



DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION  
CITY OF CHICAGO

**AGREED PLAN OF OPERATION**

**Licensee:** RH F&B Illinois, LLC  
D/b/a: Restoration Hardware

**Premises:** 1300-1310 N. Dearborn Street, Basement to Fifth Floor  
Chicago, Illinois 60610

**Licenses:** Retail Food Establishment, Consumption on Premises Incidental - Activity, and Public Place of Amusement License

**Account Number:** 396326

**Site Number:** 1

The City of Chicago Department of Business Affairs & Licensing/Local Liquor Control Commission (BACP/LLCC) and the above named Licensee have agreed to the following license conditions concerning the operation of the business:

1. The Licensee hereby incorporates the restrictive covenant by and among 1300 Dearborn Property, LLC, the North Dearborn Association, the Sutton Place Association, and The Whitney Condominium Association, dated August 16, 2013 (the "Restrictive Covenant"), to this Plan of Operation. The Restrictive Covenant is attached as Exhibit A.

The agreed conditions of this liquor license are legally binding and may be enforced by City of Chicago enforcement authorities. Violation of the above stated agreed conditions may result in the imposition of a fine and/or suspension or revocation of all business licenses issued to the Licensee. Violations of the above stated agreed conditions may also result in the issuance of cease and desist orders prohibiting the activity which violates the conditions of the liquor license. The agreed conditions of the liquor license shall apply to the business address and Licensee and to all officers, managers, members, partners and direct or indirect owners of the Licensee. The sale of the Licensee to other persons purchasing the stock or membership units of the Licensee shall be subject to the same agreed conditions set forth in this Plan of Operation. Any and all new owners of the Licensee shall be subject to the same conditions set forth in this statement. It shall be the duty of every person conducting, engaging in, operating, carrying on or managing the Licensee to post this Plan of Operation next to the business license certificates in a conspicuous place at the business address.




DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION  
CITY OF CHICAGO

**Licensee:** RH F&B Illinois, LLC

**Business Address:** 1300-1310 N. Dearborn Street, Basement to Fifth Floor  
Chicago, Illinois 60610

  
Edward Tony Lee, LLC Manager

  
Gregory Steadman  
City of Chicago  
Local Liquor Control Commission

6/22/2015  
Date

6/17/15  
Date

  
Karen Lorraine Boone, LLC Manager

6/22/2015  
Date

**DOCUMENT  
PREPARED BY  
AND RETURN TO:**

Edward J. Kus  
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Doc#: 1323934024 Fee: \$84.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/27/2013 09:32 AM Pg: 1 of 24

*For Recorder's Use Only*

**RESTRICTIVE COVENANT AND AGREEMENT**

**(1300 North Dearborn Parkway, Chicago, Illinois)**

**THIS RESTRICTIVE COVENANT AND AGREEMENT** ("*Restrictive Covenant*") is made this 16<sup>th</sup> day of August, 2013 and is by and between **1300 Dearborn Property, LLC**, a Delaware limited liability company ("*Owner*"), the **North Dearborn Association**, an Illinois not-for-profit corporation, the **Sutton Place Association**, an Illinois not-for-profit corporation, and **The Whitney Condominium Association**, an Illinois not-for-profit corporation (collectively, the North Dearborn Association, the Sutton Place Association, and The Whitney Condominium Association are the "*Neighborhood Associations*").

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Restrictive Covenant, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Neighborhood Associations agree that the Property (as defined below) and all portions thereof are and shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants hereinafter set forth.

**SECTION 1. RECITALS**

A. The Owner is the legal title owner of the property located at 1300 North Dearborn Parkway, Chicago, Illinois, and legally described in **EXHIBIT A** attached to and, by this reference, made a part of this Restrictive Covenant. ("*Property*")

B. The Property currently is improved with a four-story existing building commonly known as the "Three Arts Club" ("*Building*").

C. The Property is located on the northwest corner of the intersection of North Dearborn Parkway and West Goethe Street in the City of Chicago ("**City**"), with an alley running parallel to North Dearborn Parkway located immediately to the west of the Building ("**Alley**").

D. On June 10, 1981, the Building was designated a Landmark by the Commission on Chicago Landmarks.

E. Pursuant to Title 17 of the Municipal Code of Chicago, titled the "Chicago Zoning Ordinance" ("**Zoning Ordinance**"), the Property is currently zoned RM-5, Residential Multi-Unit Zoning District ("**RM-5 District**"), which is intended for multi-unit residential buildings of up to four stories.

F. The Owner proposes to renovate the Property for a principal use as a retail gallery operated by a company that sells luxury furniture, art and home accessories, with an accessory restaurant use ("**Proposed Development**"), all as more fully described in the proposal attached to, and by this reference made a part of, this Restrictive Covenant as **Exhibit B** ("**Proposal**").

G. The proposed retail use is not permitted in the RM-5 District.

H. On May 8, 2013 the Owner filed an application with the City to amend Map No. 3-F of the Zoning Ordinance so that the Property will be located within the B3-5, Community Shopping Zoning District ("**B3 -5 District**") ("**Proposed Rezoning**").

I. The North Dearborn Association was established in 1954 under the Illinois Not for Profit Corporation Act and exists to serve and protect the interests of its members, who are primarily owners and occupants of property located on, around, and nearby North Dearborn Parkway in the City. Members of the North Dearborn Association are owners of real property located within the vicinity of the Property, including certain parcels of real property located within 1,200 feet of the Property.

J. The Sutton Place Association was established in 1978 under the Illinois Not for Profit Corporation Act and exists to serve and protect the interests of its members, who are owners and occupants of property located at 1300-1354 North Sutton Place in the City.

K. The Whitney Condominium Association was established on December 10, 1996 under the Illinois Not for Profit Corporation Act and exists to serve and protect the interests of its members, who are owners and occupants of property located at 1301 N. Dearborn Parkway in the City.

L. The Neighborhood Associations initially opposed the Proposed Rezoning and the Proposed Development; however, based on the assurance by the Owner that the Property will be developed and used as set forth in the Proposal and this Restrictive Covenant, the Neighborhood Associations have assured the Owner that they would withdraw their opposition to, and support, the Proposed Rezoning and the Proposed Development.

M. To provide such assurances in a legally binding and enforceable manner, the Owner and the Neighborhood Associations have agreed to execute, record, and be bound by this Restrictive Covenant.

## **SECTION 2. BENEFICIARY OF RESTRICTIVE COVENANT.**

This Restrictive Covenant exists for the protection of the Neighborhood Associations. It shall run to the sole and exclusive benefit of the Neighborhood Associations, or any of them, and their successors, assigns, agents, and representatives, each of whom shall have the right to enforce this Restrictive Covenant pursuant to Section 5 of this Restrictive Covenant.

## **SECTION 3. REZONING**

**A. Pending Application to Rezone to B3-5 District.** The Owner acknowledges that notwithstanding the uses and rights that may otherwise be applicable to the Property within the B3-5 District, the Property shall be subject to this Restrictive Covenant.

**B. Voluntary Application to Rezone Back to the RM-5 District.**

i. The Owner covenants, represents and warrants to the Neighborhood Associations that the Owner shall, upon receipt of a certificate of occupancy from the City for the Proposed Development, and in no event more than thirty days thereafter, file an application with the City to amend Map No. 3-F of the Zoning Ordinance so that the Property will be rezoned back to the RM-5 District ("***RM-5 Rezoning Application***"). The Owner acknowledges and agrees that such rezoning would constitute a "downzoning" of the Property and would cause the Building and the Proposed Development to be a legal nonconforming use under the Zoning Ordinance. Nevertheless, the Owner shall, in good faith, take all necessary steps to diligently file and process the RM-5 Rezoning Application and shall affirmatively support and seek the City's approval of the RM-5 Rezoning Application. To ensure that the RM-5 Rezoning Application will be filed, the Owner shall, concurrent with the execution of this Restrictive Covenant, complete and execute all of the required and applicable documentation for the RM-5 Rezoning Application and deposit such documentation into an escrow account controlled by an escrow agent mutually agreed upon in advance by the Owner and the Neighborhood Associations, with escrow instructions acceptable to the Neighborhood Associations and Owner, that enable the North Dearborn Association to file and process the RM-5 Rezoning Application with the City in the event that the Owner does not do so at the time required by this Restrictive Covenant. If the North Dearborn Association declines to file the Rezoning Application, then any of the other Neighborhood Associations may file and process the Rezoning Application with the City.

ii. If either (a) a building permit for the renovation work contemplated in the Proposal is not issued by the City within a period ending 12 months after the date on which the Proposed Rezoning to the B3-5 District is approved by the City, which period may be extended by the written consent of the Neighborhood Associations, which consent shall not be unreasonably withheld, or (b) a certificate of occupancy is not issued within a period ending 30 months after the date on which the building permit is issued by the City, which period may be extended by the written consent of the Neighborhood Associations, which consent shall not be unreasonably withheld, then the Owner shall, as soon as practicable, but in no event later than 30 days thereafter, file with the City the RM-5 Rezoning Application. If the Owner fails to do so, the North Dearborn Association shall have the right to file and process the RM-5 Rezoning Application utilizing the documents deposited in the escrow described in Section 3.B.i of this Restrictive Covenant. The escrow agreement shall contain instructions acceptable to the Neighborhood Associations and Owner that enable the North Dearborn Association or any of

the other Neighborhood Associations to file and process the RM-5 Rezoning Application with the City in the event that the Owner does not do so within the time required by this Section 3.B.ii. If the North Dearborn Association declines to file the Rezoning Application, then any of the other Neighborhood Associations may file and process the Rezoning Application with the City.

**C. Applicability of Restrictive Covenant.** In the event that a certificate of occupancy is issued for the Proposed Development, the provisions of this Restrictive Covenant shall remain in full force and effect whether or not the City grants the RM-5 Rezoning Application. However, in the event that (i) either no building permit is issued or no certificate of occupancy is issued for the Proposed Development within the time periods set forth in Section 3.B of this Restrictive Covenant and (ii) the City subsequently grants the RM-5 Rezoning Application, this Restrictive Covenant shall terminate upon the date that the RM-5 zoning district again becomes effective pursuant to the granting of the RM-5 Rezoning Application. In the event that the City denies the RM-5 Rezoning Application for any reason, the provisions of this Restrictive Covenant shall remain in full force and effect.

#### **SECTION 4. DEVELOPMENT AND USE RESTRICTIONS**

Notwithstanding any use, bulk regulation, or development right that may be applicable or available at any time pursuant to the provisions of the Zoning Ordinance or any other code, ordinance, or regulation of the City, the Property shall be subject to the following conditions, provisions, and restrictions.

##### **A. Building Bulk and Appearance.**

i. The Building shall be the only structure on the Property. The Building shall not be demolished or removed from, and no structure other than the Building shall be constructed on, the Property; provided, however, that in the event of a casualty or condemnation that necessitates the removal of the Building, the Owner may demolish and remove the Building and improve the Property in strict accordance with the zoning restrictions applicable to properties located within the RM-5 District.

ii. The total square footage of the Building shall not exceed 62,500 square feet, excluding the Atrium and the Rooftop, as such terms are hereinafter defined.

iii. The total height of the Building shall not exceed 69 feet.

iv. There shall be no exterior additions to the Building except as those specifically depicted in the Proposal, which shall include the skylight atrium over the courtyard and the glass conservatory on the roof.

v. The exterior elevations of the Building shall be as depicted on the building elevation plan in the Proposal.

vi. During the construction of the Proposed Development, the Owner shall not place, store, or dispose of construction materials or equipment, including without limitation refuse containers, in the Alley or on Dearborn Parkway except as is necessary to complete any part of the Proposed Development that requires the performance of work from locations within the Alley or Dearborn Parkway; provided, however, that at all times during the construction of the Proposed Development, the Owner shall not obstruct in any manner access

to the garages owned by members of the Sutton Place Association that are located adjacent to, and are accessed from, the Alley, or access to the garages or entrance Driveway of 1301 N. Dearborn.

**B. Use.** The Property and Building shall be limited exclusively to the following uses.

i. The principal use shall be a retail gallery operated by a seller and purveyor of luxury furniture, art, home accessories, and related merchandise and services, located entirely within the Building and on the Rooftop, as hereinafter defined ("**Gallery**"). Furniture inventory shall not be stored in, and shall not be delivered to customers from, the Property.

ii. The restaurant shall be an accessory use that primarily serves the visitors and customers of the Gallery ("**Restaurant**").

iii. Any allowed use in the RM-5 zoning district, provided that such use is subject to all of the restrictions set forth in this Restrictive Covenant.

**C. Hours of Operation.** The Gallery shall not be opened to the public on weekdays and Saturdays earlier than 10:00 a.m. or later than 9:00 p.m., and on Sundays earlier than 11:00 a.m. or later than 7:00 p.m. The Restaurant will not be open to the public on weekdays and Saturdays earlier than 8:00 a.m. or later than 9:00 p.m., and on Sundays earlier than 9:00 a.m. or later than 8:00 p.m. Subject to the foregoing, Owner shall establish the hours of operation for the Gallery and the Restaurant (the actual hours of operation, the "**Hours of Operation**").

**D. Restaurant Restrictions.** Operation of the accessory Restaurant use shall be subject to the following restrictions:

i. The Restaurant shall be open to the public, and food and beverages shall be sold, only during the Hours of Operation.

ii. The Restaurant dining area shall be located within the southwest area of the first floor of the Building and within the proposed enclosed atrium ("**Atrium**") and include the loggia, as depicted in the Proposal ("**Dining Area**").

iii. The Dining Area shall accommodate seating for not more than 100 guests.

iv. Food and beverages shall not be sold within any area within the Building other than the Dining Area.

v. The Restaurant shall not sell or serve alcoholic beverages other than wine and beer.

vi. The Restaurant shall sell or serve food and beverages solely through the employment of wait staff who shall provide service to guests within the Dining Area. No bar shall be constructed or used for the purpose of selling or serving food or beverages within or on any part of the Building or the Property except in the Dining Area.

vii. The Restaurant kitchen shall be located solely on the west side of the first floor or basement of the Building and shall abut the Alley, as depicted in the Proposal.

viii. Exhaust from the Restaurant kitchen hoods shall be blown upward through vents that shall be located either within the Building or along the west wall of the Building and constructed so that their exit points are higher than the roofline of the Building.

ix. During the times the Restaurant is open prior to and after the Gallery, customers shall not have access to any part of the Building other than the first floor of the Building. No customers shall be permitted or remain inside the Building more than two hours prior to and one hour after the Hours of Operation for the Gallery.

**E. No Parties or Special Events.**

i. Subject to Section 4.E.ii of this Restrictive Covenant, no portion of the Property or the Building shall be rented, licensed, leased, or made available to any person or entity, at any time, for a party, banquet, special event, or function of any kind.

ii. The Owner may make the Building available for not more than six charitable events within each one-year period following the date of execution of this Restrictive Covenant. Such charitable events shall be held entirely within the Building or on the Rooftop and, unless specifically excepted in this Restrictive Covenant, shall be subject to all of the terms, conditions, and restrictions of this Restrictive Covenant, including specifically, but without limitation, the Hours of Operation. For purposes of this Restrictive Covenant, a "charitable event" shall mean an event conducted by, or for the benefit of, a not-for-profit entity.

**F. Promotional Activities and Events.** All promotional activities and events conducted on the Property shall be confined to the interior and the Rooftop of the Building, shall only be during the Hours of Operation, and shall comply with all City ordinances and all of the other terms, conditions and restrictions of this Restrictive Covenant.

**G. Rooftop.** Use and development of the rooftop of the Building ("**Rooftop**") shall be subject to the following restrictions.

i. The structures proposed to be constructed on the Rooftop (with the possible exception of the elevator overrun) shall be no greater in height than the height of structures in existence and located on the Rooftop prior to the commencement of any work by the Owner in connection with the Proposed Development. Once constructed, the Rooftop structures shall not be visible to pedestrians viewing the Building at street level from West Goethe Street and shall be subject to approval of the Landmarks Commission.

ii. If installed on the Rooftop, the Owner shall install and maintain, in a good and healthful condition, such landscaping on the Rooftop. At all times during the installation and maintenance of such landscaping, the Owner shall keep the Rooftop in a safe, good, and clean condition.

iii. The Owner shall not install spot lights, flood lights, or any other bright or high-intensity lighting on the Rooftop. Any Rooftop lighting shall be limited solely to low-intensity accent lighting and path lighting. Rooftop lighting shall not be illuminated at any times other than during the Hours of Operation, except as required by City ordinance; provided,



however, that Rooftop lighting may be illuminated not more than one hour prior to and one hour after the Hours of Operation solely for the purpose of performing maintenance to the Property.

iv. Any and all use of the Rooftop shall comply with the noise restrictions set forth in Section 4.H of this Restrictive Covenant.

**H. Noise Levels.** The Owner shall not install or use any audio speakers on the exterior of the building, with the exception of the Rooftop where audio speakers may be used and installed for low level music in compliance with City sound ordinances applicable to residential zones within the City. The use of any audio or amplification system within the Building shall comply with all City sound ordinances applicable to residential zones within the City and shall be restricted to the Hours of Operation.

**I. Waste and Refuse.**

i. All waste and refuse generated by uses within the Building, including, without limitation, the Restaurant, shall be stored within the Building in a safe and sanitary manner in accordance with all applicable City codes until the exact time that it is actually collected by the Owner's commercial waste and refuse contractor. No waste or refuse shall be removed from the Building and placed in the Alley unless and until the Owner's commercial waste and refuse contractor is present and ready to haul the waste and refuse on its truck.

ii. The Owner shall cause the Tenant's (hereinafter defined) commercial waste and refuse contractor to collect and remove all waste and refuse from the Building on a daily basis, or as required to maintain a safe and healthy environment. Such daily collection and removal of waste and refuse shall be performed not earlier than 8:00 a.m. and not later than 5:00 p.m. each day.

**J. Deliveries.** The Owner shall not accept any deliveries to the Building of (1) any furniture, art, home accessories, merchandise, and any other equipment, good, material, product, or supply that will be displayed, or will be used by the Owner to construct and install any part of the display thereof, in the Gallery, and (2) of any food product, beverage product, restaurant supply, and any other equipment or supplies that will be served, or will be used by the Owner in the course of performing food and beverage service, in the Restaurant, (collectively, "**Deliveries**") if such Deliveries violate any of the following Delivery conditions and restrictions:

i. All Deliveries shall be made solely to a 30-foot long loading zone located on that part of the north side of West Goethe Street located immediately to the east of the Alley, as depicted in the Proposal as the "Truck Loading Zone". The Neighborhood Associations shall support in writing the Owner's application to the City for the establishment of the Truck Loading Zone; provided, however, that the Owner shall remain solely responsible for obtaining approval of the Truck Loading Zone.

ii. No Deliveries will occur in the Alley.

iii. All Delivery trucks shall be parked next to the Building and shall not impede traffic on any street, sidewalk, or alley.

iv. At no time shall any Delivery trucks be double-parked, or otherwise unlawfully parked on any street.

v. The Gallery shall receive not more than one Delivery of furniture or other large merchandise per month by not more than one box truck. Such monthly Deliveries to the Gallery shall begin not earlier than 8:00 a.m. and shall end not later than 5:00 p.m. There shall be no limitation on the number of Deliveries to the Restaurant.

vi. Deliveries to the Restaurant shall begin not earlier than 8:00 a.m. and shall end not later than 5:00 p.m.

vii. Owner shall, subject to approval by the Commission on Chicago Landmarks, establish a delivery door on the south side of the Building.

**K. Parking.** Subject to the following restrictions, the Owner shall cause to be provided during the Hours of Operation valet parking service for visitors to the Gallery and the Restaurant.

i. Visitors shall check and claim their vehicles only at a valet parking zone located on the west side of North Dearborn Parkway to the north of the intersection of North Dearborn Parkway and West Goethe Street, as depicted in the Proposal ("**Parking Zone**"). The Neighborhood Associations shall support in writing the Owner's application to the City for the establishment of the Parking Zone on the west side of North Dearborn Parkway, in front of the Building; provided, however, that the Owner shall remain solely responsible for obtaining approval of the Parking Zone.

ii. A valet stand shall be located on the sidewalk on North Dearborn Parkway adjacent to the Parking Zone. Such valet stand shall not obstruct the public right of way and at all times shall be kept in a safe, good, and clean condition without hazard to public use of the sidewalks and streets adjacent to the Parking Zone.

iii. The Owner shall cause valet parking attendants to be located within the Building when they are not attending to vehicles or assisting visitors into the Building, and to keep noise levels to the minimum level possible.

iv. The valet parking service shall not leave vehicles parked or standing in any street or alley. Sufficient attendants shall be employed so that vehicles are not parked or left standing in the street for any significant period of time.

v. The Owner shall ensure that at least 50 parking spaces are available at a nearby location for use by the valet parking service for the parking of cars for visitors to the Gallery and the Restaurant. The Owner shall ensure sufficient parking spaces are available for all charitable events.

vi. The valet parking service shall not use the driveway of the building located at 1301 North Dearborn Parkway for any purpose, including without limitation as a location for the turning of checked vehicles on Dearborn Parkway. The valet parking service shall also not leave vehicles parked or standing on the east side of Dearborn Parkway outside 1301 N. Dearborn.

L. **Exterior Landscaping.** The Owner shall install and maintain, in a good and healthful condition, exterior landscaping on the Property along the east-facing side of the Building adjacent to the Dearborn Parkway right-of-way, as depicted in the Proposal, and along the south-facing side of the Building adjacent to the Goethe Street right-of-way. At all times during the installation and maintenance of such landscaping, the Owner shall keep the streets and sidewalks adjacent to such landscaping in a safe, good, and clean condition without hazard to public use. Such landscaping shall appear, and shall be, consistent with the look and feel of the landscaping located on properties within the vicinity of the Property.

M. **Exterior Lighting.** Any exterior lighting installed and maintained by the Owner on any part of the Property and Building and any exterior lighting installed and maintained on the Property around the perimeter of the Building and adjacent to public rights-of-way shall be limited solely to low intensity ground lighting, low intensity architectural accent lighting, and path lighting. Owner shall make a reasonable effort so that the lighting shall appear, and be, consistent with the look and feel of the exterior lighting located on properties within the vicinity of the Property and consistent with the look and feel of the Gallery and Building.

N. **Exterior Signage.** All signage shall comply with applicable City ordinances and shall be approved by the Commission on Chicago Landmarks. The aggregate maximum signage for the exterior of the Building shall not exceed 20 square feet and shall not be illuminated except for incidental lighting consistent with the lighting described in Paragraph M above.

O. **Gangway North of Building.** The gangway located immediately to the north of the Building, between the Alley to the west and North Dearborn Parkway to the east, shall at all times be closed, and, to the extent allowed by fire and life-safety regulations, locked, with secure fencing to prohibit public access to the gangway.

P. **Windows on North and West Side of Building.** All of the windows on the north side of the Building and the first floor windows on the west side of the Building shall be covered with an opaque material.

Q. **No Congregation in Alley.** No employees or independent contractors related to Owner or any Tenant in the Building shall congregate at any time in the Alley for a purpose other than performing their regular and ordinary work at the Property in accordance with the terms and restrictions of this Restrictive Covenant.

#### **SECTION 5. ENFORCEMENT**

A. **Right of Enforcement.** The parties acknowledge and agree that in the event of any dispute between the Owner and the Neighborhood Associations, or any of them, with respect to whether the Owner has complied with any of the provisions of this Restrictive Covenant, the North Dearborn Association shall have the first right to enforce or compel performance of this Restrictive Covenant by specific performance in equity or by injunctive relief. If the North Dearborn Association declines to enforce or compel performance of this Restrictive Covenant, then any of the other Neighborhood Associations shall have the right of enforcement.

B. **Damages Inadequate.** The Owner acknowledges and agrees that in the event of any violation of this Restrictive Covenant by the Owner, damages will be inadequate to remedy the unique injuries incurred by the Neighborhood Associations, and the Neighborhood

Associations, or any of them, shall be, and are hereby, entitled to specific performance of any and all provisions of this Restrictive Covenant by the Owner.

**C. Enforcement Costs.** In the event that the Neighborhood Associations, or any of them, are required to take action to enforce any provision of this Restrictive Covenant and are successful in securing enforcement or damages, the Neighborhood Associations, or any of them, shall be entitled to reimbursement from the Owner and any lessee of the Property, jointly and severally, of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with such enforcement.

**D. Evidence of Compliance.** Upon the execution of this Restrictive Covenant, and thereafter upon the reasonable belief by the Neighborhood Associations, or any of them, that the Owner has breached any provision of this Restrictive Covenant, the Owner and any lessee of the Property shall, upon the request of the Neighborhood Associations, or any of them, provide to the Neighborhood Associations such evidence or assurance as the any of the Neighborhood Associations may reasonably deem necessary to demonstrate that the Owner and any lessee of the Property is in compliance with the provisions of this Restrictive Covenant.

#### **SECTION 6. APPLICABILITY TO PROSPECTIVE TENANTS AND SUBSEQUENT OWNERS**

**A. Prospective Tenants.** The Owner has stated its intent to lease the Building, or portions thereof, to a tenant ("**Tenant**") who shall operate the Gallery and the Restaurant. The Owner hereby represents, warrants, and agrees that the Owner shall cause the provisions of this Restrictive Covenant to be attached as an exhibit to any and every lease with any and every Tenant that may, at any time, lease all or any part of the Building. The Owner shall cause every such Tenant to be bound by this Restrictive Covenant to the same extent as the Owner is bound and Tenant shall have the rights of Owner hereunder as such rights apply to the operation of the Gallery and the Restaurant. In such instances, references in this Restrictive Covenant to "Owner" shall be applicable to such tenant. The Neighborhood Associations, or any of them, shall have the same right to enforce this Restrictive Covenant against every such tenant as they have against the Owner. Without limitation of any other provision of this Restrictive Covenant, upon request of the Neighborhood Associations, or any of them, the Owner shall provide to the Neighborhood Associations evidence of compliance with this Section 6.

**B. Subsequent Owners.** The Owner hereby represents, warrants, and agrees that the Owner shall cause the provisions of this Restrictive Covenant to be incorporated into any and every agreement of sale of the Property or the Building or any part thereof into which the Owner may hereafter enter. Nothing contained in this Section 6 shall in any way supersede, negate or diminish the full force and effect of the provisions set forth below in Section 7.

#### **SECTION 7. GENERAL PROVISIONS**

**A. Restrictive Covenant Running With the Property.** This Restrictive Covenant shall be recorded against, and shall run with, the Property and shall be binding upon the Owner and its successors, assigns, mortgagees, lenders, agents, licensees, lessees, operators, invitees, and representatives, and permanent and temporary occupants of the Property, including, without limitation, all subsequent owners of the Property, or any portion thereof, and all persons claiming under them.

**B. Recordation.** This Restrictive Covenant shall be recorded with the Cook County Recorder immediately upon execution of this Restrictive Covenant, and all contracts and deeds of conveyance relating to the Property, or any part thereof, shall be subject to the provisions of this Restrictive Covenant.

**C. Property Right and Interest.** This Restrictive Covenant gives rise to a property right and interest immediately vested in the Neighborhood Associations.

**D. No Right of Entry.** Nothing herein shall be construed to grant to any person or persons, including the representatives and members of the Neighborhood Associations, the right to enter upon any part of the Property. All rights of entry by the public shall be established from time to time by the Owner, its successors and assigns, in the exercise of its discretion.

**E. No Mortgages.** The Owner represents that no mortgages exist on the Property as of the date of this Restrictive Covenant. For the avoidance of doubt, the Neighborhood Associations agree that this Section 7.E shall not prohibit the Owner or its successors and assigns from obtaining or recording such mortgage on the Property following the date that this Restrictive Covenant is recorded against the Property as contemplated by Section 7.B.

**F. Taxes and Assessments.** The Owner shall continue to pay all taxes, levies, assessments, and any other governmental or municipal charges which may become a lien on the Property, including any taxes or levies imposed to make those payments.

**G. Conflicts.** To the extent that any provision of this Restrictive Covenant conflicts with any other covenant or agreement recorded against the Property, this Restrictive Covenant shall control.

**H. Term.** This Restrictive Covenant shall run with and bind the Property; provided, however, that the Neighborhood Associations may release this Restrictive Covenant at any time by resolution, duly adopted by all of the respective associations. If any of the privileges or rights created by this Restrictive Covenant would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then the affected privilege or right shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current President of the United States, or for any shorter period that may be required to sustain the validity of the affected privilege or right.

**I. Rights Cumulative.** Unless expressly provided to the contrary in this Restrictive Covenant, each and every one of the rights, remedies and benefits provided by this Restrictive Covenant shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law. The enforcement by specific performance limitation in Section 5.A of this Restrictive Covenant shall not be construed to preclude any rights or remedies existing apart from the Restrictive Covenant, including, without limitation, claims for money damages arising from negligence or other tort, contract or statutory claims that are not based on a claim of noncompliance with the terms of this Restrictive Covenant.

**J. Non-Waiver.** The Neighborhood Associations shall be under no obligation to exercise any of the rights granted to them in this Restrictive Covenant except as

they shall determine to be in their best interests from time to time. The failure of the Neighborhood Associations, or any of them, to exercise at any time any such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the Neighborhood Associations' rights to enforce such rights or any other rights.

**K. Governing Law.** This Restrictive Covenant shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

**L. Severability.** If any provision of this Restrictive Covenant is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Restrictive Covenant shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Restrictive Covenant shall not affect the enforceability of that provision in any other situation.

**M. Notices.** All notices required or permitted to be given under this Restrictive Covenant shall be in writing and shall be deemed received by the addressee thereof (i) when delivered in person on a business day at the address set forth below, (ii) on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested, or (iii) on the business day after being deposited with a reputable overnight courier service with delivery charges prepaid. The address of any party may be changed by written notice to the other parties.

Notices and communications to the Owner shall be addressed and delivered to the following address:

David B. Nelson  
DRW Trading Group  
540 West Madison Street  
Suite 2500  
Chicago, IL 60661

with a copy to:  
Shefsky & Froelich  
111 East Wacker Drive  
Suite 2800  
Chicago, IL 60601  
Attention: Edward J. Kus

Notices and communications to the North Dearborn Association shall be addressed and delivered to the following address:

North Dearborn Association  
P.O. Box 10521  
Chicago, IL 60610

with a copy to:  
Holland & Knight LLP  
131 S. Dearborn Street, 30<sup>th</sup> Floor  
Chicago, IL 60603  
Attention: Steven M. Elrod

Notices and communications to the Sutton Place Association shall be addressed and delivered to the following address:

Board of Directors, The Sutton Place Association  
c/o The Building Group  
1045 West Lawrence Ave.  
Chicago, IL 60640

Notices and communications to The Whitney Condominium Association shall be addressed and delivered to the following address:

Property Manager,  
The Whitney Condominium Ass'n.  
First Service Residential  
325 W. Huron St.  
Chicago, IL 60654

with a copy to:

Arnstein & Lehr LLP  
120 S. Riverside Plaza, Suite 1200  
Chicago, IL 60606  
Attention: David Sugar

**N. Amendments and Modifications.** No modification, addition, deletion, revision, alteration or other change to this Restrictive Covenant shall be effective unless and until such change is reduced to writing and (i) executed and properly approved by each Neighborhood Association, pursuant to all applicable statutory procedures, and (ii) executed by the Owner, or the then-current owner of the Property.

**O. No Third Party Beneficiaries.** Except as expressly set forth or provided in this Agreement, no claim as a third party beneficiary under this Restrictive Covenant by any person shall be made, or be valid, against the Neighborhood Associations or the Owner.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Owner and the North Dearborn Association have caused this Restrictive Covenant to be executed on the date first above written.

WITNESS:

1300 DEARBORN PROPERTY, LLC


\_\_\_\_\_

By: DRW Real Estate Management 1, LLC  
Its: Manager

\_\_\_\_\_

By: Donald R. Wilson, Jr.  
Its: Manager

WITNESS



NORTH DEARBORN ASSOCIATION

By: Michele Studl

\_\_\_\_\_

Its: President

WITNESS

\_\_\_\_\_

SUTTON PLACE ASSOCIATION

By: Malcolm S. Kamrin

\_\_\_\_\_

Its: *President*

WITNESS

\_\_\_\_\_

THE WHITNEY CONDOMINIUM ASSOCIATION

By: Kevin E. Noonan

\_\_\_\_\_

Its: President



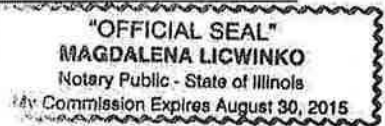
**ACKNOWLEDGMENT**

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me on August 16<sup>th</sup>, 2013,  
by Michele Studl.

Given under my hand and official seal this 16<sup>th</sup> day of August, 2013.

My commission expires: 8-30-2015  
[Signature]  
Notary Public



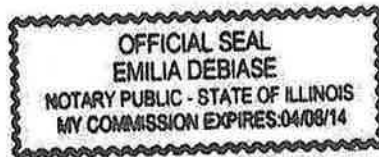
**ACKNOWLEDGMENT**

STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

The foregoing instrument was acknowledged before me on August 19, 2013,  
by Kevin Noonan.

Given under my hand and official seal this 19 day of August, 2013.

My commission expires: 4/6/14  
[Signature]  
Notary Public



**ACKNOWLEDGMENT**

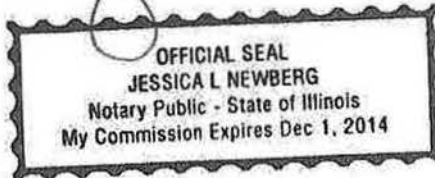
STATE OF IL )  
COUNTY OF COOK ) SS:

The foregoing instrument was acknowledged before me on August 19, 2013,  
by Donald V Wilson Jr.

Given under my hand and official seal this 19 day of August, 2013.

My commission expires: 12/1/14

[Signature]  
Notary Public



**ACKNOWLEDGMENT**

STATE OF Illinois )  
COUNTY OF Cook ) SS:

The foregoing instrument was acknowledged before me on August 21, 2013,  
by Malcolm S. Kamin.

Given under my hand and official seal this 21st day of August, 2013.

My commission expires: 08/06/16

[Signature]  
Notary Public

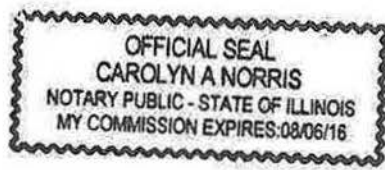


EXHIBIT "A" TO RESTRICTIVE COVENANT

(Legal Description of 1300 North Dearborn Parkway, Chicago, Illinois)

Lots 7, 8, 9 and 10 in Assessor's Division of Lots 16 to 23 in Bronson's Addition to Chicago in Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-04-217-044-0000

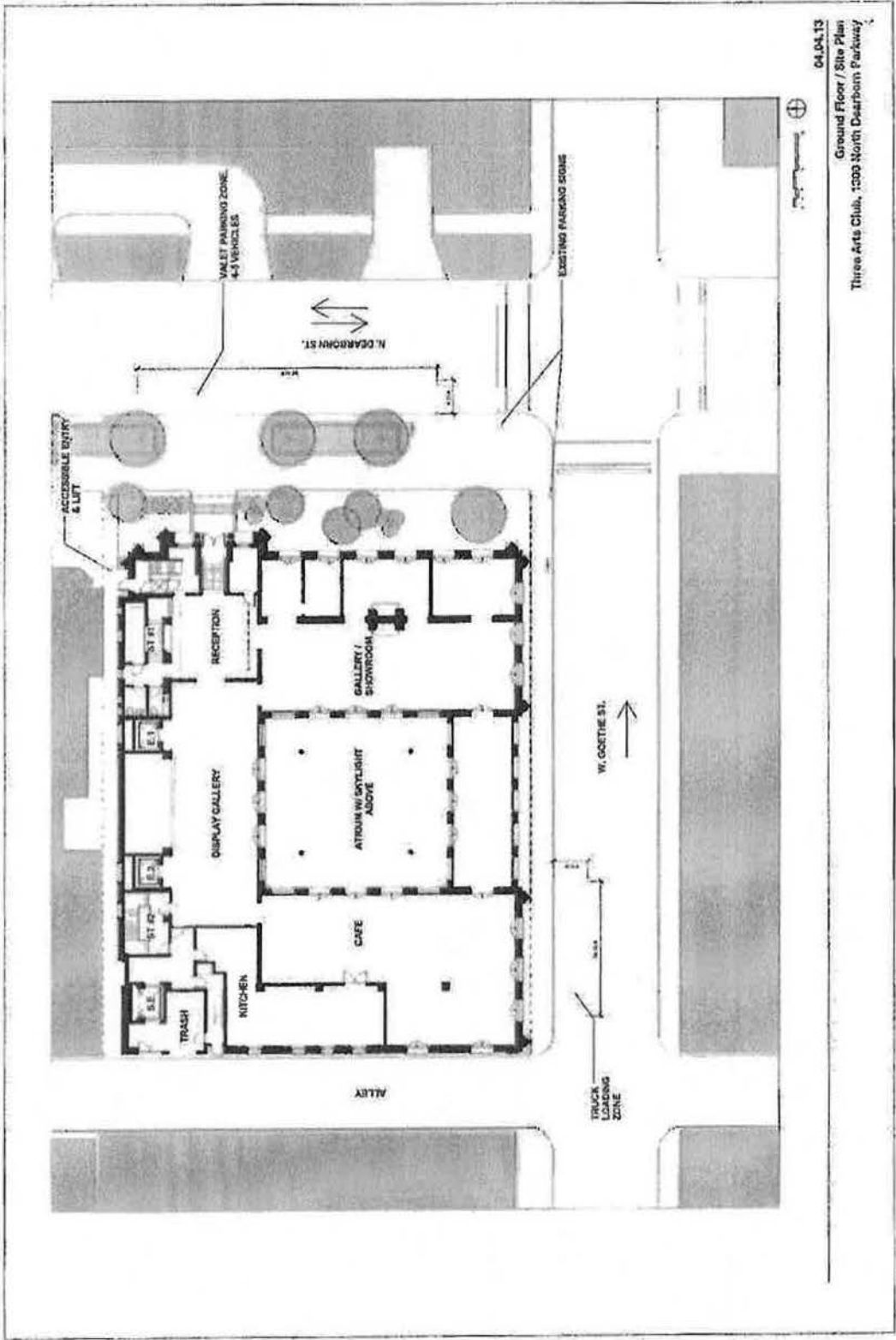
EXHIBIT "B" TO RESTRICTIVE COVENANT

(Proposal)



04.04.13

Exterior View  
Three Arts Club, 1500 North Dearborn Parkway



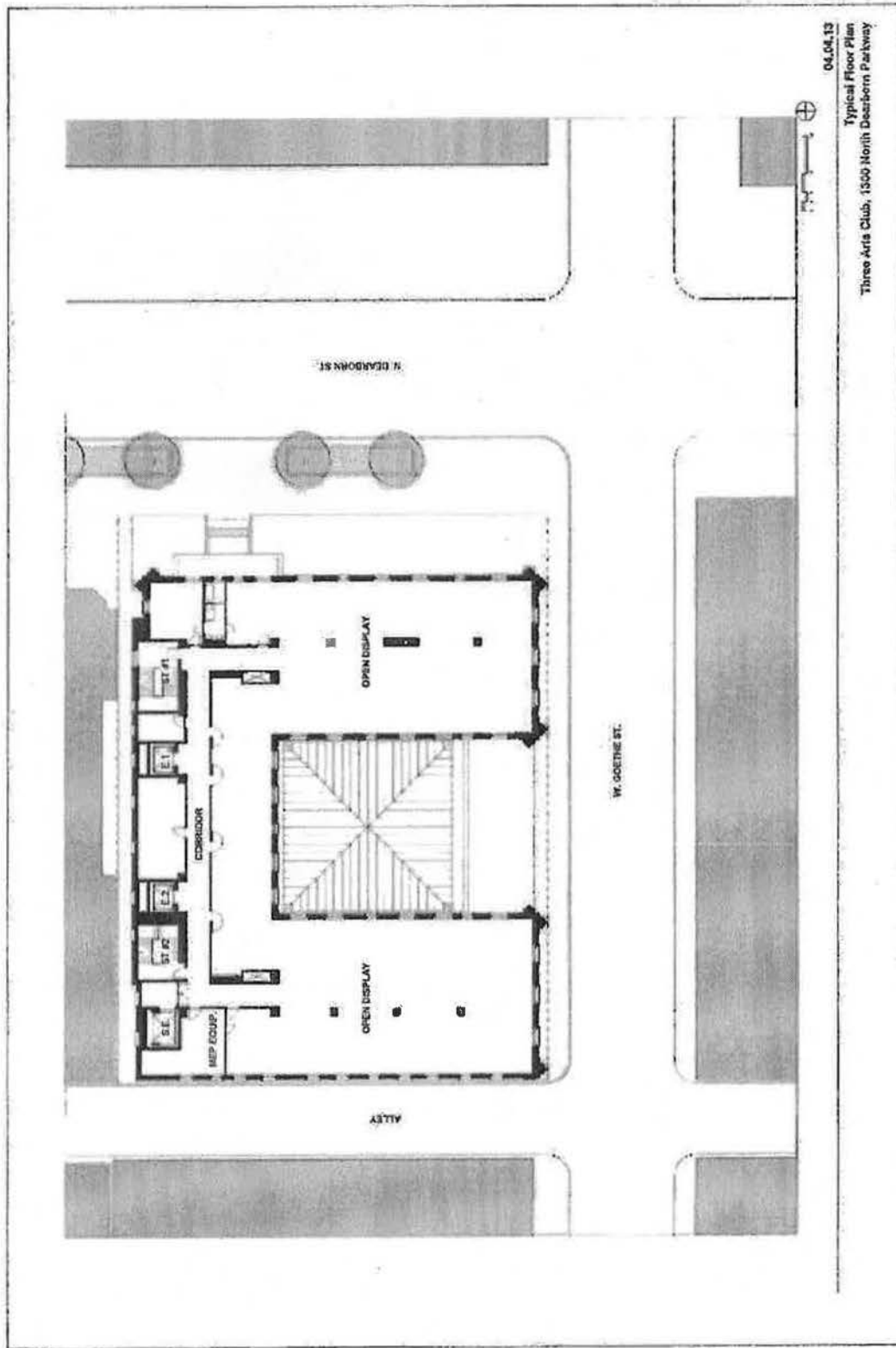
04.04.13  
 Ground Floor / Site Plan  
 Three Arts Club, 1000 North Dearborn Parkway



SITE

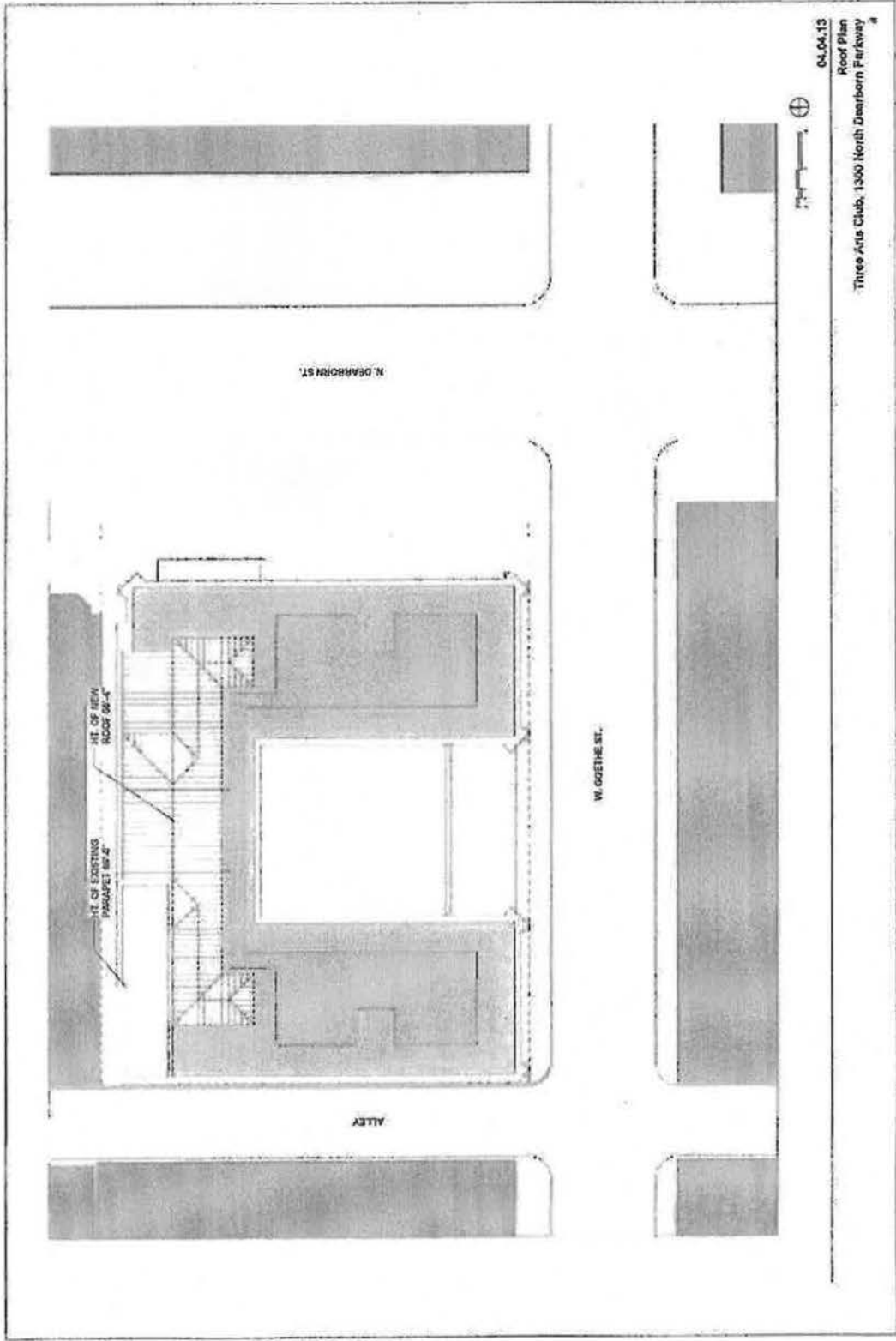
PARKING  
GARAGE AT 1250  
N. DEARBORN

04.04.13  
Aerial View  
Three Ards Club, 1300 North Dearborn Parkway

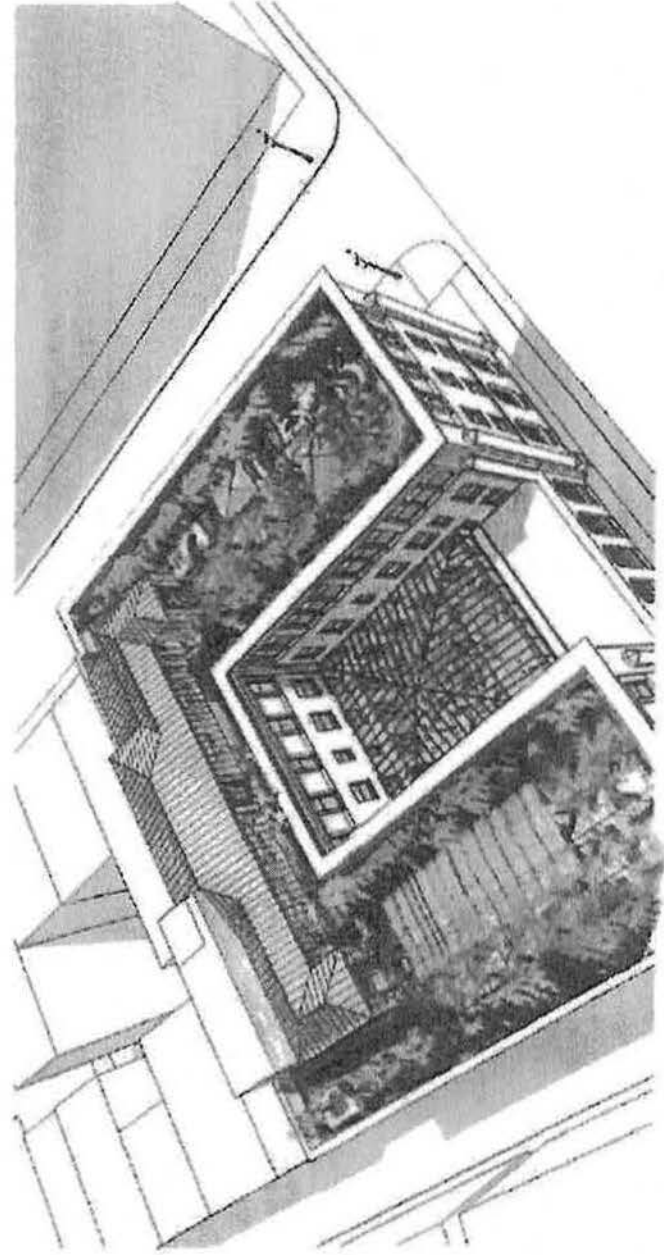


04.04.13  
 Typical Floor Plan  
 Three Arts Club, 1300 North Dearborn Parkway





04.04.13  
Roof Plan  
Three Arts Club, 1300 North Dearborn Parkway



04.04.15  
Roof Perspective View  
Three Arts Club, 1300 North Dearborn Parkway