residences Parcel Owner hereby grants to the Foundation Parcel Owner a non-exclusive Easement (A) for the use for their intended purposes of all Facilities (other than Foundation Easement Facilities, for which an Easement is granted under Section 2.5) located in the Residences Parcel, including Foundation Owned Facilities, and

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connected to Facilities located in the Foundation Parcel which provide or are necessary to provide the Foundation Parcel with any utilities or other services necessary to the operation of the Foundation Parcel and (B) permitting the exercise of the rights granted to the Foundation Parcel Owner pursuant to Section 5.5(1) hereof during any period in which said rights may be exercised.

2.5 **Foundation Easement Facilities.** The Residences Parcel Owner hereby grants to the Foundation Parcel Owner an exclusive Easement for the Maintenance under Article 5 and Section 9.1, and for use of the Foundation Easement Facilities, subject to the rights of the Residences Parcel Owner set forth in Section 5.4(1) hereof.

2.6 **Encroachments.** The Residences Parcel Owner hereby grants to the Foundation Parcel Owner an Easement permitting the existence of encroachments if, by reason of the renovation of the Building or the subsequent settlement or shifting of the Building, any part of the Foundation Parcel or Foundation Owned Facilities not originally designed to be located within the Residences Parcel encroaches or shall hereafter encroach upon any of the Residences Parcel. No such encroachment shall be placed or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as such encroachments continue to exist.

2.7 **Common Walls, Ceilings and Floors.** The Residences Parcel Owner hereby grants to the Foundation Parcel Owner a non-exclusive Easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs constructed in and along the boundaries of the Foundation Parcel and the Residences Parcel which also serve as walls, ceilings or floors for the Foundation Parcel.

2.8 **Utilities.** The Residences Parcel Owner hereby grants to the Foundation Parcel Owner (and if requested by the applicable Utility Company, the Residences Parcel Owner shall grant to such Utility Company) non-exclusive Easements for utility purposes, including the right to install, lay, maintain, repair and replace electrical conduit, wires and equipment, water mains and pipes, vent stacks, sewer lines, gas mains, wires and equipment and cables for transmission of telephone, television or other electrically transmitted information in the Residences Parcel within the areas therefor as shown on Exhibit E. If at any time it shall become necessary to relocate or add to utility Easements other than as shown on Exhibit E in order to provide utility service to the Foundation Parcel, the Residences Parcel Owner agrees to grant such additional or relocated utility Easements (at such location mutually agreed to by the Residences Parcel Owner and whichever of the Foundation Parcel Owner requires such relocation or additional Easement) provided such Easements do not unreasonably interfere with the reasonable use and enjoyment of the Residences Parcel for the purposes for which the Residences Parcel is designed, constructed and maintained.

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## EASEMENTS APPURTENANT TO RESIDENCES PARCEL

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

1. The Foundation Parcel Owner is the grantor of Easements described in this Article 3. The grants of Easements in this Article 3 shall bind and be enforceable against the Foundation Parcel Owner and its successors and assigns.

2. The Residences Parcel Owner is the grantee of the Easements described in this Article 3. The Easements shall benefit the Residences Parcel Owner and its successors, assigns and Permittees.

3. The grant of an Easement by the Foundation Parcel Owner shall bind and burden the Foundation Parcel, which shall, for the purpose of this Article 3, be deemed to be the servient tenement. Where only a portion of the Foundation Property is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

4. The grant of an Easement to the Residences Parcel Owner is appurtenant to and shall benefit the Residences Parcel, which shall, for the purpose of this Article 3, be deemed to be the dominant tenement. Where only a portion of the Residences Parcel is so benefited, only that portion shall be deemed to be the dominant tenement. No property other than the Residences Parcel as it may exist from time to time in accordance with the terms of this Agreement shall constitute part of the dominant tenement.

5. Unless otherwise expressly provided in this Agreement, all Easements granted to the Residences Parcel Owner are irrevocable and perpetual in nature.

6. In exercising an Easement granted under this Article 3, the Residences Parcel Owner shall minimize the impact of its exercise on the Foundation Parcel Owner, taking into consideration the economic impact of any disruption on the Foundation Parcel Owner, and shall comply with the provisions of Section 14.1(5) whether or not the work being performed, or exercise of the Easement, constitutes "Alterations."

7. The Foundation Parcel Owner may, (1) in connection with the Maintenance, repair or restoration of the Foundation Parcel, or (2) in an Emergency Situation, or (3) to prevent a dedication of, or an accruing of rights by, the public in and to the use of any of the Foundation Parcel: 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, but only to the minimal extent and for the shortest time period reasonably necessary under the

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circumstances in order to minimize the effect on the user of such Easement. The Foundation Parcel Owner may, from time to time, impose (1) reasonable limitations on any other Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the portion of the Foundation Parcel described in this Article 3, including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which any other Owner or Permittee may use such Easement and (2) reasonable security controls consistent with the operation by such Owner of a portion of the Foundation Parcel of its business on its portion of the Foundation Parcel and any security system for the Property. In imposing limitations or controls, the Foundation Parcel Owner shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the imposing Owner's own needs and requirements. Notwithstanding anything to the contrary contained in this Section 3.1(7), the Foundation Parcel Owner, except in an Emergency Situation, shall provide at least minimal pedestrian ingress and egress access to the Foundation Parcel for Persons at all times.

8. Any disputes concerning the existence, location, nature and scope of any of the Easements granted under this Article 3 shall constitute an Arbitrable Dispute.

9. Except for Easements granting exclusive use of parking spaces, any exclusive Easement granted under this Agreement 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 and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

3.2 **Ingress/Egress and Parking.** The Foundation Parcel Owner hereby grants to the Residences Parcel Owner a non-exclusive Easement for ingress and egress for Persons, material and equipment in, over, on, across and through those portions of the Foundation Parcel as depicted on Exhibits D-1A, D-1B, D-2A, D-2B and D-6, and for vehicles in, over, on, across and through Lots 4 and 10 of the Foundation Parcel. The Foundation Parcel Owner hereby grants to the Residences Parcel Owner an exclusive Easement for use of the parking area as depicted on Exhibit D1-A.

3.3 **Structural Support.** The Foundation Parcel Owner hereby grants to the Residences Parcel Owner a non-exclusive Easement in all Structural Supports located in or constituting a part of the Foundation Parcel for the support of (A) the Residences and any part of the Building in the Residences Parcel, (B) any Facilities or areas located in the Foundation Parcel with respect to which the Residences Parcel Owner is granted an Easement and (C) any Residences Owned Facilities, all as depicted on Exhibit D-3.

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3.4 **Use of Facilities.** The Foundation Parcel Owner hereby grants to the Residences Parcel Owner a non-exclusive Easement (A) for the use for their intended purposes of all Facilities (other than Residences Easement Facilities for which an Easement for use is granted in Section 3.5) located in the Foundation Parcel, including Residences Owned Facilities, and connected to Facilities located in the Residences Parcel which provide or are necessary to provide the Residences Parcel with any utilities or other services necessary to the operation of the Residences Parcel and (B) permitting the exercise of the rights granted to the Residences Parcel Owner herein during any period in which said rights may be exercised.

3.5 **Residences Easement Facilities.** The Foundation Parcel Owner hereby grants to the Residences Parcel Owner an exclusive Easement for the Maintenance and use of the Residences Easement Facilities, subject to the rights of the Foundation Parcel Owner set forth in Section 5.4(1) hereof.

3.6 **Signs.** The Foundation Parcel Owner hereby grants to the Residences Parcel Owner an exclusive Easement for the use, maintenance, repair and replacement of signs located on those portions of the Foundation Parcel as shown on Exhibit D-4. The Residences Parcel Owner shall be responsible for compliance of the signs with all Laws. The Residences Parcel Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use the signs at the designated locations on the Foundation Parcel.

3.7 **Utilities.** The Foundation Parcel Owner hereby grants to the Residences Parcel Owner (and if requested by the applicable Utility Company, the Foundation Parcel Owner shall grant to such Utility Company) non-exclusive Easements for utility purposes, including the right to install, lay, maintain, repair, and replace electrical conduits, wires and equipment, water mains and pipes, vent stacks, sewer lines, gas mains, wires and equipment and cables for transmission of telephone, television or other electrically transmitted information in the Foundation Parcel within the areas therefor as shown more specifically on Exhibit E. If, at any time, it shall become necessary to relocate or add to utility Easements other than as shown on Exhibit E in order to provide utility service to the Residences Parcel, the Foundation Parcel Owner agrees to grant such additional or relocated utility Easements (at such location mutually agreed to by the Residences Parcel Owner) provided such Easements do not unreasonably interfere with the reasonable use and enjoyment of the Foundation Parcel for the purposes for which the Foundation Parcel is designated, constructed and maintained.

3.8 **Deliveries.** The Foundation Parcel Owner hereby grants to the Residences Parcel Owner a non-exclusive Easement for the use of the loading areas as shown on Exhibit D-5 and as necessary or desirable for the efficient delivery or dispatch of materials, supplies, goods, refuse and the like to and from the Residences Parcel, and for any other similar purposes for which such areas are customarily used in an apartment building, subject to the limitations on use set forth in this Agreement. The Residences Parcel Owner acknowledges and agrees that the use of such loading areas described herein by the Residences Parcel Owner and its Permittees

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shall be subject to reasonable rules and regulations promulgated by the Foundation Parcel Owner.

3.9 **Mechanical Units**. The Foundation Parcel Owner hereby grants to the Residences Building Owner a non-exclusive Easement for the use of equipment rooms containing Facilities serving the Residences Parcel.

3.10 **Encroachments**. The Foundation Parcel Owner hereby grants to the Residences Parcel Owner an Easement permitting the existence of encroachments if, by reason of the renovation of the Building or the subsequent settlement or shifting of the Building, any part of the Residences Parcel or Residences Owned Facilities not originally designed to be located within the Foundation Parcel encroaches or shall hereafter encroach upon any part of the Foundation Parcel. No such encroachment shall be placed or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as such encroachments exist.

3.11 **Residences Owned Facilities**. The Foundation Parcel Owner hereby grants to the Residences Parcel Owner an Easement permitting the existence, attachment and Maintenance of Residences Owned Facilities in locations agreed to by the Foundation Parcel Owner.

3.12 **Security**. The Foundation Parcel Owner hereby grants to the Residences Parcel Owner an exclusive Easement for security purposes, including the right to operate and maintain reasonable security controls, in, on and upon Lot 7, as shown on Exhibit D-7.

3.13 **Common Walls, Ceilings and Floors**. The Foundation Parcel Owner hereby grants to the Residences Parcel Owner a non-exclusive Easement for support, enclosure, use and maintenance with respect to those walls and horizontal slabs constructed in and along the boundaries of the Residences Parcel and the Foundation Parcel which also serve as walls, ceilings or floors for the Residences Parcel.

3.14 **Light, Air and Maintenance**. The Foundation Parcel Owner hereby grants to the Residences Parcel Owner a non-exclusive Easement over those portions of the Foundation Parcel as are required to provide and maintain light, air and exterior maintenance for and on the Residences Parcel. The Foundation Parcel Owner covenants not to construct any additional buildings within fifteen (15) feet of the boundaries of the Building without the written consent of the Residences Parcel Owner and HUD.

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## **STRUCTURAL SUPPORT**

4.1 **Structural Safety and Integrity**. Neither Owner shall do or permit any act which would adversely affect the structural safety or integrity of any portion of the Building, including any act described in Section 14.1(2).

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4.2 **Reduction of Structural Support.** If for any reason the structural support for any portion of the Building is inadequate or is reduced below the support required to maintain the structural safety or integrity of said portion of the Building, either Owner may request that the Architect or another structural engineer (who shall then act in the capacity of "Architect" under this Article 4) and a contractor (in each case reasonably acceptable to all Owners) the adequacy of the support or extent of any such reduction and the need for or adequacy of any substitute or additional structural support. In such event, the Owners shall provide notice of the same to HUD in accordance with Article 19 and neither Owner shall have the right to request the architectural or engineering review as aforesaid without first obtaining HUD's written consent thereto. The Architect and contractor shall also estimate, if possible, the time reasonably necessary to provide adequate substitute or additional structural support. If the structural support has been reduced or is inadequate, the Owners shall attempt in good faith to determine which Owner(s) are responsible (including such Owner's agents, contractors, engineers, architects and Permittees) for such inadequacy or reduction, and any Owner may submit such question to the Architect for its advice.

4.3 **Construction of Additional Support.**

1. If substitute or additional structural support is required in a portion of the Building in which the structural support is inadequate or has been reduced, then the Owner or Owners responsible for such inadequacy or reduction (except as provided in Section 4.3(2) where the Owners are expressly made jointly responsible), if the responsible Owner or Owners can be determined, shall commence the construction of such substitute or additional support within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction in accordance with plans and specifications prepared by or approved by the Architect and approved by the Owners. The responsible Owner or Owners shall be severally liable to pay all costs and expenses, including the Architect's and any other architectural fees, in connection with construction of the substitute or additional support, including any ongoing Maintenance costs, and if a responsible Owner has paid more than its share, such Owner shall be entitled to contribution or reimbursement from the other Owner in proportion to the other responsible Owner's share of liability. The provisions of Sections 9.3 and 9.4 and not this Article 4, shall apply if the reduction or inadequacy in structural support results from a fire or other casualty. An Owner may be "responsible" for inadequate or reduced structural support if such Owner provided information to the design professionals or contractor which resulted in such inadequacy or reduction in structural support.

2. If the responsible Owner or Owners cannot be determined for any reason, or if the reduction or inadequacy in structural support results from a defect in the original construction of any portion of the Building then each Owner shall jointly be responsible for substitute or additional structural support and shall share all costs and expenses as provided below. For purposes of this Section 4.3, a defect in the original construction of a portion of the Building does not include structural matters which arise out of improper maintenance by the other Owner or which

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constitute required or ordinary maintenance responsibilities. In any case where there is a responsible party other than an Owner, the Owners will jointly pursue appropriate legal and equitable remedies against the responsible party. If joint action is not legally possible, then the Owner or Owners who have a remedy will pursue enforcement for the benefit of both Owners. Where damages are recovered from third parties, the Owners shall apply amounts recovered in the following priority: first, to the costs of suit; second, to payment of costs and expenses of providing substitute or additional support; third, to damages suffered by the Owners as a result of such reduction or inadequacy in structural support, to each Owner in the ratio of damages suffered by such Owner to total damages suffered by the Owners; and fourth, the balance, if any, to the Owners *pro rata*. Each Owner, whether pursuing enforcement or not, shall share the costs and expenses (including any fees of the Architect for advice or preparation of plans and specifications) of substitute or additional support and any enforcement action under this Section 4.3(2), to the extent such costs and expenses are not recovered from third parties.

3. The construction of such substitute or additional support shall be performed by a contractor or contractors jointly selected by the Owners (which selection shall be subject to the approval of the Mortgagees). In the event the Owners and the Mortgagees fail to agree upon the selection of a contractor or contractors to construct such substitute or additional support, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. For purposes of this Article 4, provision or construction of substitute or additional structural support shall also include any Maintenance required to remedy or prevent the inadequacy or reduction in structural integrity or safety of the Building.

Notwithstanding anything to the contrary contained in this Section 4.3, the exercise by either Owner of rights with respect to the construction of additional support are subject to the prior written approval of HUD.

4.4 **Effect of Delay.** If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portion of the Building, 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 or Owners of the portion of the Building in which the reduction occurred or is occurring shall, upon not less than ten (10) days advance written notice to the other Owner (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever required, or the Owners shall jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner (or Owner otherwise liable for a share of costs and expenses of providing substitute or additional structural support) shall be liable for and pay all costs and expenses incurred as a result of the other Owner's provision of any required substitute or additional support.

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## SERVICES TO RESIDENCES PARCEL OWNER AND TO FOUNDATION PARCEL OWNER

5.1 Services to Residences Parcel Owner. The Foundation Parcel Owner shall furnish or cause to be furnished the following services to the Residences Parcel Owner when, as and if required:

A. Domestic (City) Water. Maintenance of Facilities providing for delivery of domestic (city) water to the Residences Parcel.

B. Combination Standpipe and Low Level Sprinkler. Maintenance of Facilities providing for combination standpipe and low level sprinkler protection for the use of the Residences Parcel.

C. Storm Water. Maintenance of Facilities providing for storm water drainage for the use of the Residence, Parcel.

D. Sanitary Waste and Vent. Sanitary waste and vent drainage for the use of the Residences Parcel.

E. HVAC. Maintenance of Facilities providing for heating, ventilating and air conditioning for the Residences Parcel.

F. Street Level Exterior Maintenance and Snow Removal. Street level exterior maintenance and snow removal shall be provided to the Residences Parcel.

G. Security. Maintenance of Facilities located on the Foundation Parcel providing certain security functions for the Residences Parcel.

H. Utility Facilities. Such Facilities as may be necessary to provide for the delivery and transport of gas and electric services to the Residences Parcel.

5.2 Services to Foundation Parcel Owner. The Residences Parcel Owner shall furnish or cause to be furnished the following services to the Foundation Parcel Owner, as and if required:

A. Lightning Protection. Maintenance of Facilities providing for lightning protection for the Foundation Parcel.

5.3 Obligation to Furnish Services. Each Owner shall make a good-faith effort to operate its Facilities and furnish all services as required under this Article 5 in a manner consistent with its intended respective use as first-class office or residential property and the level of operation and management of comparable properties. Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this Article 5 but shall not be liable under this Article 5 for interruption or inadequacy of service or loss or

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damage to property or business arising out of such interruption or inadequacy except as may be provided in Sections 5.4 and 5.5. Each such Owner obligated to furnish services hereunder 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 9.1 and 9.2 which are connected to other Facilities in the Building, the responsibility for whose Maintenance is another Owner's under this Article 5, shall perform its obligations under Section 9.1 or 9.2 in such a manner and standard so as to permit and facilitate the other Owner's performance of its obligations under Article 5. In no event shall the Foundation Parcel Owner be obligated under Article 5 for Maintenance of Residences Easement Facilities, nor shall the Residences Parcel Owner be obligated under Article 5 for Maintenance of Foundation Easement Facilities, except as otherwise provided in this Agreement.

## 5.4 Foundation Parcel Owner's Failure to Perform Services.

1. If the Foundation Parcel Owner shall fail to perform as required by the terms and conditions of Section 5.1 of this Agreement (except when such failure is caused by the Residences Parcel Owner or by Unavoidable Delay or except when the Foundation Parcel Owner is entitled to discontinue such service pursuant to Section 5.3 or Section 5.7 hereof) and such failure shall continue for a period of ten (10) days after written notice thereof to the Foundation Parcel Owner from the Residences Parcel Owner, the Residences Parcel Owner shall have the right to perform the same (without limiting any other rights or remedies of the Residences Parcel Owner) until such time as the Foundation Parcel Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting the Residences or any of its occupants.

2. If a dispute exists as to whether the Foundation Parcel Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 11 if not resolved within ten (10) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate the Residences Parcel Owner's rights under Section 5.4.

## 5.5 Residences Parcel Owner's Failure to Perform Services.

1. If the Residences Parcel Owner shall fail to perform as required by the terms and conditions of Section 5.2 of this Agreement and if such failure shall continue for a period of ten (10) days after written notice thereof to the Residences Parcel Owner from the Foundation Parcel Owner, the Foundation Parcel Owner shall have the right to perform the same (without limiting any other rights or remedies of the Foundation Parcel Owner) until such time as the Residences Parcel Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation affecting the Foundation or any of its occupants.

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2. If a dispute exists as to whether the Residences Parcel Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute which may be submitted to arbitration under Article 11 if not resolved within ten (10) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate the Foundation Parcel Owner's rights under Section 5.5.

5.6 **Replacement of Facilities.** An Owner may, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better.

5.7 **Conflict with Other Provisions.** The provisions of Article 4, 9 and 13 control over provisions of Article 5 where such provisions are inconsistent with provisions of Article 5.

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## INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS; ZONING;

6.1 **Indemnity by Owners.** Each Owner (hereinafter in this Section 6.1, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owner (hereinafter in this Section 6.1, collectively 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, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Building or Owned Facilities or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement or Facility, and from and against all costs, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. 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. Notwithstanding anything to the contrary in this Section 6.1, when the Indemnifying Owner is the Residences Parcel Owner, no Indemnitee shall have or assert any claim or lien of any kind against the HUD Project (as such term "Project" is defined and described in the Loan Documents) by reason of any actual or claimed right under the provisions of this Section 6.1.

6.2 **Liens.** Each Owner ("Liening Owner") shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien arising by reason of its act or acts of its agents and contractors or any work or materials which it or its agents or contractors has ordered (A) on the other Owner's portions of the Building or Owned Facilities, or (B) on its own portion of the Building or Owned Facilities, if the existence or foreclosure of such lien on its own portion of the Building or Owned Facilities would adversely affect any Easement benefitting the other Owners the other Owners or services to be furnished the other Owners pursuant to Article 5 hereof (such other Owners in (A) or (B) being "Impacted Owner"). The Liening Owner shall not be required to remove such lien within thirty (30) days after its

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filing if: within said thirty (30) day period, (A) such lien cannot be foreclosed, and (B) the Liening Owner (i) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien and (ii) shall deliver to the Impacted Owner either, at the Impacted Owner's option: (a) cash or a surety bond from a responsible surety company 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 (b) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner. In any case, a Liening Owner must remove or release such lien prior to its foreclosure. In the event the Liening Owner fails to comply with the foregoing provisions of this Section 6.2, thereby becoming a Defaulting Owner, the Impacted Owner, thereby becoming the 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 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 6.2.

**6.3 Compliance With Laws.** The Foundation Parcel Owner and the Residences Parcel Owner:

1. shall each comply with all Laws, if noncompliance by such Owner with respect to its portion of the Property or any part thereof or Owned Facilities or areas for which such Owner has been granted an exclusive Easement would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for the Building itself or would jeopardize the other Owner's right to occupy or utilize beneficially its respective portion of the Property or any part thereof or Owned Facilities, or would result in the imposition of a lien against any of the property of the other Owner; and

2. 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 the other Owner's portion of the Property or Owned Facilities if noncompliance by it with respect to its respective portion of the Property or any portion thereof or Owned Facilities would (i) increase the premiums of any policy of insurance maintained by the other Owner or the premiums of any policy of insurance maintained by the Owners (unless the non-complying Owner pays all such increases), or (ii) render the other Owner's portion of the Property or Owned Facilities uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring such other Owner's portion of the Property or Owned Facilities provided further, however, that if such compliance is hereafter required solely because of the nature of the use, possession and management of or activities in the other Owner's portion of the Property or Owned Facilities, such other Owner

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shall be liable for the costs and expense of such compliance. If at any time the Owner so obligated to comply shall not proceed diligently with any such compliance, and such failure to proceed shall adversely and materially affect the other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur.

## 6.4 Zoning Use.

1. Without limiting the provisions of Section 6.3(1), neither the Residences Parcel Owner nor the Foundation Parcel Owner shall (i) make any Alterations, (ii) allow any use of their respective portions of the Building, or (iii) take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance, as said ordinance may be amended from time to time.

2. The Foundation Parcel and Residences Parcel are now and shall continue to be combined and treated as one zoning lot for the purposes of complying with the zoning ordinance applicable to the Property. If the applicable zoning ordinances require that there be a single designated controlling entity for the zoning lot, then for purposes of dealing with the City of Chicago, the Foundation Parcel Owner shall be such designated entity. The foregoing designation will not be deemed to expand such Owner's rights or reduce the other Owner's rights under this Section 6.4.

3. Applications for variations in the application of the provisions of the Chicago Zoning Ordinance applicable to the Property which conform to the restrictions contained herein and do not change the permitted use under such ordinances or this Agreement, may be filed and processed solely by the Owner of the portion of the Building directly affected by such application and shall not require the joinder of the other Owner, subject to the written consent of HUD as hereinafter provided in this Section 6.4.

4. Each Owner shall execute such applications or other instruments as may be necessary to obtain any zoning variation or amendment conforming with the provisions of this Section 6.4; provided, however, the Owner requesting such zoning variation or amendment shall indemnify and hold harmless the other Owners from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of such applications or other instruments. If either Owner fails to execute said applications or instruments when required hereunder to do so, the Owner requesting such zoning variation or amendment is hereby irrevocably appointed, subject to the written consent of

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HUD as hereinafter provided in this Section 6.4, attorney-in-fact of such Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such Owner, subject to the written consent of HUD as hereinafter provided in this Section 6.4.

5. The Residences Parcel Owner may not use the Residences Parcel for any use other than residential purposes and uses ancillary to residential purposes. The Residences Parcel Owner shall operate the Residences Parcel as a first-class residential property.

So long as HUD is an Owner or a Mortgagee of the Residences Parcel, the Residences Parcel shall be used in accordance with the statute, regulations and HUD directives that are applicable to an elderly project created pursuant to Section 202 or such other use as HUD in its sole discretion may approve in writing. Further, no Owner is or shall be appointed or act as attorney-in-fact for any purpose for the Residences Parcel Owner unless HUD gives its prior written consent upon specific written request to so do. So long as HUD is an Owner or a Mortgagee of the Residences Parcel, the Foundation Parcel Owner may not use that part of the Building located in the Foundation Parcel for any use other than a use permitted under Law and which is compatible with the use of the Residences Parcel as a multi-family residential apartment building for elderly persons.

7

## REAL ESTATE TAXES

7.1 Separate Assessment. If necessary, the Foundation Parcel Owner will petition the Assessor of Cook County, Illinois (the "Assessor"), to assess and tax separately the Foundation Parcel and the Residences Parcel for calendar year 1998 and subsequent years. The Owners shall cooperate with each other and make good faith efforts so that the Foundation Parcel and the Residences Parcel, when possible, will be assessed separately by the Assessor and taxed as two or more separate parcels of real estate. If at any time there is a separate assessed valuation determinable based on an examination of the Assessor's records (but not a separate tax bill or bills) for each of the two parcels, real estate taxes for any combined parcels shall be allocated between the parcels based on the ratio of the assessed valuation for such parcels. The Residences Parcel Owner shall be entitled to petition the Assessor for a real estate tax exemption for the Residences Parcel for the year 1998 and any and all subsequent years.

7.2 Reference to Taxes in Leases. For purposes of this Agreement and any documents or instruments, such as leases, referring to the allocation of real estate taxes pursuant to this Agreement, the real estate taxes allocated to a portion of the Building or Property shall mean those taxes assessed and payable with respect to such portion of the Building or Property, as long as such portion of the Building or Property is separately assessed and taxed.

7.3 Failure to Pay Taxes. If a Defaulting Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article 7, and if such unpaid tax or charge is a lien or encumbrance on any

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portion of the Building or Property and any lawful authority would thereafter have the right to sell or otherwise foreclose against any portion of the Building or Property owned by the other Owner or to impair or extinguish any Easement benefiting the other Owner by reason of such nonpayment, then the Creditor Owner may, after ten (10) days written notice to the Defaulting Owner, pay such tax or charge 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 amounts that accrued thereon.

7.4 **No Separate Bill.** If at any time after the initial tax division is effected there is not a separate assessed valuation which can be determined by an examination of the Assessor's records and tax bills for the Foundation Parcel and the Residences Parcel, real estate taxes for which no separate assessed valuation can be so determined shall be allocated to each Owner not separately assessed and taxed based on the ratio of (a) respective appraised value of each parcel of the Property for which such Owner is obligated to pay real estate taxes (as set forth in Section 7.1) which is not included in a separate tax bill to the Owner, to (b) the total appraised values of such parcels not included in a separate tax bill to the Owner. If the Owners cannot agree on the ratio to be used, such matter shall be an Arbitrable Dispute.

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## INSURANCE

8.1 **Insurance Required.** The Residences Parcel Owner and the Foundation Parcel Owner shall procure and maintain the following insurance:

1. **Real and Personal Property.** The Residences Parcel Owner shall keep the Residences Parcel and Residences Owned Facilities insured for no less than "all risk" coverage on real property and personal property owned by the Residences Parcel Owner used in the operation of the Residences Parcel for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. The Foundation Parcel Owner shall keep the Foundation Parcel and Foundation Owned Facilities insured for no less than "all risk" coverage on real property and personal property owned by the Foundation Parcel Owner used in the operation of the Foundation Parcel for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. Each Owner shall separately insure on an "all risk" basis 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 office or apartment buildings 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.

2. **Public Liability** - The Foundation Parcel Owner and the Residences Parcel Owner shall each (1) insure against public liability claims and losses on a comprehensive or commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury or property

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damage occurring in, on, under, within, upon or about the Building, or as a result of operations thereon (including contractual liability covering obligations created by this Agreement including, but not limited to, those indemnity obligations contained herein), and (2) 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 office or residential buildings (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 Building, of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with an amount not less than \$3,000,000 umbrella coverage. Each such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds.

3. **Boiler and Machinery.** The Foundation Parcel Owner and the Residences Parcel Owner shall each insure their respective boiler and machinery risks, on a comprehensive, blanket basis covering all Building 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 \$3,000,000 limit each accident, and each Owner shall also provide coverage as to each Owner in accordance with its own needs, for loss of rental income or use caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts as may be carried from time to time by prudent owners of first-class office or residential buildings in the City of Chicago, Illinois. Alternatively, each Owner may separately insure its loss of rental income caused by business interruption or extra expense incurred to reduce such loss of income in required amounts.

4. **Flood** - The Foundation Parcel Owner and the Residences Parcel Owner, in addition to "all risk" property insurance required under Section 8.1(1), shall each insure their respective portions of the Building against 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; subject, however, to deductibles available and reasonable for such type of insurance.

5. **Builder's Risk.** Each Owner shall 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 under Article 4, Section 9.3 or 9.4 or for any Alterations which require another Owner's consent under Section 14.1. 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 "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 office or residential buildings in the City of Chicago.

6. **Worker's Compensation.** Each Owner shall carry worker's compensation insurance in amounts as required by Law and employer's liability insurance in not

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less than the following amounts: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 each employee; bodily injury by disease, \$1,000,000 policy limit.

8.2 **Insurance Companies.** Unless the Foundation Parcel Owner and the Residences Parcel Owner otherwise agree in writing, but in any event subject to the approval of the Mortgagees, including HUD, with respect to each of the insurance policies required in Section 8.1 (for work being performed under Sections 4.3 or 9.4) hereof, the interest of each Owner shall be insured separately by the same insurance companies with respect to each Owner's interest in the Building. Insurance policies required by Section 8.1 hereof 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/XIV (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.

8.3 **Insurance Provisions.** Each policy described in Section 8.1 (other than Section 8.1(6) 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" insureds the Foundation Parcel Owner and the Residences Parcel Owner (except that the Owners other than the primary insured shall be "additional" insureds under policies described in 8.1(2)); (iii) shall provide (except for liability insurance described in Section 8.1(2)), 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, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iv) shall provide, except for liability insurance required by Section 8.1(2), that all losses payable thereunder shall be paid to the Depository in accordance with the terms of Article 16 hereof, unless the Owners otherwise agree, subject to the consent of the Mortgagees; (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; (vi) shall include a standard mortgagee endorsement or loss payable clause in favor of the Mortgagees reasonably satisfactory to them; and (vii) shall not include a co-insurance clause. Unless otherwise specified herein, the "all-risk" form of property-related insurance required to be procured and maintained by the Residences Parcel Owner and Foundation Parcel 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.

8.4 **Limits of Liability.** Insurance specified in this Article 8 or carried by the Owners shall be jointly 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 Building

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or operations conducted in the Building), 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 transferred 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 8.1(1) (other than loss of rental income insurance), 8.1(3) and 8.1(5) shall not exceed \$5,000; provided, however, such maximum shall not apply to an Owner at any time who qualifies under Section 8.7 to self-insure risks. Deductible amounts for insurance required under Section 8.1(2) shall not be more than is reasonable considering the financial responsibility of the insured and shall also be subject, in any case, to the consideration to be given deductible amounts described above in this Section 8.4. Where separate policies are issued under Section 8.1(1) or 8.1(4), 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 8. 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 with the Recorder as a supplement to this Agreement. With the consent of each Owner, 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 shared by the Owners in the ratio their annual insurance premiums for joint policies of insurance required or provided for hereunder bear to each other.

**8.5 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 Owner and to the Mortgagees at least ten (10) days prior to the expiration date of any such expiring insurance policy. Binders shall be replaced with certified full copies of the actual renewal policies as soon as reasonably possible. Should an Owner fail to provide and maintain any policy of insurance required under this Article 8 or pay its share of the premiums or other costs for any joint policies, then the other Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after the Creditor Owner's written demand therefor.

**8.6 Waiver.** Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Agreement, each Owner hereby waives all claims for recovery from the other Owner 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.

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## MAINTENANCE AND REPAIR: DAMAGE TO THE BUILDING

9.1 **Maintenance of Foundation Parcel.** Except as expressly provided in Sections 5.1 and 5.2 hereof relating to Maintenance of certain Facilities and areas of the Building or hereinafter in this Article 9 in the event of fire or other casualty, and except as provided in and without limiting or diminishing such Owner's obligations under Article 4, the Foundation Parcel Owner shall, at its sole cost and expense, maintain and keep the Foundation Parcel, including all Facilities located in its respective portions of the Foundation Parcel (other than the Residences Easement Facilities and Residences Owned Facilities), and its portion of the Foundation Easement Facilities and Foundation Owned Facilities in good and safe order and condition, 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, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise.

9.2 **Maintenance of Residences Parcel.** Except as expressly provided in Sections 5.1 and 5.2 hereof relating to Maintenance of certain Facilities and areas of the Building or hereinafter in this Article 9 in the event of fire or other casualty, and except as provided in and without limiting or diminishing such Owner's obligations under Article 4, the Residences Parcel Owner shall, at its sole cost and expense, maintain and keep the Residences Parcel, including all Facilities located in the Residences Parcel (other than the Foundation Easement Facilities and Foundation Owned Facilities), the sign described in Section 3.6, the Residences Easement Facilities and Residences Owned Facilities in good and safe order and condition, 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 and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise.

9.3 **Damage Affecting Only Residences or Foundation.** If any portion of the Building is damaged by fire or other casualty and (A) if such damage occurs within the Foundation Parcel only and does not affect Residences Easement Facilities or Residences Owned Facilities, or (B) if such damage occurs within the Residences Parcel only and does not affect Foundation Easement Facilities or Foundation Owned Facilities, then any such damage shall be repaired and restored by the Owner of the portion of the Building 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 17 hereof, be entitled to withdraw any insurance proceeds (including deductible amounts and self-insurance amounts) held by the Depository by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time either Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration adversely and materially affecting an Easement in favor of the other Owner or services to be furnished the other Owner under Article

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5 hereof, then (i) the 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 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 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 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 17 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 costs and expenses incurred by Creditor Owner in excess of said insurance proceeds. Repair and restoration under this Section 9.3 shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the other Owner's consent if such consent would not otherwise be required under Section 14.1.

9.4 **Joint Damage** If the Building is damaged by fire or other casualty and if the provisions of Section 9.3 hereof are not applicable because the nature of the damage is such that it does not fall within either of the categories set forth in clause (1) or (2) of Section 9.3, then to the extent such damage does not fall within either of such categories, the repair and restoration of only that portion of such damage which does not fall within those categories shall be the joint responsibility of the Owners in whose portion of the Building the damage occurs or whose Facilities are damaged (the "Affected Owners"). 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 selected by the Affected Owners, which selection shall be subject to the approval of the Mortgagees if the approximate cost of the repair and restoration is greater than \$50,000 (in 1998 equivalent dollars). 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 Owners, 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 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, subject to the approval of their Mortgagees, in accordance with instructions given by the Affected Owners. Such plans and specifications shall provide for the damaged portion of the Building to be rebuilt as nearly identical as practicable to the damaged portion of Building 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 the other Affected Owners under Section 14.1(2) where required. The Architect (or other architect or engineer 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 if the approximate cost of the repair and restoration is greater than \$50,000 (in 1998 equivalent dollars), any contractor or contractors shall work under the supervision of the Architect (or other architect or engineer preparing the plans and

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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] as such repair and restoration progresses, to disburse in accordance with Article 17 hereof, the insurance proceeds (including deductible amounts) held by the Depository and any other monies deposited with the Depository pursuant to Section 9.5 hereof for application against the cost and expense of any such repair and restoration.

9.5 **Cost of Repairs.** If the cost and expense of performing any repair and restoration provided for in Section 9.4 hereof shall exceed the amount of available insurance proceeds if any, paid by reason of the damage, including deductible amounts 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 Article 5 providing for allocation of 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 Building and Owned Facilities. Notwithstanding the foregoing, if an Owner has not carried the insurance required under Article 8 and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance which the other Owner is obligated to pay which would not have been payable by such Owner if proper insurance had been carried to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

9.6 **Deposit of Costs.** In any instance of repair or restoration pursuant to Sections 9.3 or 9.4 hereof, the Residences Parcel Owner or the Foundation Parcel 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 has theretofore been executed. If said estimate or stipulated sum, or if the 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 either Owner may at any time give notice to the other Owner demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to Section 9.5. Any Owner maintaining deductible amounts shall deposit the deductible amounts. 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 9.6, or fails to deliver the security provided for above within ten (10) days after receipt of the other Owner's written demand therefor, then the Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

9.7 **Excess Insurance Proceeds.** Upon completion of the repair and restoration of any damage to the Building, 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 by the insurer for the repair and restoration or, if the insurance is

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provided by a single policy covering the Building, then the ratio of insurance proceeds attributed to such Owner's portion of the Building and Owned Facilities by the insurer or the Owners to the total insurance proceeds made available by the insurer or the Owners for the repair and restoration. For purposes of this Section 9.7, insurance proceeds include deductible amounts.

9.8 **Agreement Not to Repair.** If the Building is destroyed or substantially damaged, and the Foundation Parcel Owner and the Residences Parcel Owner agree not to rebuild, repair or restore the Building, subject to the written approval of the Mortgagees of the Foundation Parcel Owner and the Residences Parcel Owner, then the Building shall be demolished to the extent necessary to comply with all applicable Laws. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to each Owner in the same ratio of insurance proceeds contributed by such Owner or by such Owner's insurance company to the total insurance proceeds paid by reason of such damage or, if the insurance is provided by a single policy covering the Building, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Building and Owned Facilities to the total insurance proceeds paid by reason of such damage. If the Owners agree not to rebuild, repair or restore the Building, the rights of the Owners to receive available insurance proceeds, if any, shall be subject to the rights of the Mortgagees with respect to the applicable Owner's share of any such available insurance proceeds. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 9.4, 9.5, 9.6 and 9.9 are applicable except that demolition, and not construction, shall be performed. In the event the Foundation Parcel Owner and the Residences Parcel Owner agree not to rebuild the Building, subject to the written approval of the Mortgagees of the Foundation Parcel Owner and the Residences Parcel Owner, they may also make provision (A) for sale of the Property by the Residences Parcel Owner and the Foundation Parcel Owner and distribution of sale proceeds, or (B) for ownership of the Property by the Residences Parcel Owner and the Foundation Parcel Owner as tenants in common, with the right to sue for partition (but for purposes of such partition the Property itself shall be deemed not susceptible of division), all subject to the written approval of the Mortgagees of the Foundation Parcel Owner and the Residences Parcel Owner.

9.9 **Costs Defined.** For purposes of this Article 9, 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.

## 10

### **LIENS, DEBTS, INTEREST AND REMEDIES**

10.1 **Failure to Perform.** If, at any time, either 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 Agreement (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 portion of the Building or Property owned by the Defaulting Owner and (ii) for a default under Article 9, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Building or Property or otherwise under

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insurance policies carried pursuant to Article 8 hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 10. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. 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's liens provided for in this Section 10.1, shall be superior to and take precedence over any mortgage, trust deed or other encumbrance other than a prior lien (including, but not limited to, the lien created by the Loan Documents) constituting a lien on the portion of the Building or Property owned by the Defaulting Owner. Notwithstanding anything in the foregoing to the contrary, no Creditor Owner may enforce any rights under this Section 10.1, or elsewhere in this Agreement, without the prior written consent of HUD.

10.2 **No Diminution of Lien.** No conveyance or other divestiture of title shall in any way affect or diminish any lien arising pursuant to this Article 10, and any lien which would have arisen against any property pursuant to this Article 10 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.

10.3 **Mortgagee's Subrogation.** The holder of a mortgage or trust deed on all or any portion of the Foundation Parcel or of all or any portion of the Residences Parcel Property shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article 10 affecting the property secured by its mortgage upon payment of the amount secured by such lien.

10.4 **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 lesser of: (a) 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 First Chicago NBD Bank, at Chicago, Illinois or any successor thereto as its base or reference rate of interest or (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a base or reference rate is not announced or available, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

10.5 **Cumulative Remedies.** Subject to the limitations set forth in this Section 10.5 and in Section 10.7 hereof, the rights and remedies of an Owner provided for in this Article 10 or elsewhere in this Agreement 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 document which such other Owner is required to execute under or pursuant to this Agreement. 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. Notwithstanding anything contained in this Article 10 to the contrary, any liens in favor of the Foundation Parcel Owner pursuant to this Article 10 shall automatically

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terminate in the event HUD records a deed in lieu of the foreclosure of the mortgage which secures the Capital Advance.

10.6 **No Set-Off.** Each claim of any Owner arising under this Agreement 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.

10.7 **Period of Limitation.** Actions to enforce any right, claim or lien under this Agreement shall be commenced within three (3) years immediately following the date the cause of action accrued, or such other shorter period as may be provided by law or statute.

## 11

### ARBITRATION

11.1 **Disputes Subject to Arbitration; Arbitration Procedure.** Subject to the limitations contained in this Section 11.1, all Arbitrable Disputes, questions, differences, disputes, claims or controversies (the foregoing sometimes being referred to collectively as a "Matter") arising among or between Owners under this Agreement:

1. constituting a monetary claim involving an amount as to any one claim not exceeding \$25,000 (in 1998 equivalent dollars); or
2. expressly made an Arbitrable Dispute or subject to arbitration under this Article 11 by the terms of this Agreement; or
3. involving any of the following matters:
  - (i) selection of an insurance company or appointment of insurance premiums under Section 8.2 hereof;
  - (ii) appointment of a contractor or contractors pursuant to Section 9.4 or 13.4 hereof;
  - (iii) replacement of the Architect pursuant to Section 18.1 hereof;
  - (iv) other failure to agree on a matter described in Section 2.1, 3.1 or 5.7, which this Agreement expressly requires the Owners to jointly decide or agree upon;
  - (v) disputes arising generally under Articles 5, 7, 8, 9 or 14; 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

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not be resolved within sixty (60) days after it shall arise (or such other shorter or longer time period expressly provided herein), shall be submitted for arbitration to one (1) arbitrator at the Chicago, Illinois office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules. Each Owner who is a party to the arbitration shall cause the arbitrator to be selected within seven (7) days, and proceedings shall commence within five (5) business 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 (3)(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 Agreement 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. Any award issued by the arbitrator shall take into account and be consistent with any standards, terms or conditions contained in this Agreement 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 standards, 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 10.4. Where a dispute involves both matters which are Arbitrable Disputes and matters which are not Arbitrable Disputes which are not easily divisible, the dispute shall not be submitted to arbitration.

Notwithstanding anything to the contrary contained in this Article 11, no Arbitrable Dispute or any other Matter shall be considered subject to arbitration unless and until: (i) the Matter is first submitted to the HUD Director of Multi-Family Housing in Chicago, Illinois, or a person of equal or higher rank at HUD (the "HUD Director") in Chicago, for mediation for at least sixty (60) days, and (ii) such HUD Director consents in writing to such submission for arbitration. In the event such HUD Director fails to so consent, then the Owner or Owners

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involved in such Matter shall be entitled only to take such actions at law or in equity as they deem necessary in a court of competent jurisdiction.

11.2 **Monetary Adjustment (Equivalent Dollars).** For purposes of this Agreement, "1998 equivalent dollars" means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 1998. The 1998 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction (but not less than zero) (expressed as a percentage), the numerator of which is the difference obtained by subtracting (x) the Consumer Price Index for January, 1998 from (y), the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for January, 1998. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, City of Chicago, All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

## 12

### UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Agreement, 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, civil commotion, strikes, 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. However, if non-performance is due to an Unavoidable Delay which does not affect another Owner's self-help remedy which may otherwise be exercised for such non-performance, then notwithstanding such Unavoidable Delay such other Owner shall still be entitled to such remedy with respect to those obligations to have been performed by the Non-Performing Owner (hereinafter defined) which are the subject of Unavoidable Delay. The Owner unable to perform (hereinafter in this Article the "Non-Performing Owner") shall notify the other 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 any other Owner, keep such other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

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## CONDEMNATION

13.1 **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 the Building or Property by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 13, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Building shall be performed, in accordance with the requirements of this Article 13. The Owners shall cooperate with one another to maximize the amount of the Award.

13.2 **Payment of Award to Depository; Temporary Taking Awards.** Subject to the limitation set forth herein, all Awards resulting from the taking of all or any part of the Building or Property, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depository by the Owners regardless of the Owner who received the Award and disbursed by the Depository as hereinafter provided. In the event of a taking of a temporary use of any space not including Residences or Foundation Easement Facilities or affecting services described in Section 5.1 or 5.2 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Property. Notwithstanding anything in this Article 13 to the contrary, any Award or part thereof resulting from the taking of all or any part of the Residences Parcel shall be paid directly to HUD and no part thereof shall be paid to the Depository. Such Award or part thereof paid to HUD shall be disbursed and used in such manner as HUD in its sole discretion shall in writing provide.

13.3 **Taking of Only One Parcel.** In the event of (A) a taking (other than a temporary taking) of a part of the Foundation Parcel Property or Foundation Owned Facilities only (not including any Residences Easement Facilities or Residences Parcel Owned Facilities) or (B) a taking (other than a temporary taking) of a part of the Residences Parcel or Residences Owned Facilities only (not including any Foundation Easement Facilities or Foundation Owned Facilities), then, subject to the provisions of Section 13.6 hereof, the Owner of the portion of the Building or Owned Facilities in which the taking occurred shall repair and restore the remainder of its portion of the Building or Owned Facilities to form an architectural and functional whole. 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 portion of the Building 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 17 hereof and to retain any excess not required for such repair and restoration; provided, however, that the right of any particular Owner to receive a portion of such excess, if any, shall be subject to the provisions of Section 20.12. If at any time either Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration adversely and materially affecting an Easement in favor of the other Owner or services to be furnished the other Owner under Article 5 hereof, then (i) the 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 ten (10) days after

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the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then the 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) the 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 17 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 13.3 constitute Alterations, except that the Owner performing repair and restoration shall not be required to obtain the other Owner's consent if it would not otherwise be required under Article 14 shall not apply.

**13.4 Repair and Restoration by Both Owners.** In the event of a taking other than (A) a temporary taking described in Section 13.2 hereof, (B) a taking described in Section 13.3 hereof, or (C) a taking of all or substantially all of the Building or Property, then, subject to the provisions of Section 13.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Building in accordance with plans and specifications (hereinafter described) jointly approved by the 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 Owners by a contractor or contractors jointly selected by the Owners. In the event the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. If such repair and restoration is to be performed solely in the Foundation Parcel, then the approval of the Residences Parcel Owner shall not be required with respect to the plans and specifications therefor which do not materially affect the Residences Parcel Owner and which do not constitute Alterations, nor shall the consent of the Residences Parcel Owner be required with respect to the selection of a contractor. In such event, however, the Foundation Parcel Owner, shall consult with the Residences Parcel Owner regarding those matters. If such repair and restoration is to be performed solely in the Residences Parcel, then the approval of the Foundation Parcel Owner shall not be required with respect to plans and specifications therefor which do not materially affect them and which do not constitute Alterations, nor shall the consent of the Foundation Parcel Owner be required with respect to the selection of a contractor. In such event, however, the Residences Parcel Owner shall consult with the Foundation Parcel Owner regarding those matters. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners shall otherwise agree, subject to the approval of their Mortgagees. Such plans and specifications shall provide for repair and restoration of the remainder of the Building to form an architectural and functional whole with such changes in the Building as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Agreement are extinguished or materially impaired, then changes shall be made to provide for Easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent practicable, to Easements created under Articles 2 and 3 hereof and for the furnishing of services under Article 5 hereof. The Architect will furnish to each of the Owners and the Mortgagees a set of such plans and specifications for their approval. Unless the

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Owners otherwise agree, 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 Owner in whose portion of the Property such repair and restoration is being performed, as such repair and restoration progresses, to disburse, in accordance with Article 17 hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

13.5 **Excess Award.** The Award for any taking described in Section 13.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 13.6 hereof). Any excess of the Award over the cost of repair and restoration shall then be allocated to an Owner in the same ratio as the apportionment of the Award to parties with an interest in such Owner's portion of the Property in any judicial or administrative proceedings in connection with the taking, bears to the apportionment of the Award to the parties with an interest in the other Owner's portion of the Property; provided, however, that the right of the Owners to receive any such excess shall be subject to the provisions of Section 20.12. 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.

13.6 **Demolition.** If, as a result of a taking (other than a temporary taking or a taking described in Section 13.7 hereof), either the Foundation Parcel Owner or the Residences Parcel Owner reasonably determines that its portion of the Building no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore its portion of the Building as may be required by Sections 13.3 and 13.4 hereof. However, in such case, such Owner not repairing or restoring shall demolish, repair or restore its portion of the Building to the extent, if any, as may be necessary to provide essential services or structural support for the other portion of the Building. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Paragraph 13.4 hereof are applicable.

13.7 **Allocation of Award.** In the event of a taking of all or substantially all of the Building or Property, 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 in accordance with said apportionment; provided, however, that the right of the Owners to receive any award and payment shall be subject to the provisions of Section 20.12.

## 14

### ALTERATIONS

#### 14.1 Permitted Alterations.

1. An Owner (hereinafter in this Article 14, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions,

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improvements or alterations (hereinafter in this Article 14, "Alterations") to the part of the Building within such Altering Owner's portion of the Property, provided that such Alterations comply with all of the provisions of this Article 14. Alterations shall include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this Article 14. Subject to the provisions of Section 5.6, replacement of Facilities may be made by an Altering Owner without consent of other Owners. The provisions of this Article 14 governing Alterations do not negate or diminish other provisions of this Agreement having to do with additions, improvements or alterations expressly required or permitted in Articles 4, 5, 6, 9 and 13 hereof, which are governed by such provisions unless also designated in such Articles as "Alterations" to be governed by Article 14.

2. Alterations shall not be made without the prior written consent of the other Owner if such Alterations will:

- (i) during their performance or upon their completion, unreasonably diminish the benefits afforded to such other 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 the other Owner under Article 5;
- (iii) increase the costs or expenses for which such Owner is or would be responsible pursuant to Article 5 hereof;
- (iv) alter the facade of the Building;
- (v) increase the width of any facade of the Building beyond the width of such facade of the Building existing as of the date of recording this Agreement if not constructed as of the date of this Agreement; or
- (vi) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports.

3. 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 the other Owner) the consent of the 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 14.1. An Altering Owner may also at any time request confirmation from the other 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) business days after the request is made. No

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response during such ten day period shall be deemed confirmation. If such other Owner consents to such Alterations or does not respond within a reasonable time period after receipt of plans and specifications, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owner whose consent is requested will not unreasonably delay its response, having in mind the scope and complexity of the proposed Alterations, and in any event shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If, in the good faith opinion of the other Owner, the Altering Owner has violated or will violate the provisions of Section 14.1, then such Owner (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 14.1, hereof, 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 14.1, 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 any other legal or equitable 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 14.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

4. If any matter arises between the Foundation Parcel Owner and the Residences Parcel Owner with respect to whether any Alterations or proposed Alterations violate the provisions of Section 14.1, then such Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 14.1 hereof.

5. The Foundation Parcel Owner and the Residences 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 Agreement. 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, 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, which shall not include normal construction activities in a mixed-use building. An Altering Owner may perform work during any hours permitted by applicable Law. However, if requested by the Owner who would otherwise suffer unreasonable disturbance and who pays all costs associated with work at times other than normal business

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hours, including overtime and delay costs, the Altering Owner shall not unreasonably refuse to perform work outside normal business hours.

14.2 **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of the other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owner. An Altering Owner shall send copies of any building permits to the other Owner at such other Owner's request. If joinder by the 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 the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the 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, the other Owner is hereby irrevocably appointed attorney-in-fact of the other Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such other Owner. Notwithstanding anything in this Article 14 to the contrary, any Owner being indemnified or held harmless by the Residences Parcel Owner shall have no claim or lien and shall not in the future assert any claim or lien on or against the "Project" (as such term is defined in the Loan Documents) except with respect to the "Residual Receipts" (as such term is defined in the Loan Documents) thereof, and then only to the extent permitted in writing by HUD. Further, no other Owner is or shall be appointed or act as attorney-in-fact for any purpose for the Residences Parcel Owner unless HUD gives its prior written consent upon specific written request to so do.

14.3 **No Liens.** An Owner performing any work required or provided for under this Agreement shall include in any construction contract a provision pursuant to which the contractor recognizes the separate ownership of the Residences Parcel, and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act set forth in Chapter 82 of the Illinois Revised Statutes (said Act and any successors thereto, the "Mechanics' Lien Act") shall only be enforceable against the portion of the Building or Property owned by the Altering Owner.

## 15

### ESTOPPEL CERTIFICATES

15.1 **Estoppel Certificates.** Each Owner shall, from time to time, within ten (10) days after written request from the other Owner or a Mortgagee or prospective transferee of such Owner, execute, acknowledge and deliver to the requesting party, a certificate ("Estoppel Certificate") stating:

1. That the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying such modifications;

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2. Whether, to the knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Agreement (or grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;
3. Whether there are any sums (other than those arising out of the normal course of operation of the Building within the previous ninety (90) days) 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;
4. Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to Article 5 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;
5. 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;
6. 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 Agreement describing the applicable provision or provisions and the details of any such lien claim;
7. 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;
8. The nature of any arbitration proceeding or finding under Article 11 made within the ninety (90) days preceding the date of such Estoppel Certificate;
9. The current address or addresses to which notices given to the Owner executing such Estoppel Certificate are required to be mailed under Article 19 hereof; and
10. Such other facts or conclusions as may be reasonably requested.

Notwithstanding anything in this Article 15 to the contrary, the Residences Parcel Owner shall have twenty (20) days after written request from the other Owner or a Mortgagee or prospective transferee, to execute, acknowledge and deliver to the requesting party, an Estoppel Certificate

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and such Estoppel Certificate shall be of no force or effect unless consented to in writing by HUD.

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## DEPOSITORY

16.1 **Appointment of Depository.** A Depository shall be appointed in the manner hereinafter 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 Agreement. The Depository shall be appointed by the Owners 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. The Depository shall be entitled to receive from each of the Owners said Owner's equitable share of the Depository's reasonable fees and expenses pursuant to written agreement with the Owners for acting as Depository, and may retain said fees and expenses, free of trust, from monies held by it. Any Depository appointed to act hereunder shall execute an agreement with the Owners accepting said appointment and setting such fees and expenses in such form as the Owners and HUD shall agree.

16.2 **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 Owners; provided that if only one Owner is entitled to said insurance proceeds or condemnation Award or Awards, then said Owner 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 17.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

16.3 **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 both Owners for whose benefit monies are being held have requested 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 both Owners, then the Depository, within thirty (30) days after request from both Owners given to the Depository, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within one (1) year 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 Agreement. Any interest paid or received by the Depository on monies or securities held in trust, and any gain on the redemption or sale of

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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 Agreement 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.

**16.4 Indemnification of Depository.** In consideration of the services rendered by the Depository, the Owners jointly 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 the Depository's duties hereunder or in the defense of any claim or claims made against the 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. Notwithstanding anything in this Section 16.4 to the contrary, any Depository being indemnified or held harmless by the Residences Parcel Owner shall have no claim or lien and shall not in the future assert any claim or lien on or against the "Project" (as such term is defined in the Loan Documents) except with respect to the "Residual Receipts" (as such term is defined in the Loan Documents) thereof, and then only to the extent permitted in writing by HUD.

**16.5 Resignation of Depository.** The Depository may resign by serving not less than sixty (60) days' prior written notice on the Owners and Mortgagees. Within thirty (30) days after receipt of such notice, the Owners jointly shall appoint a substitute who qualifies under Section 16.1 hereof, and the Depository 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 the Owners shall fail to appoint a substitute within said thirty (30) days, the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, who qualifies under Section 16.1 hereof.

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## **DISBURSEMENTS OF FUNDS BY DEPOSITORY**

### **17.1 Disbursement Requests.**

1. Each request by the Architect acting pursuant to the provisions of this Agreement 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, and accompanied by a written consent from HUD, stating the following in its professional judgment based on periodic observations of the work:

- (a) That the sum requested has either (a) been or will be paid by or on behalf of an Owner (in which event the certificate shall name such

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Owner) or by or on behalf of the Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain 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 shall state the progress 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;

- (b) That the sum requested, plus all sums previously disbursed, 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;
- (c) 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
- (d) Other information which may from time to time be required by the Mortgagees which is customarily required by mortgagees of comparable first-class residential or office buildings, as may be agreed to by Owners.

2. Upon:

- (i) compliance with the provisions of Section 171(1) 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 any title insurer affording coverage against mechanics' liens from the persons named in the sworn statement, and
- (iii) approval by the title insurer and the Owners and the Mortgagees of the lien waivers and other documentation, and the willingness of the 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

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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, either of the Owners, or HUD or the Depository may require that disbursements be made through the usual 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 Agreement. 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 17.1 and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

17.2 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 Owners, with the consent of the Mortgagees, may jointly at any time provide for a different disposition of funds than that provided for in this Agreement, 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.

## 18

### ARCHITECT

18.1 Appointment of Architect. Subject to the written consent of HUD, the Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Building to serve under and pursuant to the terms and provisions of this Agreement (the "Architect"). The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of The American Institute of Architects ("AIA") then-standard form agreement between owners and architects for designated services, which agreement shall incorporate those services necessary to implement the provisions of this Agreement 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, with the written consent of the Mortgagees, may replace the Architect for any reason. Either Owner also may cause any Architect to be replaced, and the other Owner shall be deemed to have consented to such replacement, if it demonstrates to the other Owners that such then-serving Architect has failed to perform its duties hereunder diligently or competently. If the Owners do not jointly desire to replace the Architect, then the Owner desiring replacement of the Architect shall serve notice upon the other Owners and the Mortgagees 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 diligently or competently. If, in the opinion of the Owner or Mortgagees receiving such notice, the Owner desiring to replace the Architect is not entitled

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to require the appointment of a new Architect pursuant to this Section 18.1, the Owner or Mortgagee receiving such notice and objecting to the appointment of a new Architect shall notify the other Owners and Mortgagees of its objection in writing within fifteen (15) days after receipt of such notice from the requesting Owner. If, within thirty (30) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences (subject to the approval of their Mortgagees), 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 and the Mortgagees.

**18.2 Notice of Submission of Dispute to Architect.** In any instance when the Architect serving pursuant to Section 18.1 hereof is authorized by this Agreement to advise the Owners concerning any dispute or matter, the 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 Owner involved in such dispute and the 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 the 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 Agreement shall be binding on the Owners, and an Owner may accept or reject such advice.

**18.3 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 the 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.

**18.4 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 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 Agreement, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Building 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 Agreement pursuant to which the Architect is performing such services. If either Owner shall fail to pay its allocable share of any fees or expenses of the Architect within thirty (30) days after receipt of any invoice therefor from the Architect, then the other Owner may pay the same and the Owner failing to

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pay shall, within thirty (30) days after written demand for reimbursement, reimburse the other Owner for any such payment.

19

## NOTICES AND APPROVALS

19.1 **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 desired to give or make or communicate to the other Owner shall be in writing and shall be given or made or communicated by personal delivery, written telecommunication (such as telex or facsimile telecopy) or by United States mail addressed as follows.

If to the Foundation  
Parcel Owner:

c/o Bethel New Life, Inc.  
367 North Karlov  
Chicago, Illinois 60624  
Fax: (773) 826-5728  
Attn: Lawrence Grisham

and to any Mortgagee which has complied with the notice provisions of Section 20.12 hereof.

If to the Residences  
Parcel Owner:

c/o Bethel New Life, Inc.  
367 North Karlov  
Chicago, Illinois 60624  
Fax: (773) 826-5728  
Attn: Lawrence Grisham

and to:

United States Department of Housing  
and Urban Development  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
Fax: (312) 353-9563  
Attn: Director of Multi-Family Housing/  
Project No. 07-EE067

and to any other Mortgagee which has complied with the notice provisions of Section 20.12 hereof.

Any Owner may designate a different address or additional addresses 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 an Owner's or Mortgagee's counsel identified above shall not render notice to an Owner invalid or ineffective. If either of the aforesaid Owners shall cease to be



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the "Owner" or Mortgagee of its respective portion of the Building, and the succeeding Owner of that portion of the Building 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 portion of the Building 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 portion of the Building in question. Unless specifically stated to the contrary elsewhere in this Agreement, any notice shall be deemed to have been given, made or communicated, as the case may be, (i) upon delivery in the case of personal delivery or immediate written telecommunication, or (ii) on the date three (3) days after the same was deposited in the United States mail, properly addressed, with postage thereon fully prepaid. However, all notices relating to (i) defaults or claims of default under this Agreement, (ii) change of notice address, or (iii) request arbitration shall be made by personal delivery or forwarded by registered or certified mail, return receipt requested.

19.2 **Multiple Owners.** If at any time the interest or estate of the Foundation Parcel Owner or the Residences 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 (a) 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 (b) 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.

## 20

### GENERAL

20.1 **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Agreement, each Owner shall cooperate with the other Owner to promote the efficient operation of each respective portion of the Building and the harmonious relationship among the Owners and to protect the value of each Owner's respective portion, estate or interest in the Building.

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

20.3 **Headings.** The headings of Articles and Sections in this Agreement 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.

20.4 **Amendments to Agreement.** Except as otherwise provided in this Agreement, this Agreement may be amended or terminated only by an instrument signed by the then Foundation Parcel Owner and the then Residences Parcel Owner (and consented to by their

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Mortgagees). Upon substantial completion of the Building, the parties shall cooperate in good faith to record an amendment to this Agreement to create, vacate and otherwise conform the Easements granted hereunder to those created pursuant to the "as built" plans and specifications for the Building, to the extent of any conflict therewith.

20.5 **Term.** The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for the term of this Agreement, which shall be perpetual (or if the law provides for a time limit on any covenant, condition or restriction, then such covenant, condition or restriction shall be enforceable for such shorter period), subject to amendment or termination as set forth in Section 20.4. If the law provides for 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 20.4.

20.6 **Construction of Agreement.** The provisions of this Agreement shall be construed to the end that the Building shall remain a first-class residential and office property.

20.7 **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 subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon the Easement provided the consent of the Mortgagees shall also be required with respect to any such abandonment.

20.8 **Applicable Laws.** The parties hereto acknowledge that this Agreement and all other instruments in connection herewith have been negotiated, executed and delivered in the City of Chicago, County of Cook, State of Illinois and the United States of America. This Agreement 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.

20.9 **Names.** The Foundation Parcel Owner shall have a non-exclusive right to use the name "Beth-Anne Foundation." The Residences Parcel Owner shall have a non-exclusive right to use the name "Beth-Anne Residences" as the name of the Residences Parcel. Each of the Owners shall have the right to change the name of their respective portions of the Building.

20.10 **No Third-Party Beneficiary.** This Agreement 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.

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

## 20.12 **Notice to Mortgagees; Rights of Mortgagee.**

1. The term "Mortgage" as used herein shall mean any mortgage (or any trust deed) given primarily to secure the repayment of money owed by the

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mortgagor. The term "Loan Documents" shall include the Mortgage and other security given by the Residences Parcel Owner to insure the maintenance of the Residences Parcel as residential housing for low-income elderly persons pursuant to Section 202. The term "First Mortgage" shall mean a Mortgage that is superior to all other consensual liens and encumbrances, and shall include the Mortgage securing the Residences Parcel Owner's repayment obligations under the Capital Advance.

2. 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 by one party to the others at the same time as and whenever such notice shall thereafter be given by one party to the others, at the address last furnished by such Mortgagee. HUD and any Mortgagee, as of the date of this Agreement shall be deemed to have properly delivered to the Owners a written notice specifying its name and address. No notice thereafter given by either party shall be deemed to have been given unless and until a copy thereof shall have been given to HUD and any Mortgagee which has given notice as aforesaid. If a Mortgagee so provides or otherwise requires, and notice thereof is given by the Mortgagee as provided above:

- (a) the proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner shall, 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 Agreement.
- (b) If an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Agreement with respect to arbitration, such appointment or action as otherwise would have been permitted by that Owner may be taken by its Mortgagee and such appointment and action shall be recognized in all respects by the other Owner.

20.13 **Binding Effect.** The Easements, covenants and restrictions created under this Agreement 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.

21

## **LIMITATION OF LIABILITY**

21.1 **Limitation of Liability.** The liability under this Agreement of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property or Owned Facilities (including insurance and condemnation proceeds attributable

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to the Property and Owned Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and not other assets of such Owner, except as hereinafter provided in this Section 21.1 and in Sections 10.1 and 10.2.

21.2 Transfer of Ownership. If an Owner shall sell, assign, transfer, convey or otherwise dispose of its portion of the Property (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 Agreement which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such portion of the Property, and (b) the Person who succeeds to the Owner's interest in such portion of the Property shall be deemed to have assumed any and all of the covenants and obligations arising under this Agreement of such Owner theretofore accruing or which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property.

22

## RIGHT OF FIRST REFUSAL

22.1 Right of First Refusal. So long as HUD is an Owner or a Mortgagee, if at any time the Foundation Parcel Owner desires to sell Lots 7, 7\*, 7A and/or 7B, the Foundation Parcel Owner may only do so pursuant to an Offer as defined below. An Offer for purposes of this Article 22 is defined as a legitimate unconditional offer to purchase the Property from a bona fide unrelated third-party accompanied by a proposed purchase and sale agreement (the "Offer Agreement") identifying the offeror's intended use of the property being offered for sale (the "Sale Property"), and a cashier's or certified check for at least 5% of the proposed purchase price. If the Foundation Parcel Owner receives and desires to accept an Offer, the Foundation Parcel Owner shall promptly notify the Residences Parcel Owner thereof as well as any Mortgagees, including HUD, and provide the Residences Parcel Owner, and any Mortgagees, a complete and fully legible copy of the Offer Agreement, accompanied by the Foundation Parcel Owner's irrevocable statement that it is prepared to sell the Sale Property, upon the terms contained in the Offer Agreement (collectively, the "Offer Notice"), and the Residences Parcel Owner shall have the right of first refusal to purchase the Sale Property in accordance with this Article 22. Within 30 days of receipt of the Offer Notice, the Residences Parcel Owner shall notify the Foundation Parcel Owner whether the Residences Parcel Owner elects to exercise its right to purchase the Sale Property as set forth above. If the Residences Parcel Owner notifies the Foundation Parcel Owner that it does not wish to exercise its right to purchase the Sale Property or if the Residences Parcel Owner fails to respond within said 30 day period, the Foundation Parcel Owner may proceed to close the proposed sale upon the terms of the Offer Agreement, provided that such sale may only be closed on terms at least as favorable as those contained in the Offer Agreement and the sale may only be made to the Purchaser identified therein. If such sale is not closed in such manner within ninety (90) days of the date that the Foundation Parcel Owner delivers the Offer Notice to the Residences Parcel Owner, then, prior to any sale of the Sale Property, the Foundation Parcel Owner shall first notify the Residences Parcel Owner and the procedure set forth in this Article 22 shall apply. If the Residences Parcel Owner elects to exercise its right of first refusal pursuant to this Article 22,

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the Residences Parcel Owner shall so notify the Foundation Parcel Owner within the 30 day period, whereupon the Residences Parcel Owner shall purchase and the Foundation Parcel Owner shall sell the Sale Property upon the same terms and conditions as are contained in the Offer Agreement, provided that: (i) the Residences Parcel Owner shall not be obligated to deposit any earnest moneys thereunder; and (ii) the date of such closing of such purchase and sale shall be the later of the date of closing set forth in the Offer Agreement or 30 days after the last date on which the Residences Parcel Owner is allowed to notify the Foundation Parcel Owner of its exercise of the right of first refusal hereunder. If the closing of the Sale Property does not occur as provided in the previous sentence, then the Foundation Parcel and the Sale Property once again shall be subject to the provisions of this Article 22.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

**BETH-ANNE FOUNDATION**, an Illinois  
not for profit corporation

By: *Mary Helme*  
Name: \_\_\_\_\_  
Title: *President*

**BETH-ANNE RESIDENCES**, an Illinois  
not for profit corporation

By: *Mary Helme*  
Name: \_\_\_\_\_  
Title: *President*


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STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COOK     )

I, Richard F. Klawiter, a Notary Public, in and for said County, in the State aforesaid, do hereby certify, that Mary Nelson, as the President of Beth-Anne Foundation, an Illinois not for profit corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that (s)he signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 20th day of January, 1998.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



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## CONSENT OF MORTGAGEE

(HUD)

The United States Department of Housing and Urban Development, holder of the mortgage dated as of January 1, 1998, hereby consents to the execution and recording of the attached Agreement subject to the terms and conditions contained herein.

IN WITNESS WHEREOF, HUD has caused this instrument to be signed by its duly authorized officers on its behalf this 20th day of January, 1998.

UNITED STATES DEPARTMENT  
OF HOUSING AND URBAN  
DEVELOPMENT

By: Edward H. [Signature]  
Title: DIRECTOR OF  
AF HOUSING

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

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STATE OF Illinois )

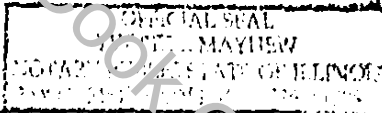
COUNTY OF COOK )

SS.

I, Wm. M. Mayhew, a Notary Public in and for the County and State aforesaid, do hereby certify that Glenn Henderson of the United States Department of Housing and Urban Development appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the United States Department of Housing and Urban Development, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of January, 1998.

Wm. M. Mayhew  
Notary Public



My Commission Expires:

Property of Cook County Clerk's Office

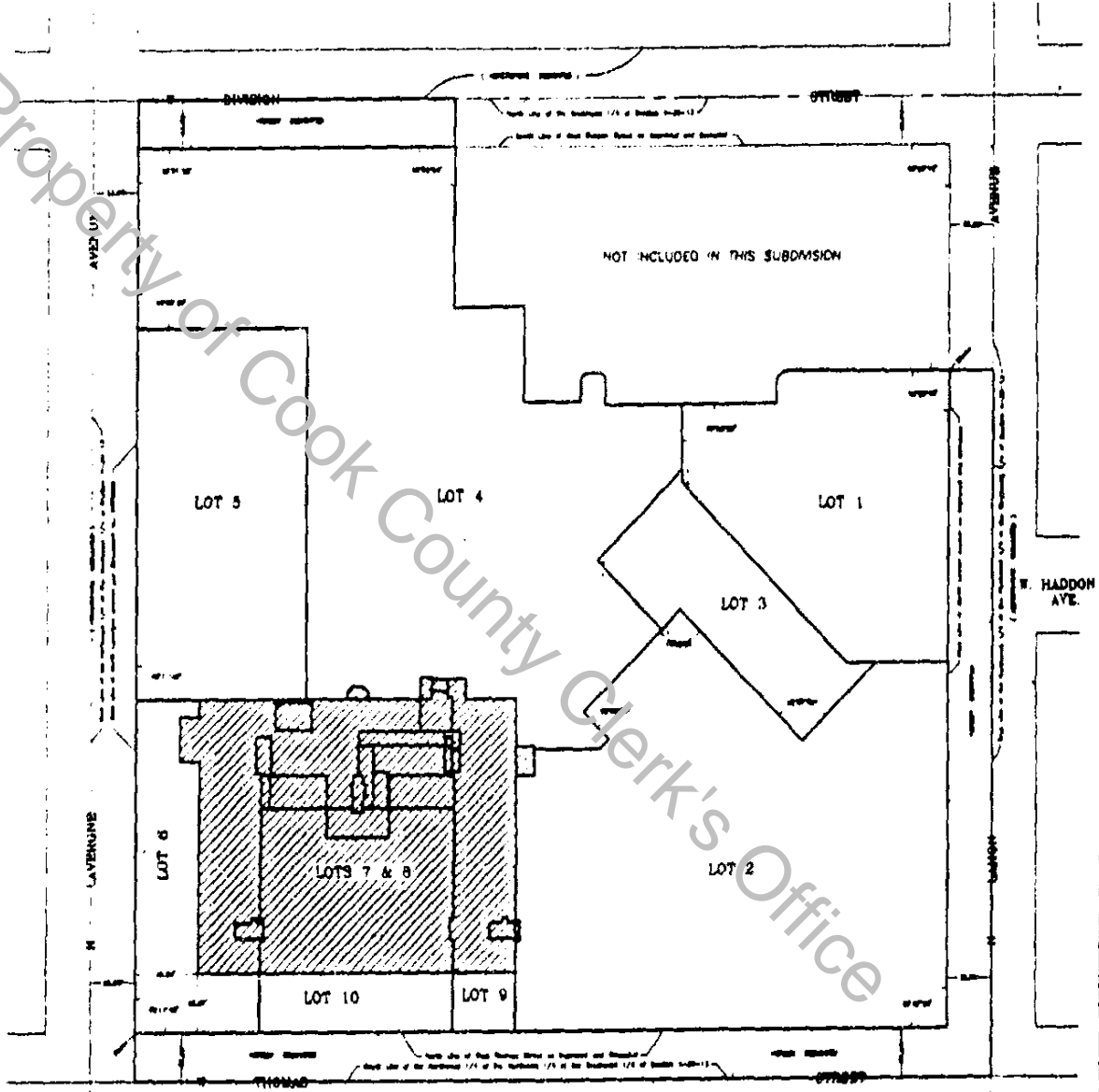
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EXHIBIT "A"

BETH-ANNE RESIDENCES PROPERTY  
LOTS 8, 9, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8J, 8K, 8L  
AND 8M IN BETH-ANNE SUBDIVISION OF PART OF THE NORTHWEST  
1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4,  
TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN,  
IN COOK COUNTY, ILLINOIS.

TAX NO: 16-04-404-003



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SURVEY NO. N-11997B-EXH-A DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS  
130 W. GRAND AVE. 312-644-3480 CHICAGO, ILL. 60618

Scale 1" = 80'

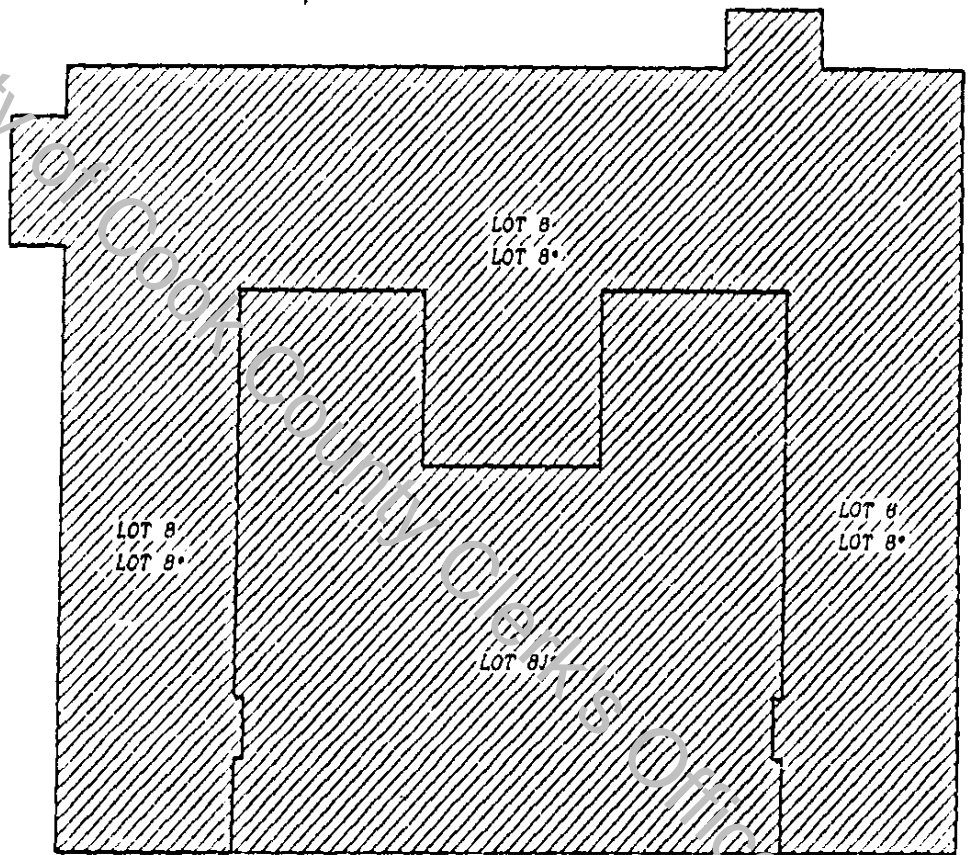


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Exhibit A

LOT 8 LOWER LIMITS = 44.95 C.C.D., UPPER LIMITS = 109.38 C.C.D.  
LOT 8\* LOWER LIMITS = 109.38 C.C.D., UPPER LIMITS = NONE  
LOT 8J\* LOWER LIMITS = 44.95 C.C.D., UPPER LIMITS = NONE

Property of Cook County, Illinois



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SURVEY NO. N-119978 EXH-A

DATE: JUNE 19, 1998

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS

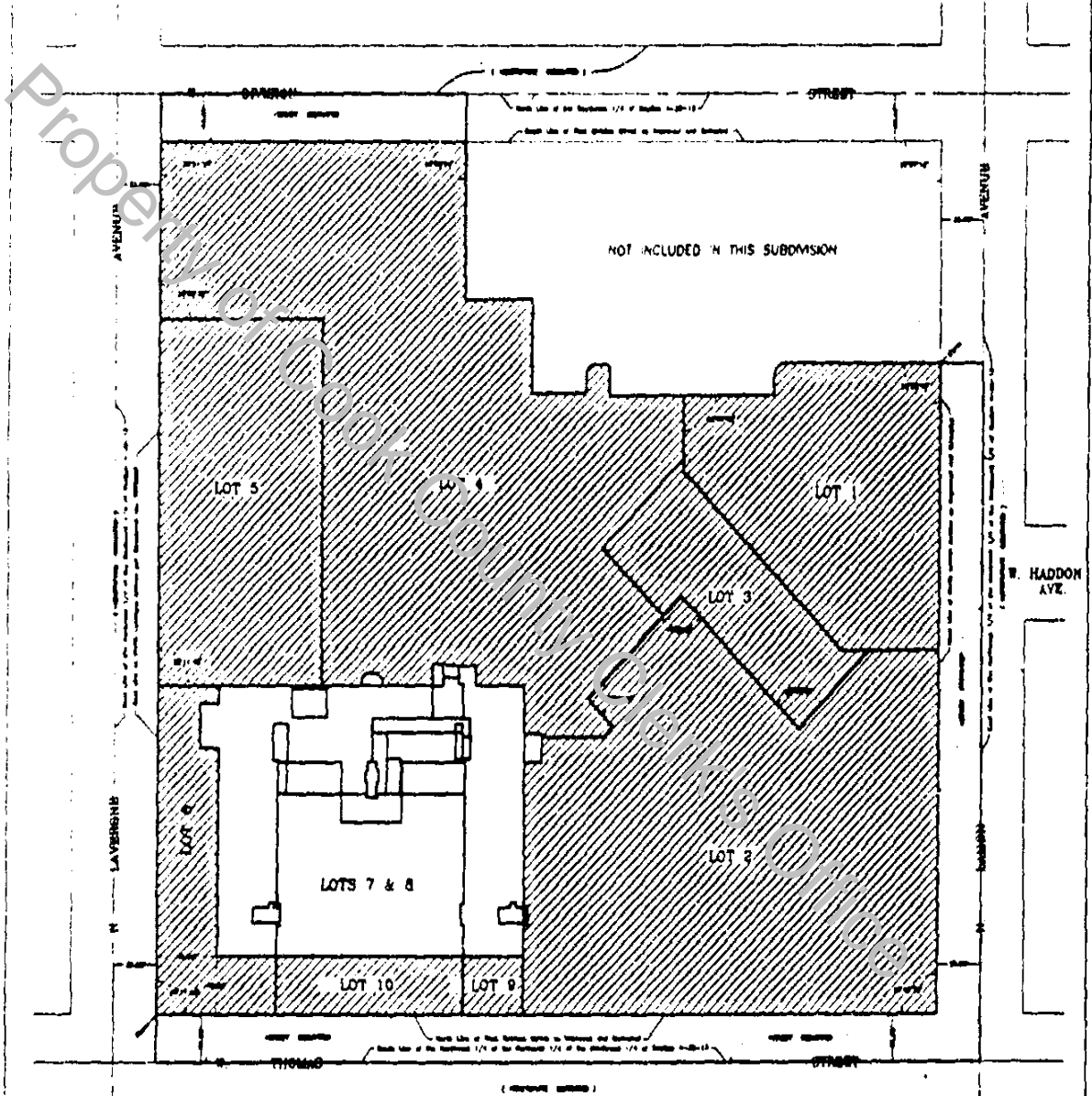
120 W. GRAND AVE. 312-844-3480 CHICAGO, ILL. 60610

Scale: 1" = 30'

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EXHIBIT "B"

BETH-ANNE FOUNDATION PROPERTY  
LOTS 1, 2, 3, 4, 5, 6, 7, 7A, 7B, 8 AND 10 IN  
BETH-ANNE SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE  
NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4, TOWNSHIP  
39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN  
COOK COUNTY, ILLINOIS.



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SURVEY NO. N-119978-9 EXHIBIT DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS  
128 W. GRAND AVE. 312-944-3480 CHICAGO, ILL. 60618

Scale: 1" = 80'





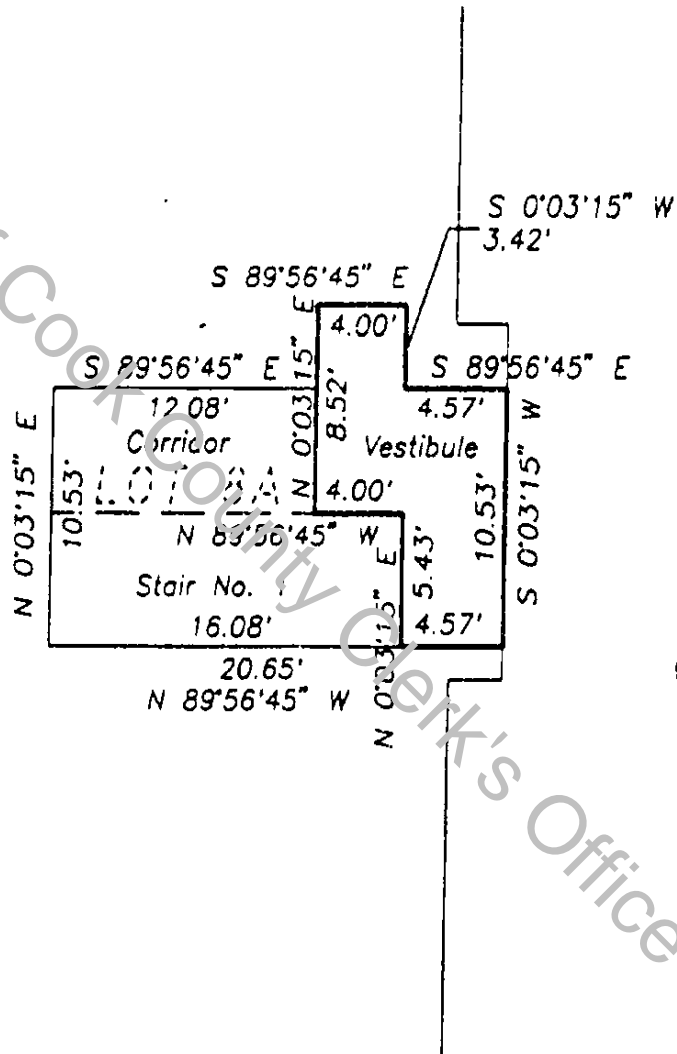
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## Exhibit "C-2A"

EASEMENT FOR INGRESS AND EGRESS FROM BETH-ANNE RESIDENCES  
FOR THE BENEFIT OF BETH-ANNE FOUNDATION  
IN BETH-ANNE SUBDIVISION

LOWER LIMITS = 32.93 C.C.D., UPPER LIMITS = 44.95 C.C.D.

AREA = 82 SQ. FT. or 0.0019 ACRES



SURVEY NO. N-119978-C-2A EXHIBIT DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS

128 W. GRAND AVE. 312-944-3450 CHICAGO, ILL 60610

Scale: 1" = 8'





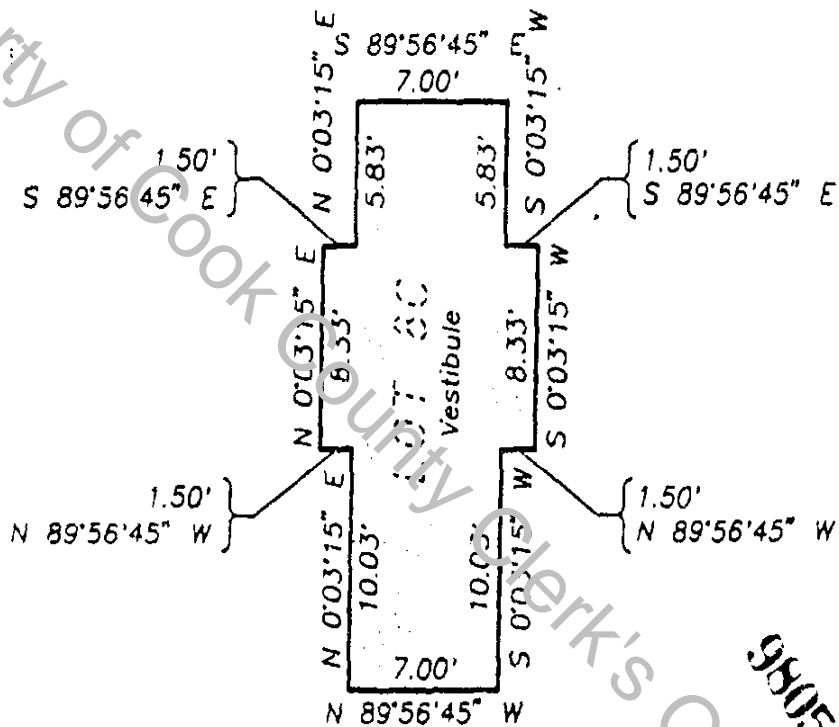
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## Exhibit C-2C

EASEMENT FOR INGRESS AND EGRESS FROM BETH-ANNE RESIDENCES  
FOR THE BENEFIT OF BETH-ANNE FOUNDATION  
IN BETH-ANNE SUBDIVISION

LOWER LIMITS = 32.93 C.C.D., UPPER LIMITS = 44.95 C.C.D.

AREA = 194 SQ. FT. or .0045 ACRES



SURVEY NO. N-119978-C-2C EXHIBIT DATE: JUNE 5, 1997

**NATIONAL SURVEY SERVICE, INC.**  
ENGINEERS AND LAND SURVEYORS

128 W. GRAND AVE. 312-944-3450 CHICAGO, ILL 60610

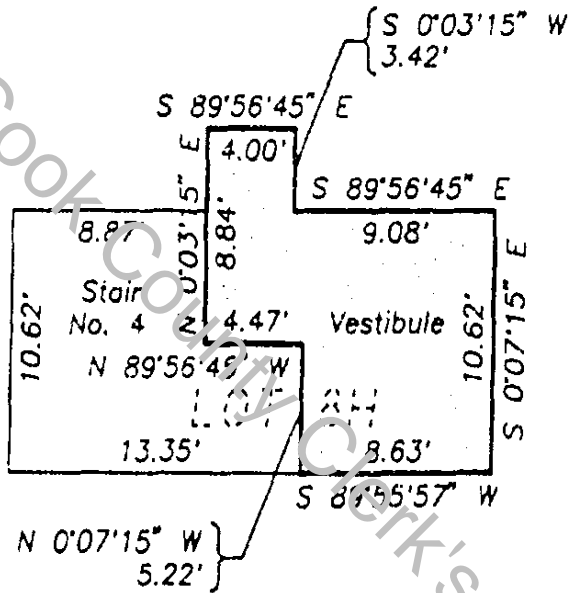
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Exhibit "C-2B"

EASEMENT FOR INGRESS AND EGRESS FROM BETH-ANNE RESIDENCES  
FOR THE BENEFIT OF BETH-ANNE FOUNDATION  
IN BETH-ANNE SUBDIVISION

LOWER LIMITS = 32.93 C.C.D., UPPER LIMITS = 44.95 C.C.D.

AREA = 130 SQ. FT. or .0030 ACRES



Property of Cook County Clerk's Office

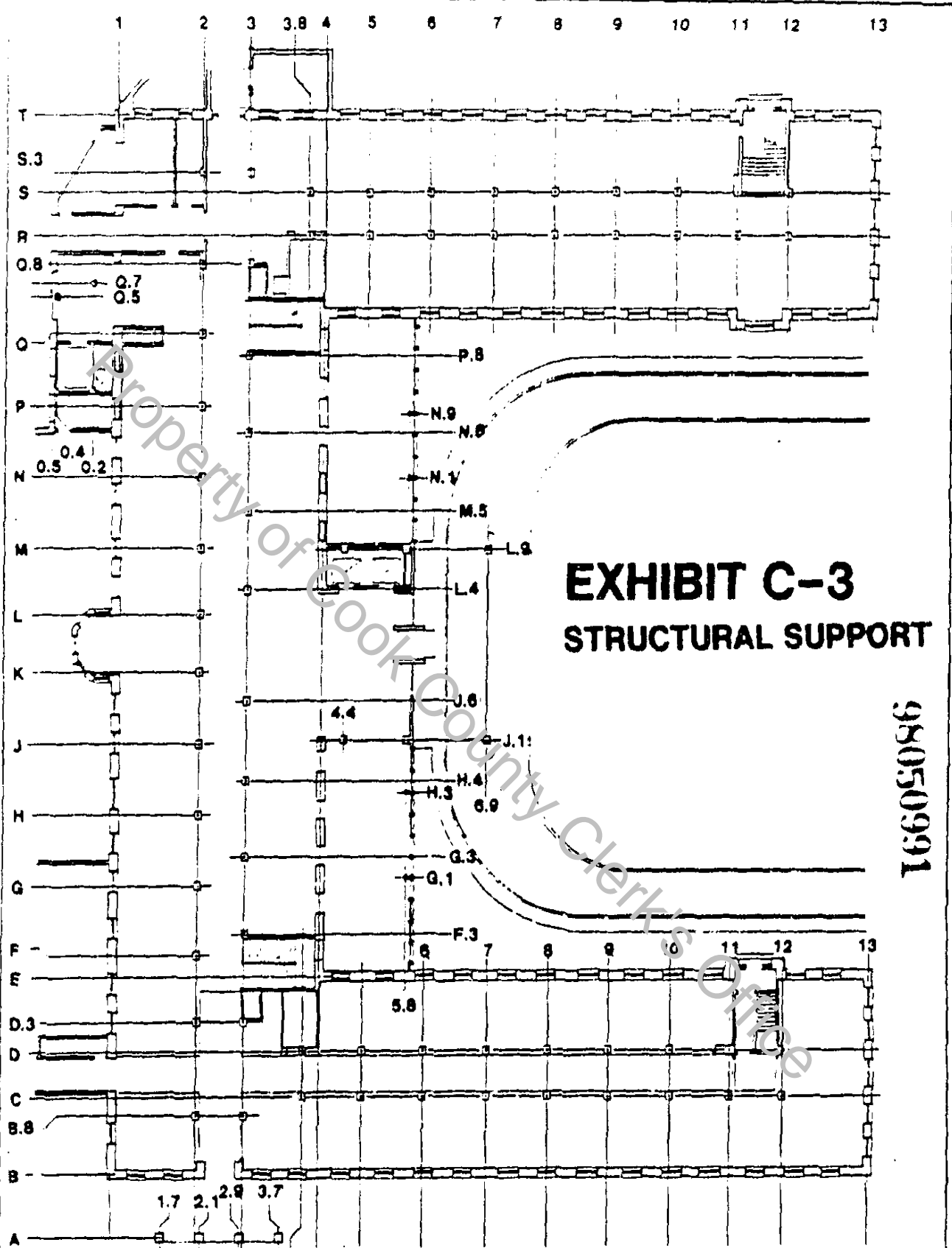
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SURVEY NO. N-119978-C-2D EXHIBIT DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS  
128 W. GRAND AVE. 312-944-3450 CHICAGO, ILL. 60610

Scale: 1" = 8'

UNOFFICIAL COPY



98050991

BETH-ANNE FOUNDATION  
BUILDING DIAGRAM-GROUND FLOOR

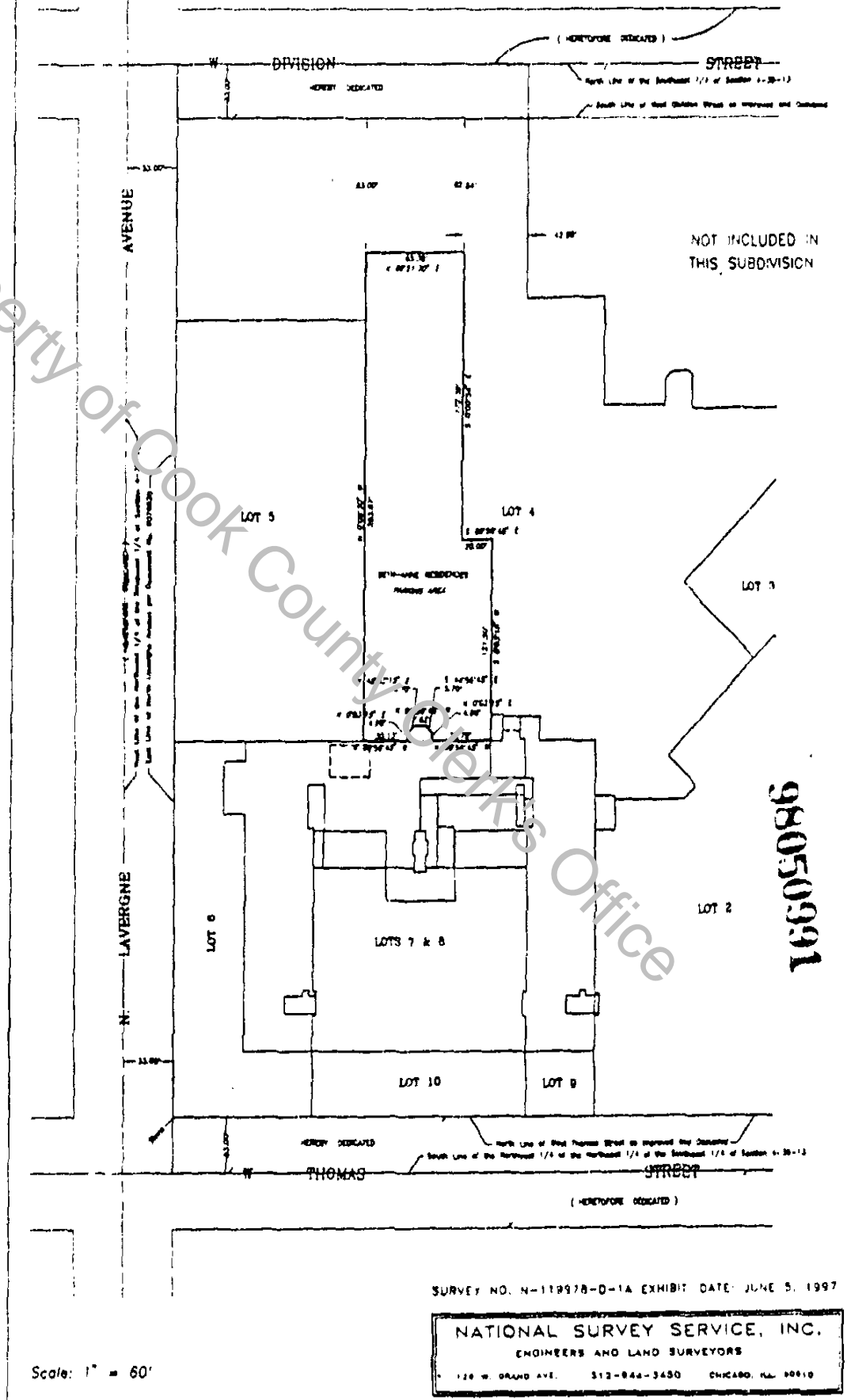


1-5		<p><b>BETH-ANNE RESIDENCES</b> ELDERLY RESIDENTIAL BUILDING RENOVATION</p>	<p>DATE: 11/11/11</p>
			<p>PROJECT NO: 11-11-11</p>

# UNOFFICIAL COPY

EASEMENT FOR PARKING FACILITIES FROM BETH-ANNE  
FOUNDATION FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION

AREA = 21'4"0.50'77" OR 0.4915 ACRES.



Scale: 1" = 60'

SURVEY NO. N-119978-D-1A EXHIBIT DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS

120 W. GRAND AVE. 312-844-3450 CHICAGO, ILL. 60610

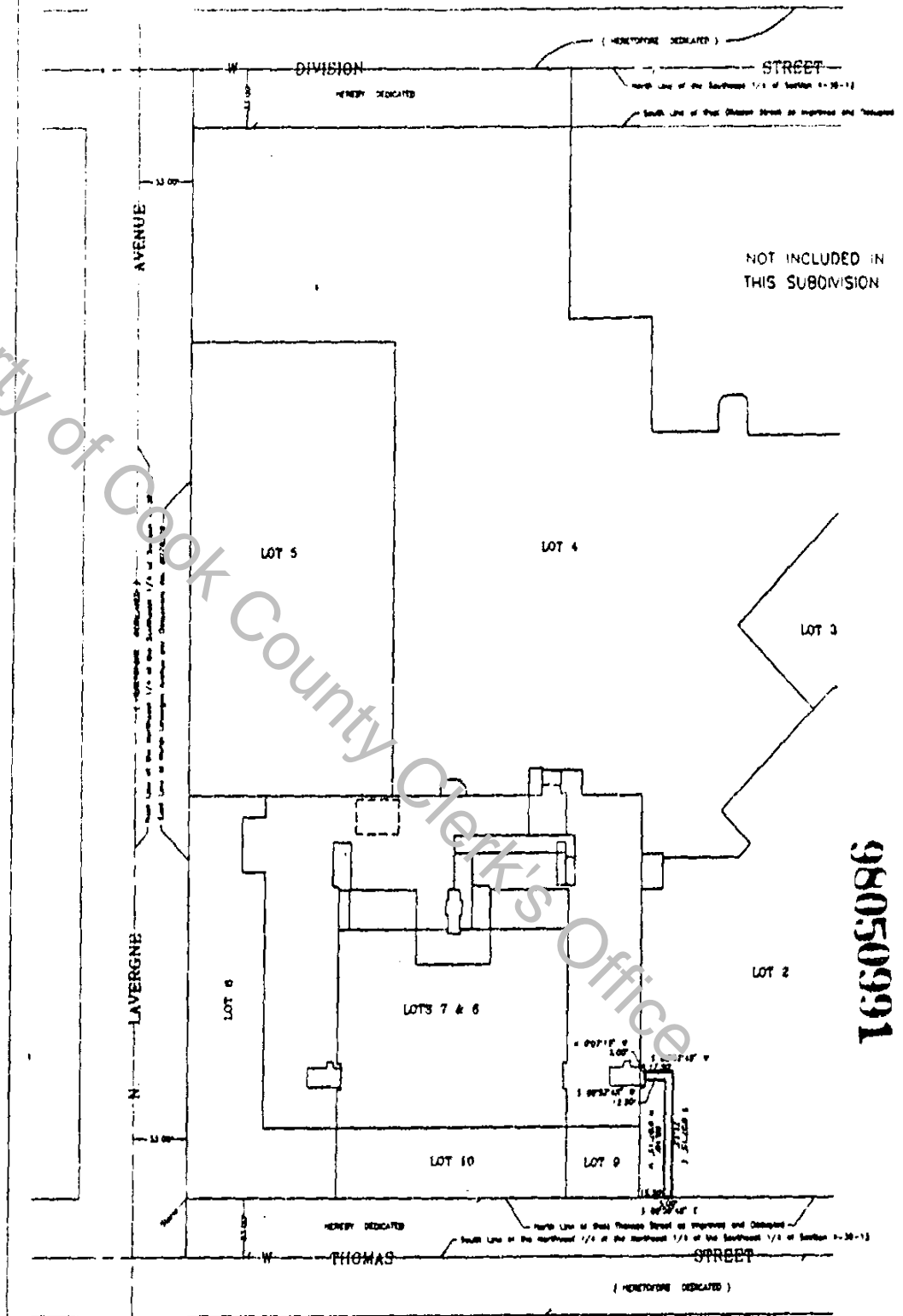
P/N-119978-E-D-1A DWG CD-2

# UNOFFICIAL COPY

EASEMENT FOR PEDESTRIAN ACCESS AND EGRESS FROM BETH-ANNE  
FOUNDATION FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION

AREA = 418 SQ. FT. OR 0.0094 ACRES

Property of Cook County Clerk's Office



NOT INCLUDED IN THIS SUBDIVISION

98050991

SURVEY NO. N-119978-D-18 EXHIBIT DATE: JUNE 18, 1998

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS  
136 W GRAND AVE. 513-844-1480 CHICAGO, ILL 60610

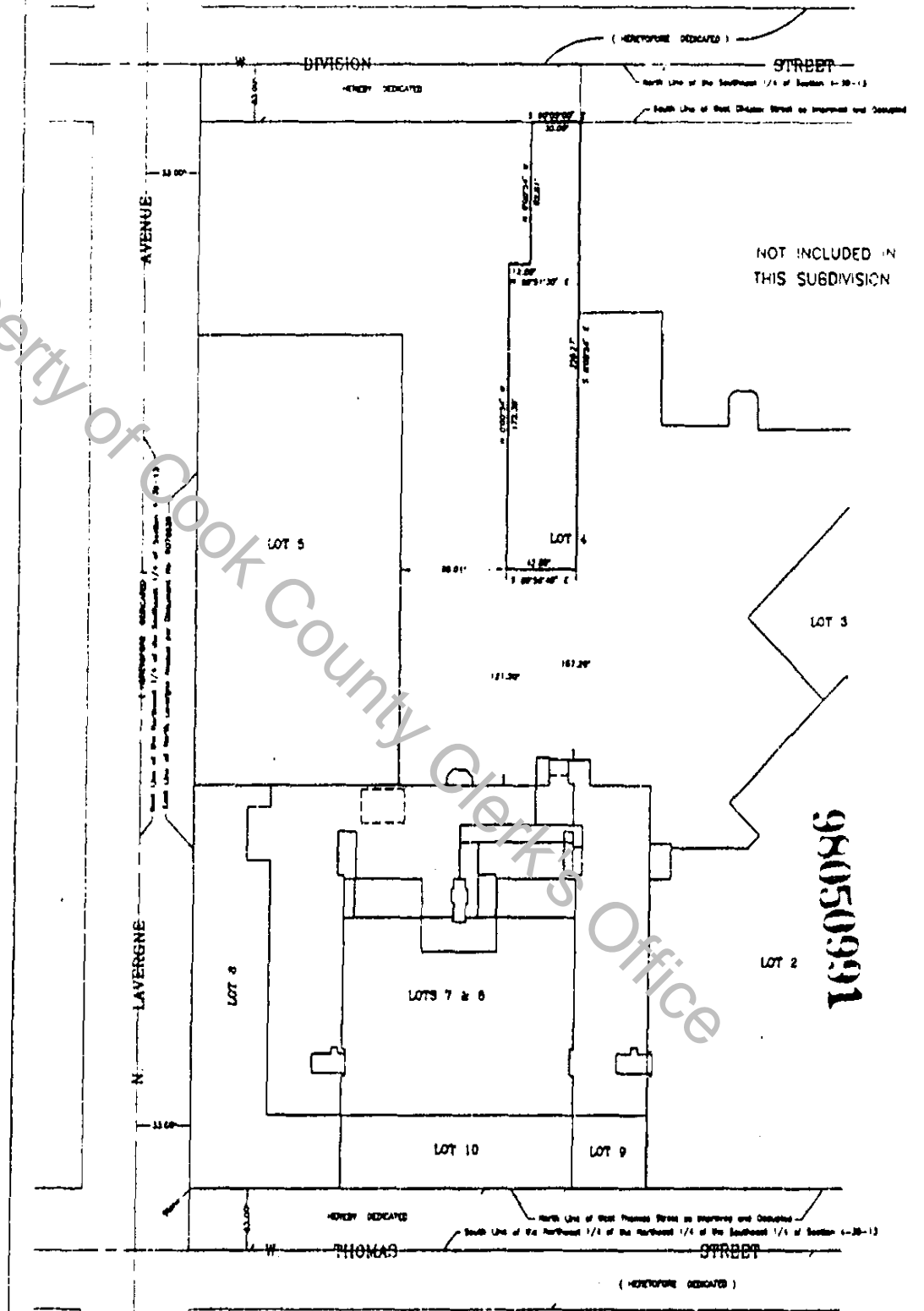
Scale 1" = 60'

PN-119978-E-0-18 DWG CD-2

# UNOFFICIAL COPY Exhibit E-1C

NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FROM BETH-ANNE FOUNDATION FOR THE BENEFIT OF BETH-ANNE RESIDENCES IN BETH-ANNE SUBDIVISION

AREA = 9,879 SQ. FT. OR 0.2268 ACRES.



SURVEY NO. N-119978-D-1C EXHIBIT DATE: JUNE 5, 1997

**NATIONAL SURVEY SERVICE, INC.**  
ENGINEERS AND LAND SURVEYORS  
128 W GRAND AVE. 312-644-3480 CHICAGO, ILL. 60618

Scale: 1" = 60'

P/N-119978 E-D-1C DWG CD-2

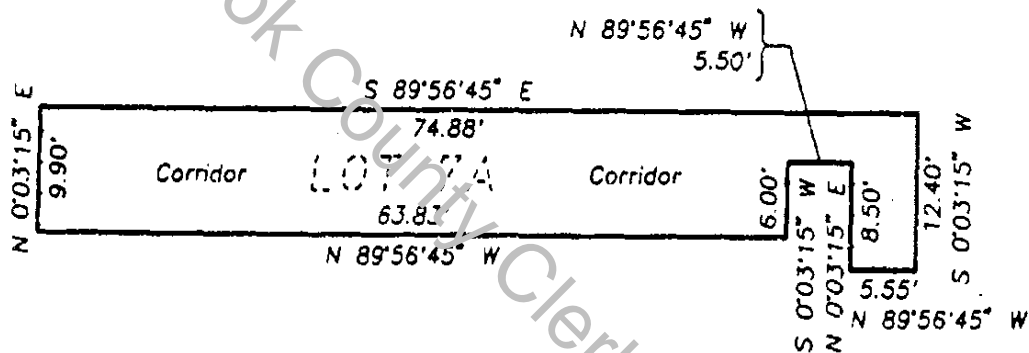
# UNOFFICIAL COPY

## Exhibit "D-2A"

EASEMENT FOR INGRESS AND EGRESS FROM BETH-ANNE FOUNDATION  
FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION

LOWER LIMITS = 32.93 C.C.D., UPPER LIMITS = 44.95 C.C.D.

AREA = 722 SQ. FT. or 0.0166 ACRES



Property of Cook County Clerk's Office

98050991

SURVEY NO. N-119978-D-2A EXHIBIT DATE: JUNE 5, 1997

**NATIONAL SURVEY SERVICE, INC.**  
ENGINEERS AND LAND SURVEYORS  
128 W. GRAND AVE. 312-944-3450 CHICAGO, ILL. 60610

Scale: 1" = 15'



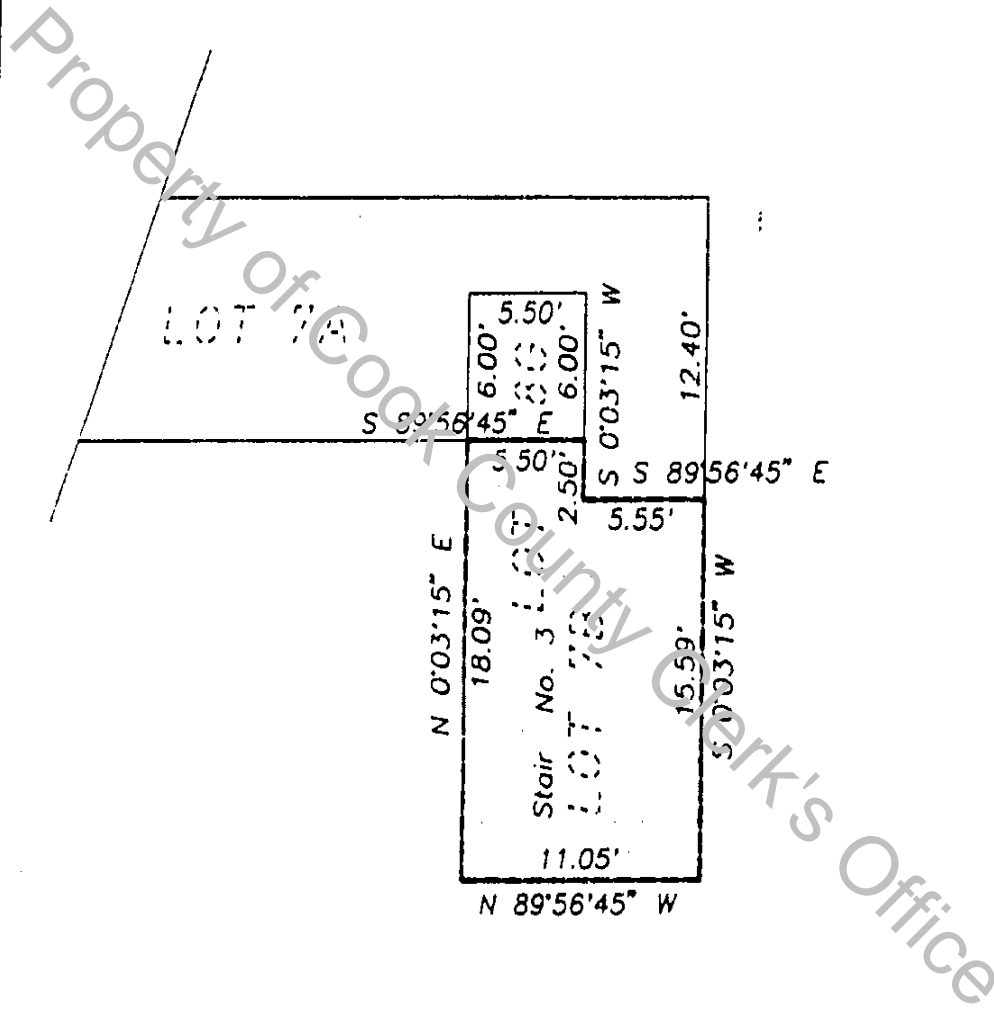
# UNOFFICIAL COPY

## Exhibit "D-2B"

EASEMENT FOR INGRESS AND EGRESS FROM BETH-ANNE FOUNDATION  
FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION

LOWER LIMITS = 23.71 C.C.D., UPPER LIMITS = 44.95 C.C.D.

AREA = 186 SQ. FT. or 0.0043 ACRES



98050991

SURVEY NO. N-119978-D-2B EXHIBIT DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS

128 W. GRAND AVE. 312-844-3450 CHICAGO, ILL. 60610

Scale: 1" = 8'

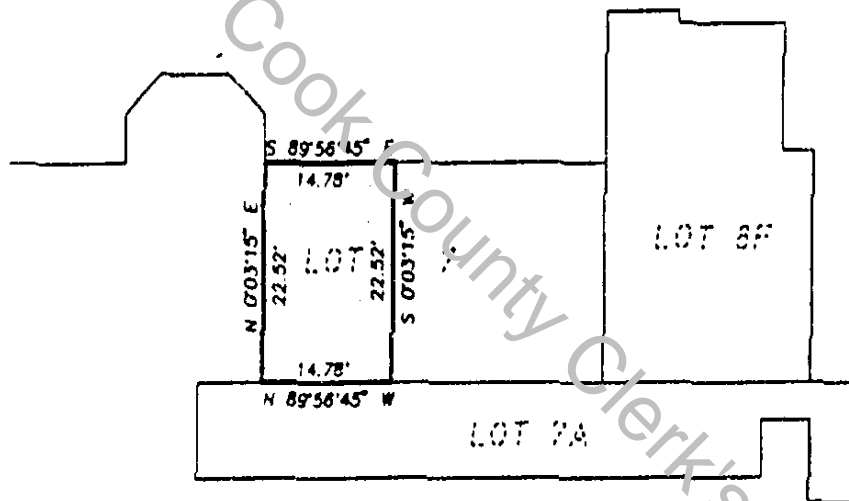
# UNOFFICIAL COPY

## Exhibit "B-2C"

EASEMENT FOR INGRESS AND EGRESS FROM BETH-ANNE FOUNDATION  
FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION

LOWER LIMITS = 32.97 C.C.D., UPPER LIMITS = 44.95 C.C.D.

AREA = 333 SQ. FT. or 0.0076 ACRES



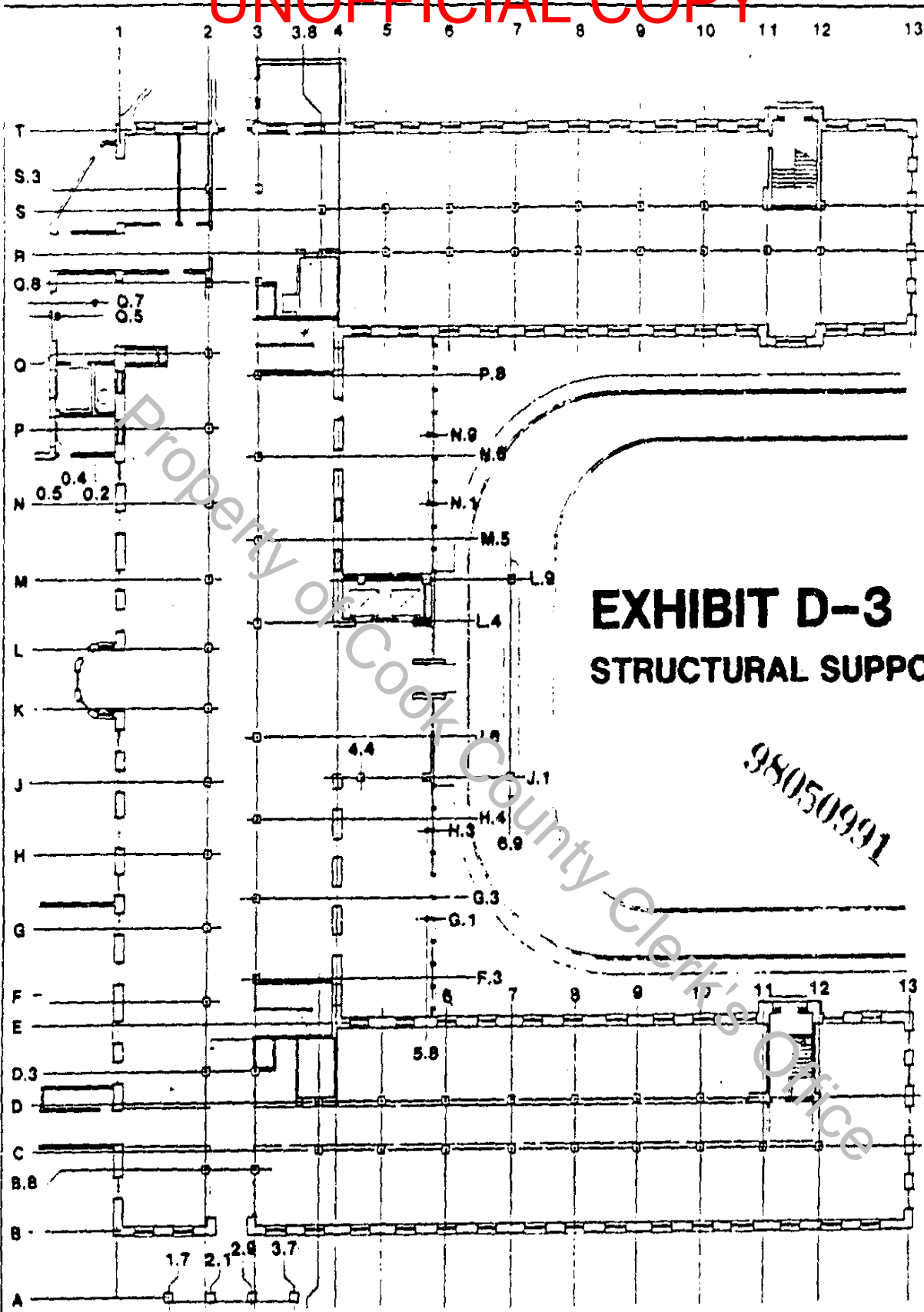
SURVEY NO. N-119978-D-7 EXHIBIT DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS

128 W. GRAND AVE. 312-944-3450 CHICAGO, ILL 60610

Scale: 1" = 20'

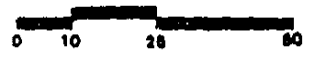
UNOFFICIAL COPY



**EXHIBIT D-3**  
**STRUCTURAL SUPPORT**

98050991

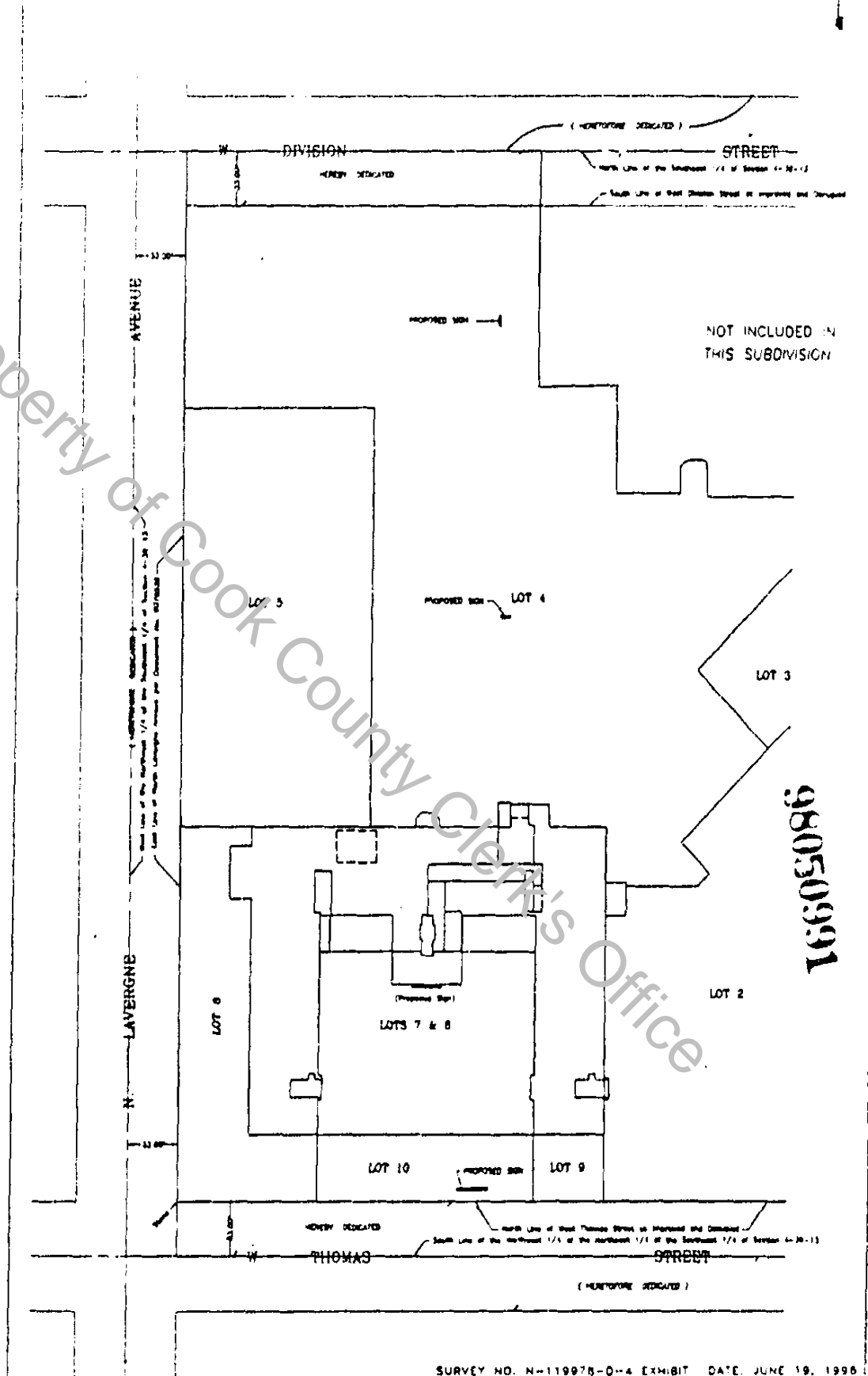
 **BETH-ANNE FOUNDATION**  
BUILDING DIAGRAM-GROUND FLOOR



1-5		<p><b>BETH-ANNE RESIDENCES</b> <b>ELDERLY RESIDENTIAL BUILDING RENOVATION</b></p>	<p><b>BETH-ANNE RESIDENCES</b> <b>ELDERLY RESIDENTIAL BUILDING RENOVATION</b></p>	<p>REVISIONS</p> <table border="1"> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table>									<p>DATE: 11/10/09</p>

# UNOFFICIAL COPY

EASEMENT FOR USE AND MAINTENANCE OF SIGNS FROM BETH-ANNE  
FOUNDATION FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION



SURVEY NO. N-119978-D-4 EXHIBIT DATE, JUNE 19, 1996

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS  
118 W. GRAND AVE. 312-844-3450 CHICAGO, ILL. 60606

Scale 1" = 60'

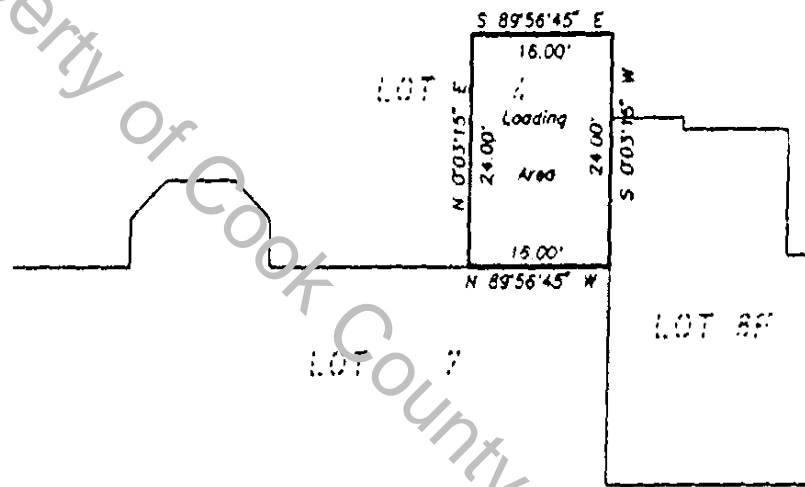
P\N119978.E-D-4 DWG CD-2

# UNOFFICIAL COPY

## Exhibit B-5

EASEMENT FOR USE OF LOADING AREA FROM BETH-ANNE FOUNDATION  
FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION

AREA = 384 SQ. FT. or .0088 ACRES



Property of Cook County Clerk's Office

98050991

SURVEY NO. N-119978-D-5 EXHIBIT DATE: JUNE 19, 1996

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS  
128 W. GRAND AVE. 312-944-3450 CHICAGO, ILL 60610

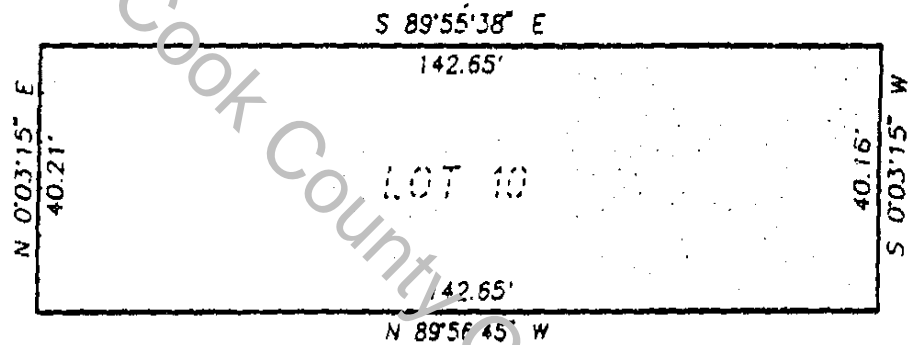
Scale: 1" = 20'

# UNOFFICIAL COPY

## Exhibit B-6

NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS  
FROM BETH-ANNE FOUNDATION FOR THE BENEFIT OF  
BETH-ANNE RESIDENCES IN BETH-ANNE SUBDIVISION

AREA = 5,733 SQ. FT. or 0.1316 ACRES



Property of Cook County Clerk's Office 98050991

SURVEY NO. N-119978-D-6 EXHIBIT DATE: JUNE 19, 1996

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS  
126 W. GRAND AVE. 312-944-3450 CHICAGO, ILL. 60610

Scale: 1" = 30'

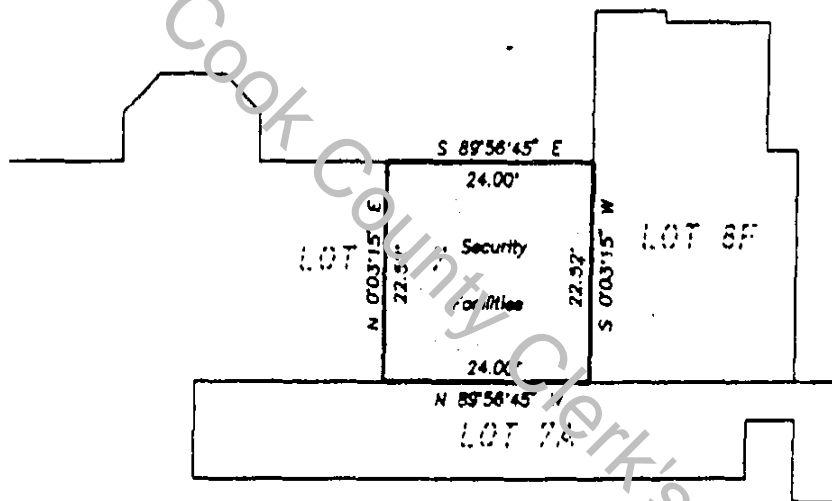
# UNOFFICIAL COPY

## Exhibit "B-7"

EASEMENT FOR SECURITY FACILITIES FROM BETH-ANNE FOUNDATION  
FOR THE BENEFIT OF BETH-ANNE RESIDENCES  
IN BETH-ANNE SUBDIVISION

LOWER LIMITS = 32.97 C.C.D., UPPER LIMITS = 44.95 C.C.D.

AREA = 541 SQ. FT. or 0.0124 ACRES



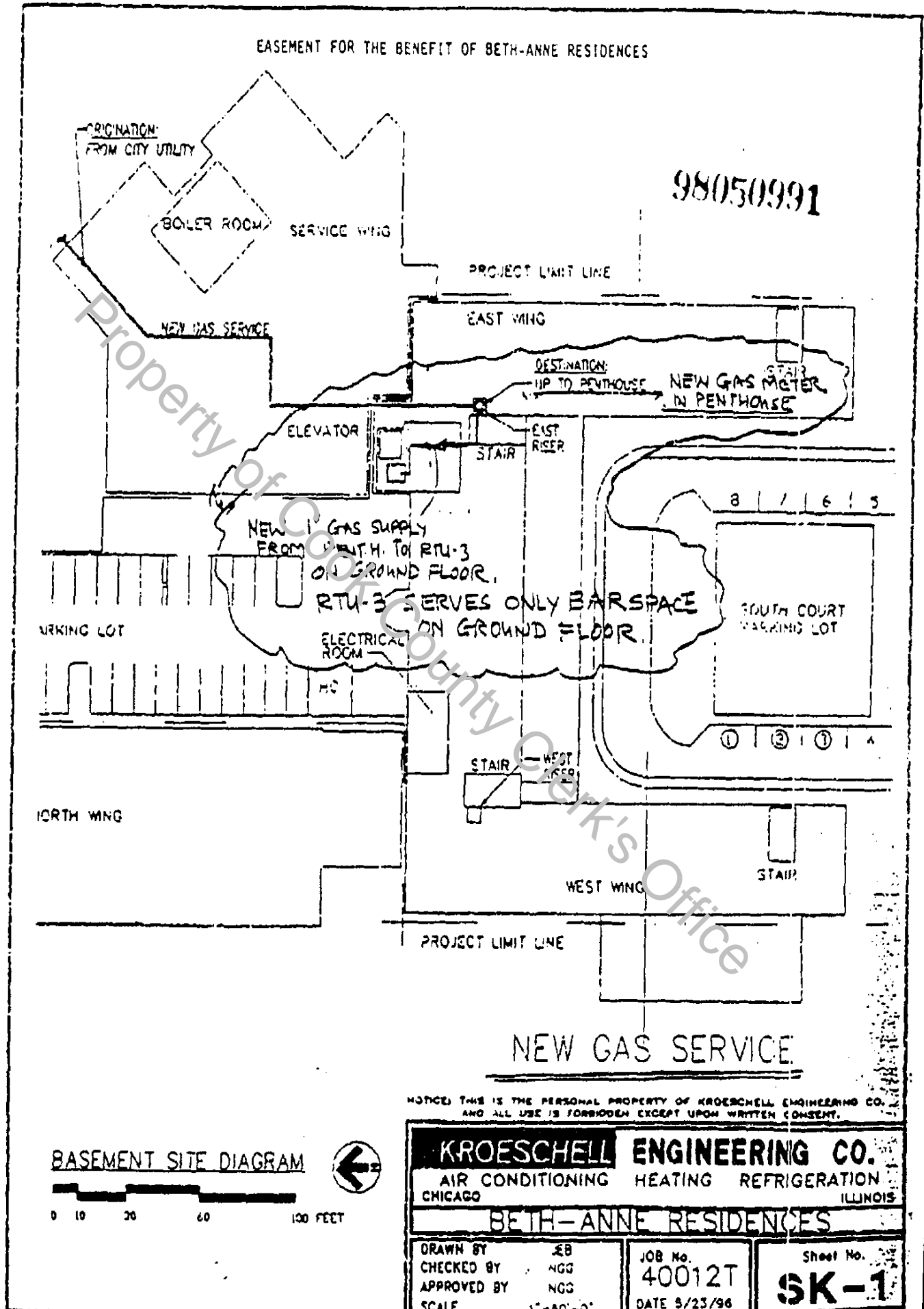
SURVEY NO. N-119978-D-7 EXHIBIT DATE: JUNE 5, 1997

NATIONAL SURVEY SERVICE, INC.  
ENGINEERS AND LAND SURVEYORS

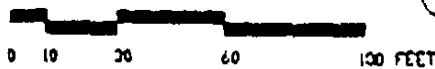
128 W. GRAND AVE. 312-944-3450 CHICAGO, ILL. 60610

Scale: 1" = 20'

## EXHIBIT E



BASEMENT SITE DIAGRAM



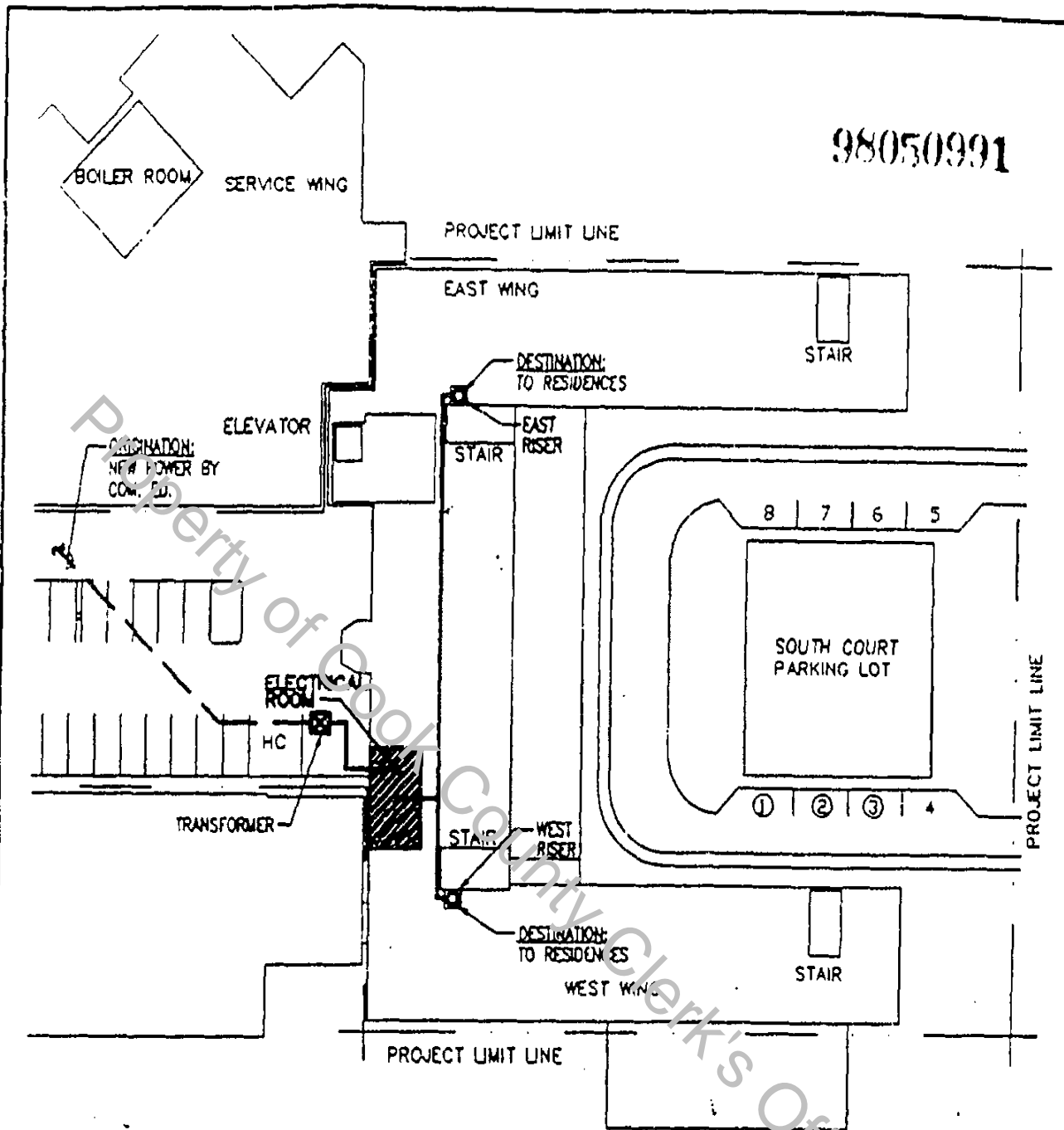
NOTICE: THIS IS THE PERSONAL PROPERTY OF KROESCHELL ENGINEERING CO. AND ALL USE IS FORBIDDEN EXCEPT UPON WRITTEN CONSENT.

<b>KROESCHELL ENGINEERING CO.</b>		
AIR CONDITIONING HEATING REFRIGERATION		
CHICAGO		ILLINOIS
BETH-ANNE RESIDENCES		
DRAWN BY: EB	JOB No.:	Sheet No.
CHECKED BY: NGG	40012T	SK-1
APPROVED BY: NGG	DATE 5/23/96	
SCALE: 1" = 30'-0"		



# UNOFFICIAL COPY

98050991



NEW ELECTRICAL SERVICE  
NEW POWER  
NEW EMERGENCY POWER  
NEW METER FOR BASEMENT/PENTHOUSE

NOTICE: THIS IS THE PERSONAL PROPERTY OF KROESCHELL ENGINEERING CO. AND ALL USE IS FORBIDDEN EXCEPT UPON WRITTEN CONSENT.

BASEMENT SITE DIAGRAM



0 10 30 60 100 FEET

**KROESCHELL ENGINEERING CO.**

AIR CONDITIONING HEATING REFRIGERATION  
CHICAGO ILLINOIS

BETH-ANNE RESIDENCES

DRAWN BY JEB  
CHECKED BY NGG  
APPROVED BY NGG  
SCALE 1"=50'-0"

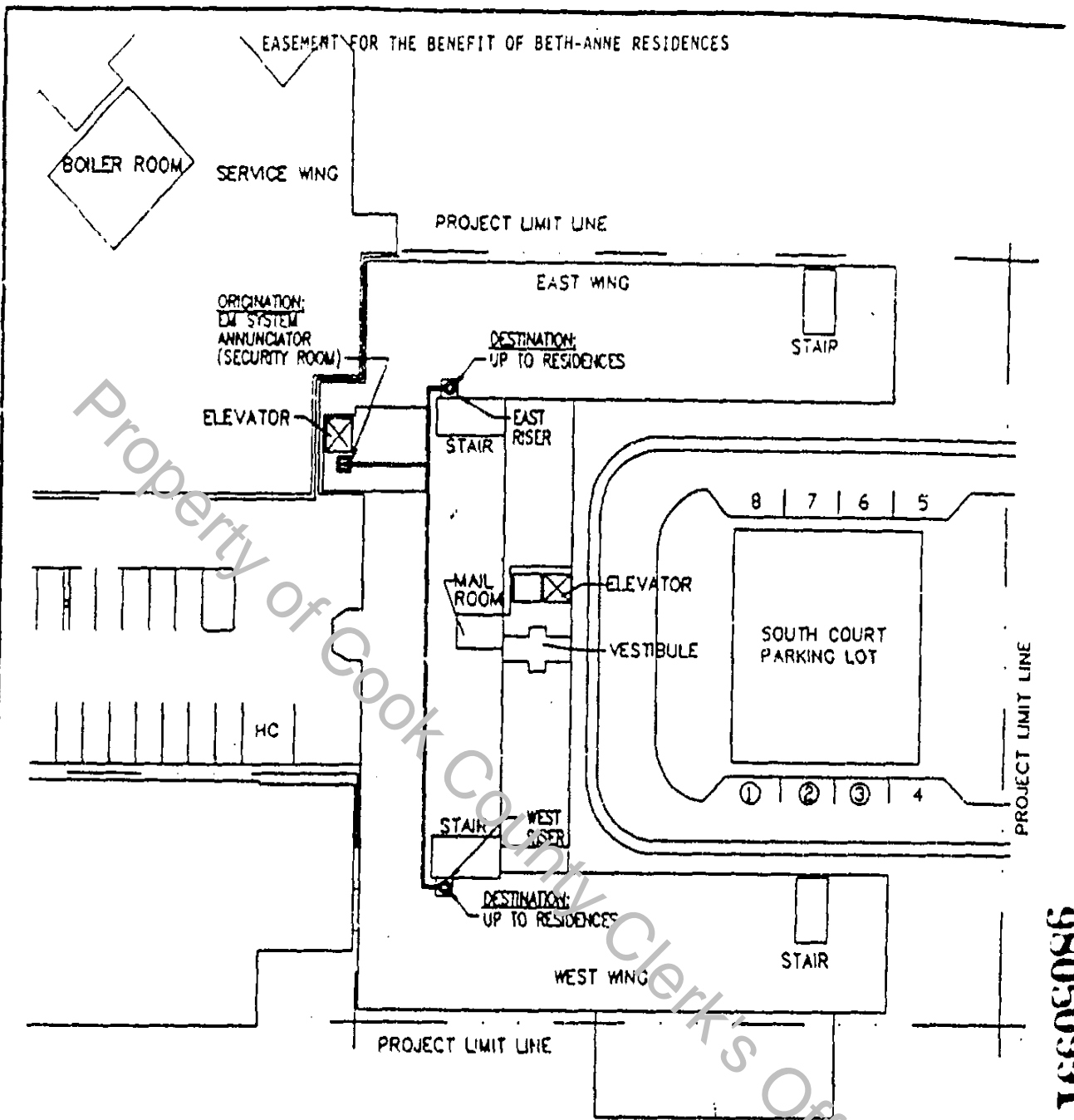
JOB No.  
40012T  
DATE 5/23/96

Sheet No.

**SK-2**

# UNOFFICIAL COPY

EXHIBIT E



98050991

## EMERGENCY CALL SYSTEM

NOTICE: THIS IS THE PERSONAL PROPERTY OF KROESCHELL ENGINEERING CO. AND ALL USE IS FORBIDDEN EXCEPT UPON WRITTEN CONSENT.

GROUND FLOOR PLAN



**KROESCHELL ENGINEERING CO.**

AIR CONDITIONING HEATING REFRIGERATION  
CHICAGO ILLINOIS

BETH-ANNE RESIDENCES

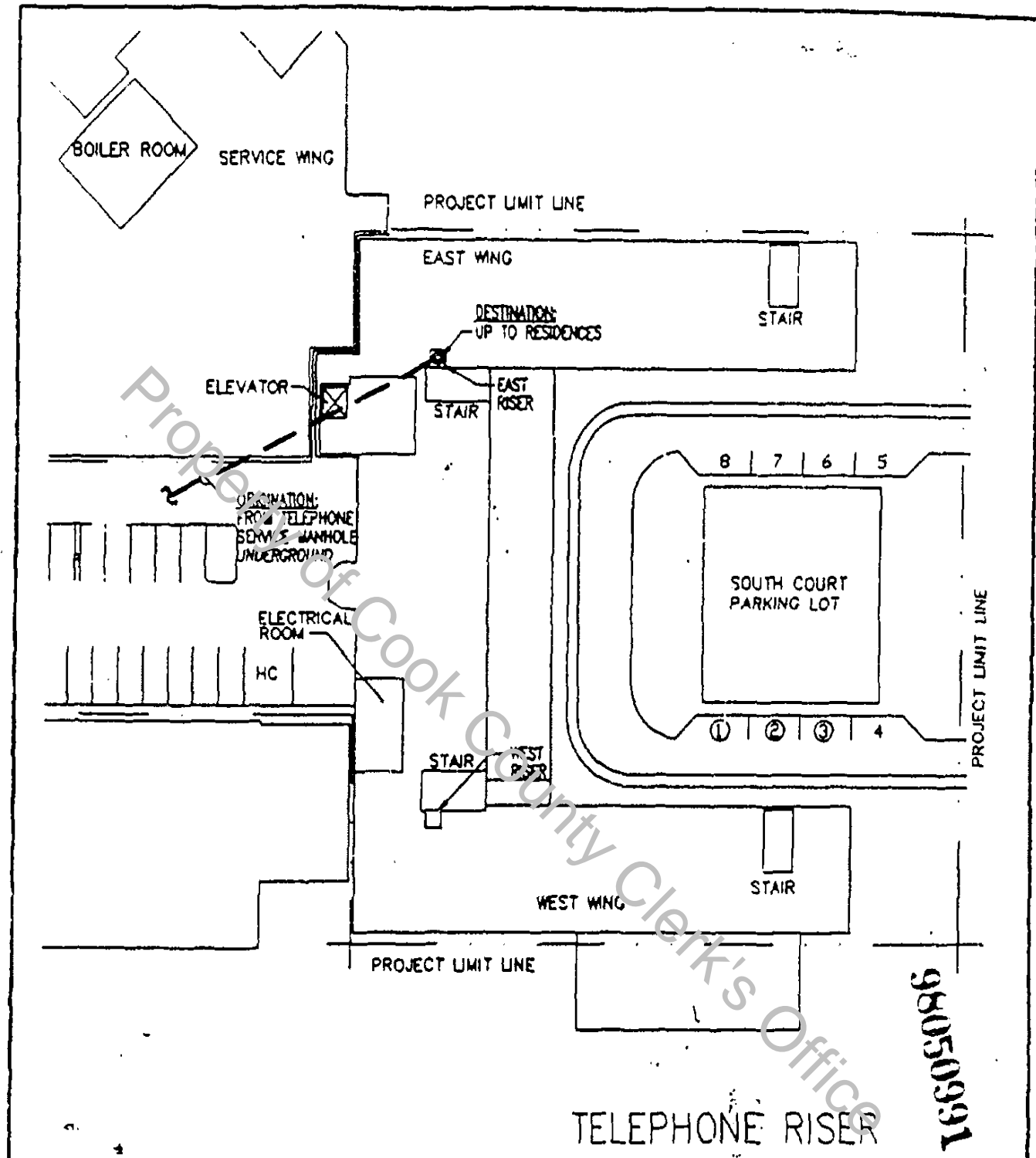
DRAWN BY JEB  
CHECKED BY NGG  
APPROVED BY NGG  
SCALE 1" = 50'-0"

JOB No.  
40012T  
DATE 5/23/98

Sheet No.

**SK-3**

# EXHIBIT E UNOFFICIAL COPY



**BASEMENT FLOOR PLAN**

0 10 30 60 100 FEET

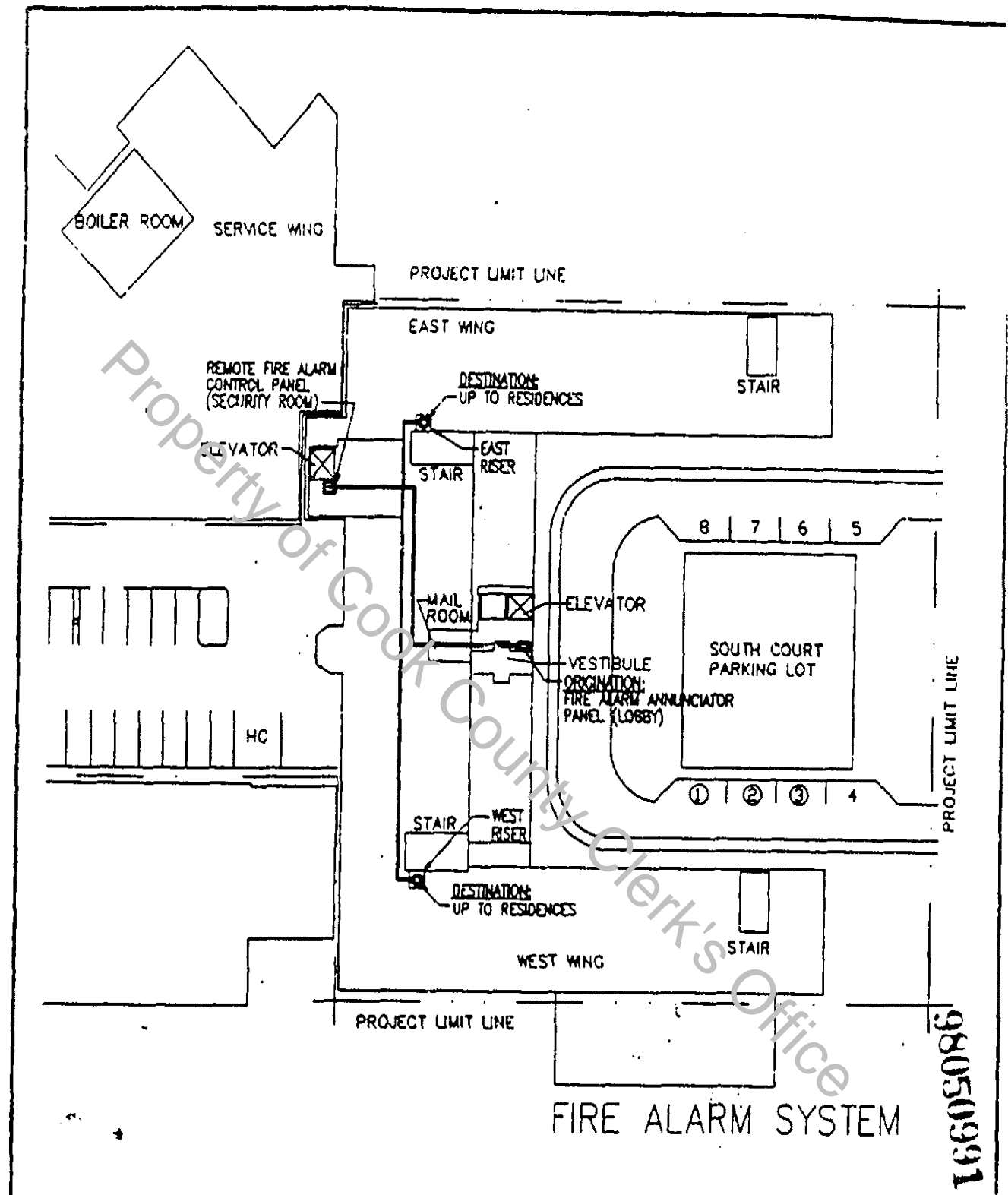
NOTICE: THIS IS THE PERSONAL PROPERTY OF KROESCHELL ENGINEERING CO. AND ALL USE IS FORBIDDEN EXCEPT UPON WRITTEN CONSENT.

<b>KROESCHELL ENGINEERING CO.</b>		
AIR CONDITIONING HEATING REFRIGERATION		
CHICAGO ILLINOIS		
<b>BETH-ANNE RESIDENCES</b>		
DRAWN BY CHECKED BY APPROVED BY SCALE	JEB NGG NGG 1"=50'-0"	JOB No. <b>40012T</b> DATE 5/23/88
		Sheet No. <b>SK-4</b>

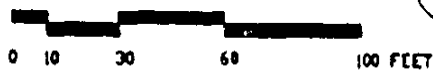
16650991

# UNOFFICIAL COPY

EXHIBIT E



GROUND FLOOR PLAN

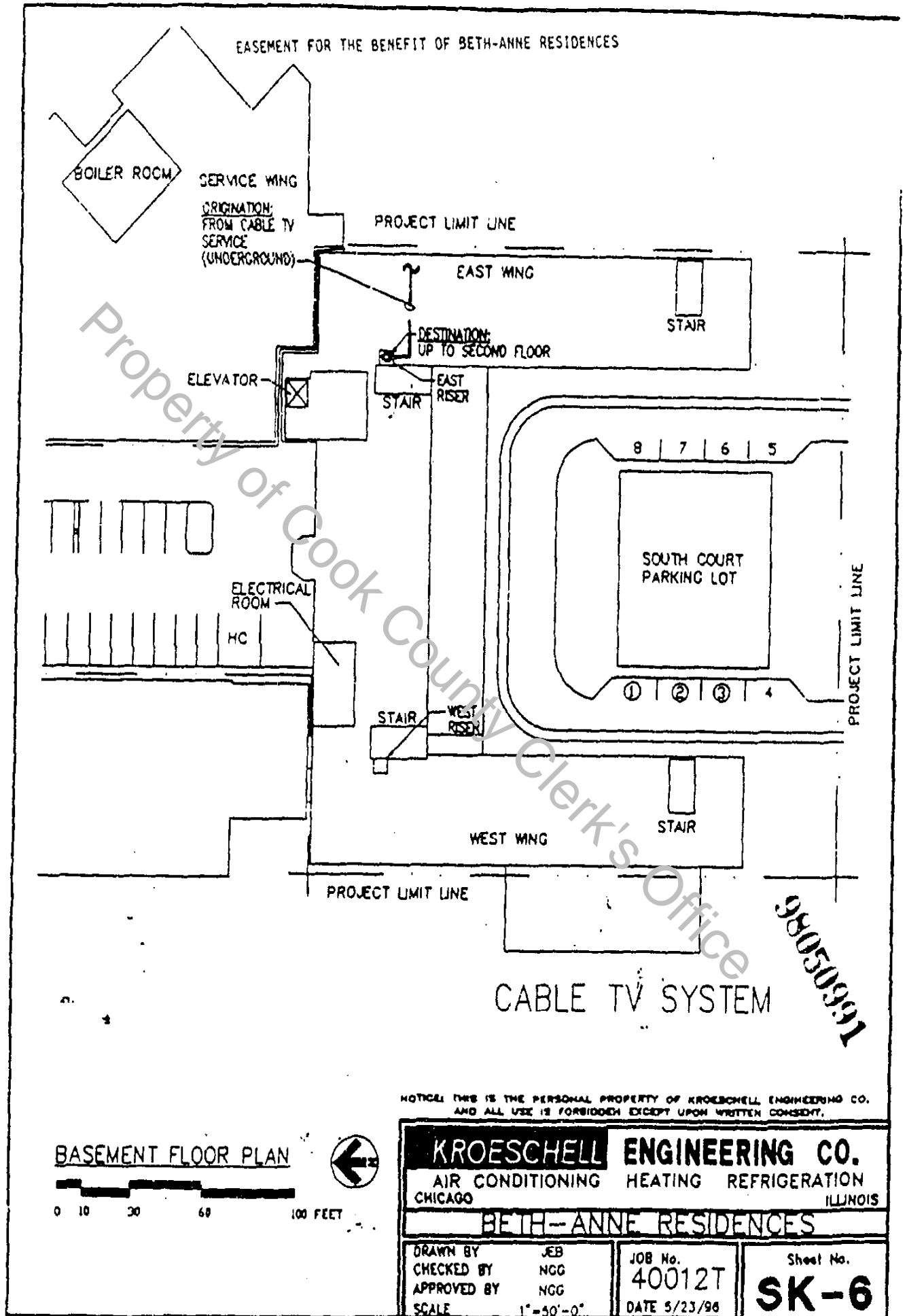


NOTICE: THIS IS THE PERSONAL PROPERTY OF KROESCHELL ENGINEERING CO. AND ALL USE IS FORBIDDEN EXCEPT UPON WRITTEN CONSENT.

<b>KROESCHELL ENGINEERING CO.</b>		
AIR CONDITIONING HEATING REFRIGERATION		
CHICAGO ILLINOIS		
<b>BETH-ANNE RESIDENCES</b>		
DRAWN BY CHECKED BY APPROVED BY SCALE	JEB NGG NGG 1" = 50'-0"	JOB No. 40012T DATE 5/23/98
		Sheet No. <b>SK-5</b>

# UNOFFICIAL COPY

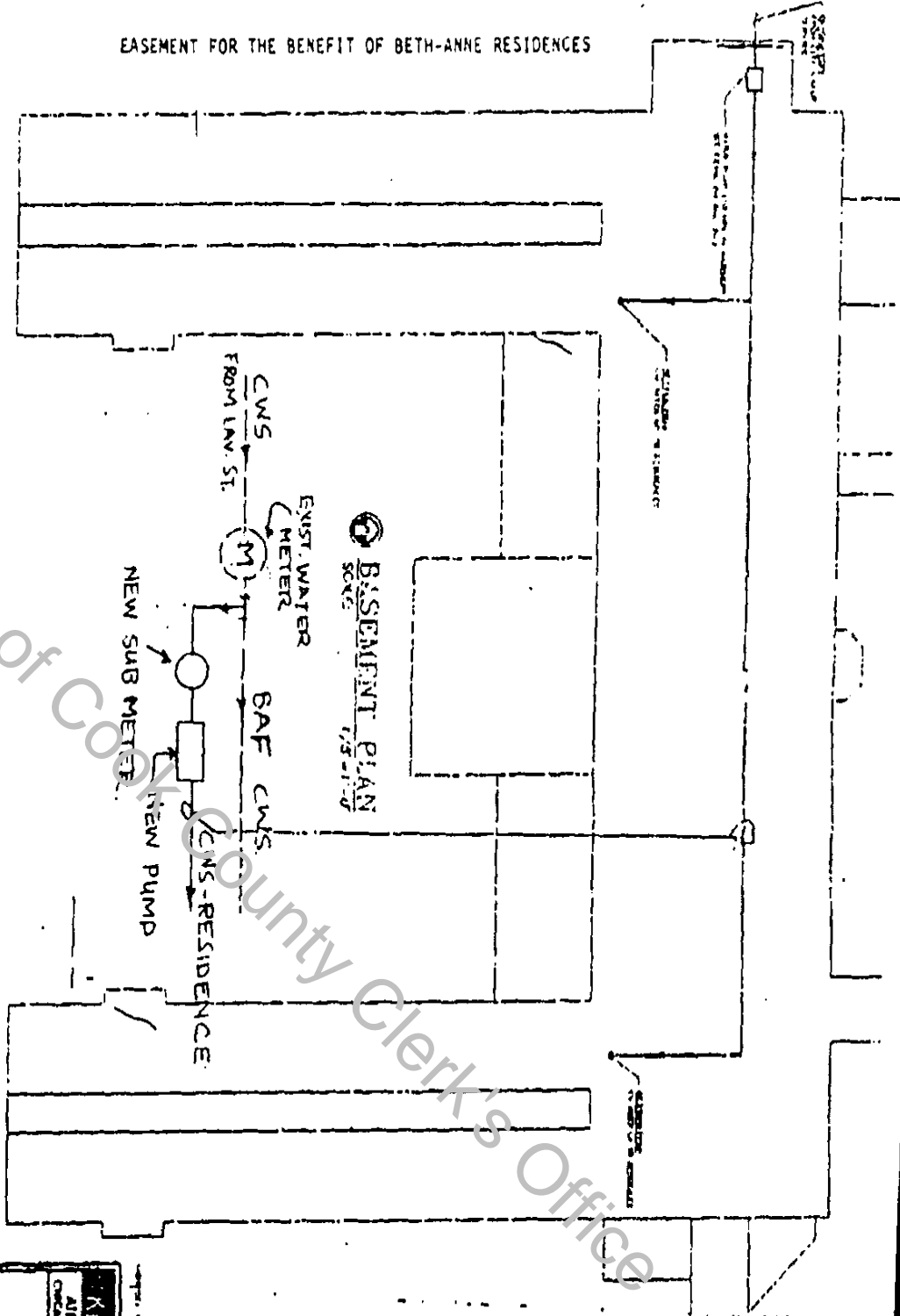
## EXHIBIT E



# UNOFFICIAL COPY

EXHIBIT E

## EASEMENT FOR THE BENEFIT OF BETH-ANNE RESIDENCES

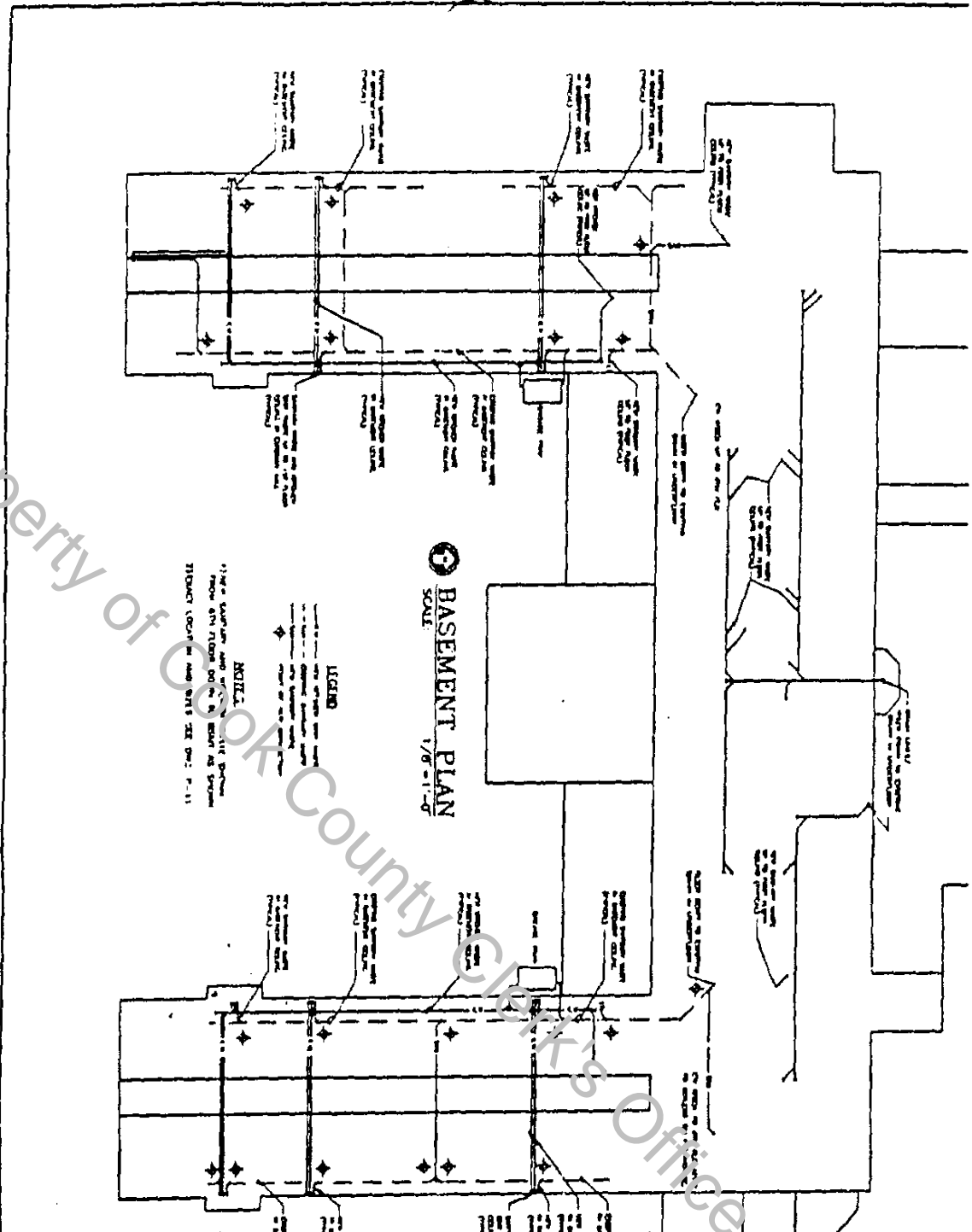


Property of Cook County Clerk's Office

REV. 6-11-97

1695096

<b>KROESCHER ENGINEERING CO.</b> AIR CONDITIONING HEATING REFRIGERATION DOMESTIC WATER SERVICES BASEMENT PLAN	
ORDERED BY 1/22/97 DATE	FOR NO. 40012T
DRAWN BY SK-7	SCALE NO. SK-7



**KROESCHELL ENGINEERING CO.**  
 AIR CONDITIONING HEATING REFRIGERATION  
 KANSAS

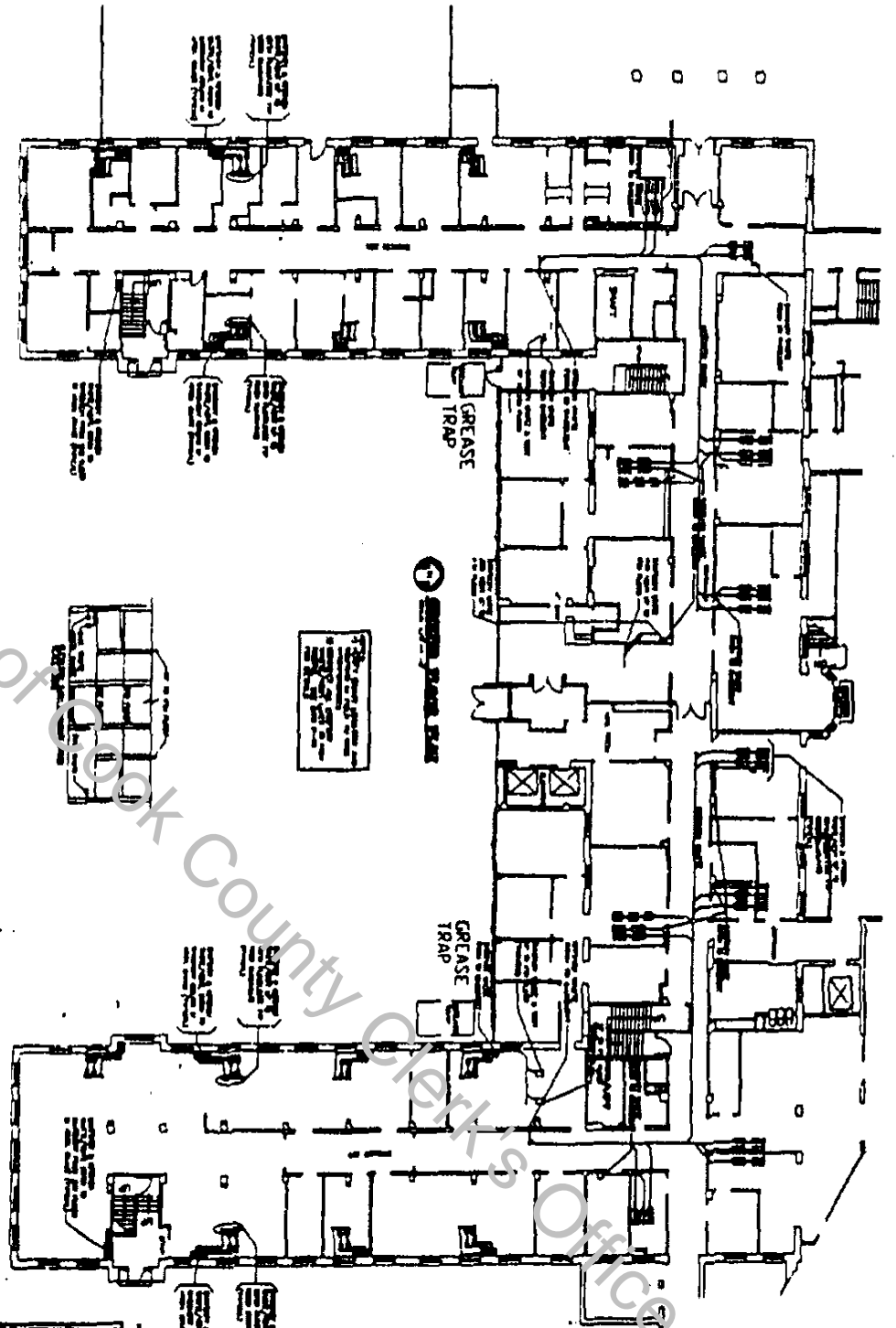
BETH-ANNE RESIDENCES  
 NEW SANITARY/KITCHEN WASTE SERVICES  
 BASEMENT PLAN

DESIGNED BY A.S.	JOB NO. 400121	DRAWN BY S.K.-8
CHECKED BY M.C.		
APPROVED BY V.J.B.-1-0		
SCALE 5/32\"/>		

Property of Cook County Clerk's Office

16605096

UNOFFICIAL COPY



Property of Cook County Clerk's Office

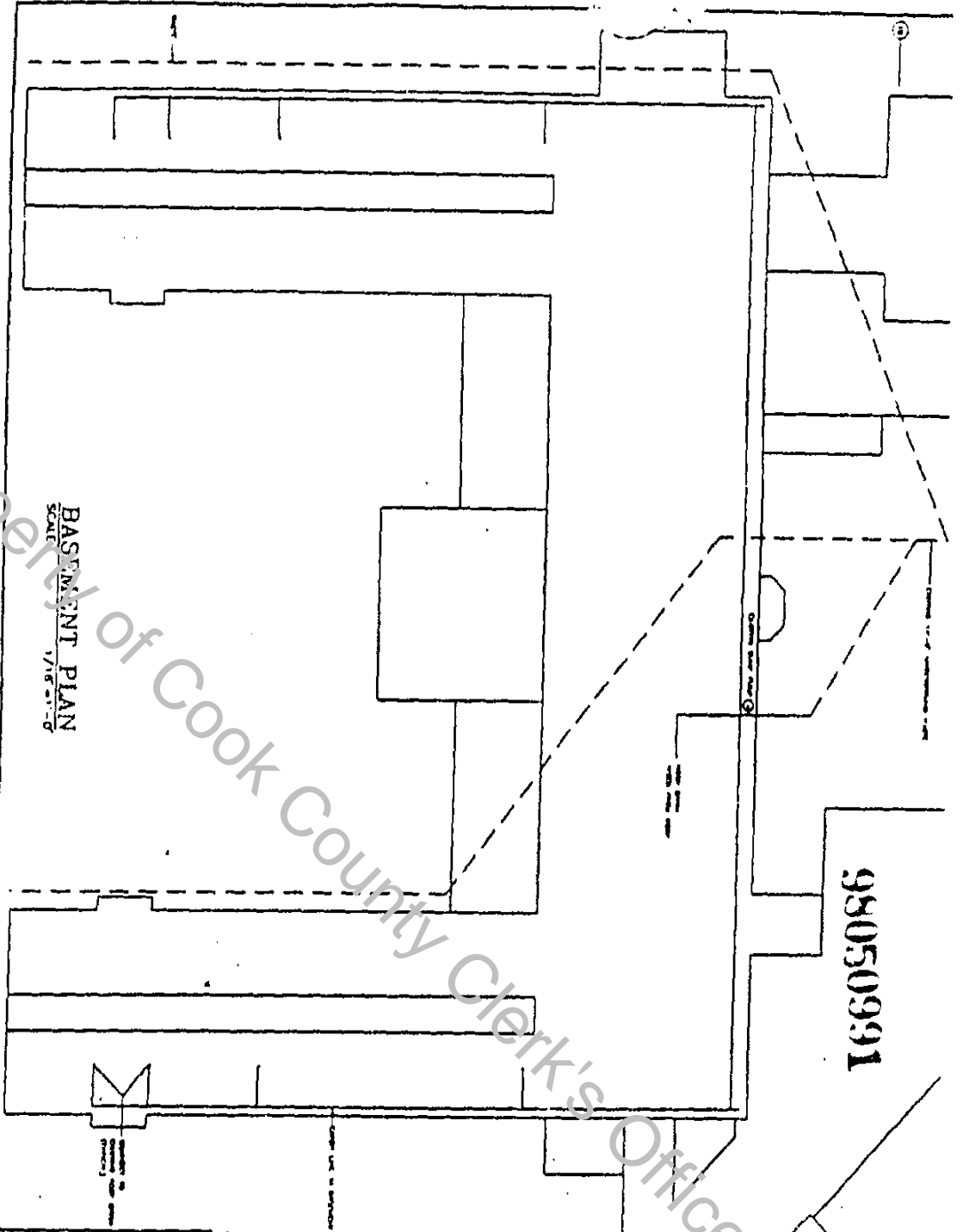
<b>KROSCHEIDT ENGINEERING CO.</b> AIR CONDITIONING HEATING REFRIGERATION CHICAGO ILLINOIS		
BETH - ANNE RESIDENCES NEW SANITARY/KITCHEN WASTE SERVICES FIRST FLOOR PLAN		
DESIGNED BY CHECKED BY APPROVED BY SCALE DATE	A.B. M.O.C. 1/32" = 1'-0" 5/23/76	JOB NO. 40012T SHEET NO. <b>SK-9</b>

16605086



UNOFFICIAL COPY

EXIST E



BASEMENT PLAN  
SCALE 1/16" = 1'-0"

98050991

**KROSCHELL ENGINEERING CO.**  
 AIR CONDITIONING HEATING REFRIGERATION  
 CHICAGO ILLINOIS

BETH - ANNE RESIDENCES  
 STORM DRAIN WATER SERVICES  
 BASEMENT PLAN

DESIGNED BY J.S.	JOB NO. 400121	Sheet No. SK-10
CHECKED BY M.C.		
APPROVED BY SCALE 1/32" = 1'-0"		
DATE 3/23/78		

Property of Cook County Clerk's Office