### Allegheny County Jessica Garofolo Division of Real Estate Pittsburgh, PA 15219

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NOTE-

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**Parties:** 

GATEWAY TOWERS EXECUTIVE OFFICE CONDO
GATEWAY TOWERS EXECUTIVE OFFICE CONDO

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Jessica Garofolo, Director Sara Innamorato, County Executive

## 622885

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#### MEMORANDUM OF LICENSES FOR CONTINUED USE OF GATEWAY TOWERS PLAZA

THIS MEMORANDUM OF LICENSES ("Memorandum") is made and effective on this 1<sup>st</sup> day of May, 2025, by Gateway Towers Executive Office Condominium, a Pennsylvania nonprofit corporation and commercial unit owners' association, with its principal place of business located at 320 Fort Duquesne Boulevard, Suite 235, Pittsburgh, Pennsylvania USA 15222-1102 ("Licensor").

#### WITNESSETH:

WHEREAS, Licensor is the fee simple owner of all surface and air rights in certain real property identified as Lot No. 3 in the Gateway Plan of Lots ("Lot No. 3"), commonly known as *Gateway Towers Plaza*, situated in the Second (2<sup>nd</sup>) Ward of the City of Pittsburgh (the "**Plaza**");

WHEREAS, Lot No. 3 was conveyed to Licensor's declarant, Duquesne Partners, LP, a Delaware limited partnership, by deed dated January 27, 1982 and recorded on January 28, 1982, in the Division of Real Estate of Allegheny County, Pennsylvania, in Deed Book Volume 6436, Page 505, and the Plaza was thereafter submitted for Licensor's condominium ownership by Declaration of Condominium dated December 15, 1982 and recorded on December 23, 1982, in Deed Book Volume 6584, Page 553;

WHEREAS, the Plaza is assessed for tax purposes as Parcel 1-C-1663 (as shown on the tax map attached hereto as **Exhibit A**), is assigned the physical address of 664 Commonwealth Place, Pittsburgh, Pennsylvania 15222, and is further delineated on that certain Site Plan dated December 22, 1982 and recorded on December 23, 1982, in Plan Book Volume 124, Page 96 (attached hereto as **Exhibit B**);

WHEREAS, Gateway Towers Condominium Association, Inc., a Pennsylvania nonprofit corporation and residential unit owners' association ("Residential"), is a co-owner, together with Licensor and Rappaport (as defined below), of a certain 26-story mixed-use high-rise known as Gateway Towers (the "Building"), located on Lot No. 2 ("Lot No. 2");

WHEREAS, Residential's interests in the Building and Lot No. 2 were conveyed to Residential's declarant, Gateway Capital, Inc., a Georgia corporation, by deed dated June 19, 1979, and recorded on June 22, 1979, in Deed Book Volume 6123, Page 181, and were thereafter submitted for Residential's condominium ownership by Declaration of Condominium dated June 19, 1979, and recorded on June 22, 1979, in Deed Book Volume 6122, Page 929;

WHEREAS, Residential is also the surface owner of Lot No. 2, which includes a separate plaza area extending approximately forty-two (42) feet south of the Building, connecting to the Plaza along the boundary line between Lot Nos. 2 and 3;

WHEREAS, Residential, Licensor, and Rappaport share certain use rights and maintenance obligations with respect to the Building and Lot No. 2 under that certain Restatement of the Cross-

Easement, Utilities and Insurance Agreement dated January 20, 2022, and recorded on March 14, 2022, in Deed Book Volume 18820, Page 252 (the "CEA");

WHEREAS, Residential's interests in the Building and Lot No. 2 are assessed for tax purposes as Parcel 1-C-1662-0, and Licensor's interests therein are assessed as Parcel 1-C-1661-Z;

WHEREAS, Residential is deemed a User (as defined below) for purposes of this Memorandum, and this recital acknowledges its prior and continuing license to use the Plaza;

WHEREAS, Pittsburgh Grand Hotel LLC, a Florida limited liability company, trading and doing business as Wyndham Grand Pittsburgh Downtown ("Wyndham"), is the owner of Lot No. 2-R, which is assessed for tax purposes as Parcel 1-C-190, and was conveyed to Wyndham by deed dated May 10, 2006, and recorded on May 22, 2006, in Deed Book Volume 12854, Page 41;

WHEREAS, Wyndham is also deemed a User for purposes of this Memorandum, and this recital acknowledges its prior and continuing license to use the Plaza;

WHEREAS, Hertz Gateway Center, LP, a Delaware limited partnership ("Hertz"), is the fee simple owner of Lot No. 1-R (assessed for tax purposes as Parcel 1-C-167-0-1) and holds a reserved, conditional fee simple determinable interest in the Plaza, as set forth in a deed dated December 8, 2004, and recorded on December 13, 2004, in Deed Book Volume 12288, Page 157, which grants Hertz ongoing exclusive rights to develop, construct, and operate a surface parking garage and related improvements, together with interim obligations to maintain and landscape the surface until such development occurs;

WHEREAS, nothing in this Memorandum shall be construed to enlarge, diminish, or otherwise modify any development rights, maintenance obligations, or appurtenant easements held by Hertz or its successors and assigns with respect to the Plaza;

WHEREAS, Hertz is also deemed a User under this Memorandum, and this recital acknowledges both its prior and continuing license to use the Plaza, as well as its independent rights and obligations thereto;

WHEREAS, Samuel Rappaport Family Partnership, a Pennsylvania limited partnership ("Rappaport"), is a co-owner of the Building and holds certain subsurface ownership rights, together with appurtenant surface rights to Lot Nos. 2 and 3, as well as a limited surface easement over the Plaza;

WHEREAS, Rappaport owns portions of the Building's basement and sub-basement, an underground parking garage underlying Lot Nos. 2 and 3, and all the land underlying Lot Nos. 2 and 3, all of which are assessed for tax purposes as Parcel 1-C-170, and were conveyed to Rappaport by deed from Licensor's declarant, dated April 15, 1986, and recorded on April 29, 1986, in Deed Book Volume 7290, Page 90;

WHEREAS, Rappaport also holds a limited, non-exclusive easement for pedestrian ingress and egress across the Plaza, as set forth in Licensor's condominium declaration, and is a party to a

prior version of the CEA, specifically the Second Amendment dated April 15, 1986, and recorded on April 29, 1986, in Deed Book Volume 7290, Page 67;

WHEREAS, nothing in this Memorandum shall be construed to enlarge, diminish, or otherwise modify any easement, or appurtenant rights and obligations held by Rappaport pursuant to its deed and other instruments of record;

WHEREAS, Rappaport is also deemed a User under this Memorandum, and this recital acknowledges both its prior and continuing license to use the Plaza, as well as its independent rights and obligations as Lot No. 3's subsurface owner;

WHEREAS, the Plaza and the other real property described above were all originally acquired, constructed, and owned as part of the Gateway Center redevelopment by The Equitable Life Assurance Society of the United States, a New York corporation (now known as Equitable Holdings, Inc.), which, in September 1995, divested itself of all its remaining rights, title, and interest in and to such properties, which now form part of the Pittsburgh Renaissance Historic District (NRHP No. 13000252);

WHEREAS, reference is hereby made to the Gateway Plan of Lots No. 4 (a revision to Plan No. 2) dated July 20, 2005, and recorded July 29, 2005, in Plan Book Volume 250, Page 199;

WHEREAS, reference is hereby made to Case Nos. 2:92-cv-01244-DWA (U.S. District Court for the Western District of Pennsylvania), GD-94-012712 (Court of Common Pleas for Allegheny County, Pennsylvania), and GD-04-014736 (Court of Common Pleas for Allegheny County, Pennsylvania) as past civil litigation involving the Plaza and the other real property described above;

WHEREAS, except as recited above or by another valid and subsisting instrument of record, no third party, including any User, holds or has ever held any rights, title, or interest in or to the Plaza;

WHEREAS, since its inception on December 23, 1982, Licensor (and, prior to that date, its declarant) has continuously granted third parties, and their respective predecessors, revocable, non-exclusive licenses to use the Plaza for various purposes;

WHEREAS, this Memorandum is intended to acknowledge, memorialize, and provide constructive notice of such longstanding permissive use by third parties, including the Users, all of whom have received and exercised such privileges by express or implied permission of Licensor; and,

WHEREAS, each User, by continuing to use the Plaza, is deemed to accept and be bound by the terms and conditions of use set forth in this Memorandum.

NOW, THEREFORE, in consideration of the mutual benefits and obligations set forth herein, and with the intent to be legally bound, Licensor hereby states and declares as follows:

#### 1. Continuing Grant of Revocable, Non-Exclusive Licenses

Licensor has previously granted, and hereby continues to grant, a revocable, non-exclusive license for limited use of the Plaza, at any time of day or night, to each of the following parties, subject to the terms of this Memorandum (each, a "User" and collectively, the "Users"):

- (a) Residential, including its association members, unit owners, residents, tenants, invitees, guests, and staff;
- **(b) Wyndham**, including its members, managers, guests, invitees, and staff; *provided, however*, that Wyndham's license is limited to that portion of the Plaza lying south of the central walkway dividing the Plaza, and shall not extend to any portion north of the central walkway on the Gateway Towers' side; and,
- (c) Hertz, including its owners, managers, tenants, invitees, guests, and staff;
- (d) Rappaport, including its owners, operators, and staff (not garage users); and
- (e) The general public, who shall be expressly limited to incidental pedestrian ingress, egress, and passive uses of the central walkway dividing the Plaza and for whom no other uses of the Plaza shall be granted. Passive use excludes bicycling, skateboarding, loitering, performances (e.g., music, busking, theatrical, dramatic, dance, magic, novelty), live entertainment, solicitations, protesting, rallying, demonstrating, photography, audio or visual recording (e.g., filming for social media content), picnicking, lounging, and other activities inconsistent with private ownership. This license is granted solely as a courtesy and shall not, under any circumstances, create a public dedication, easement, right-of-way, or other permanent interest in the Plaza.

#### Users and Related Parties.

The term "User" shall include, but only include, those parties specifically identified, and their related parties as expressly provided above (collectively, "Related Parties"), unless otherwise agreed in writing by Licensor. Licensor shall have no obligation to respond to, coordinate with, or otherwise engage directly with any Related Parties. All communications, requests, complaints, inquiries, or coordination related to the Plaza shall be directed to and managed exclusively through such User, who shall remain fully responsible for the conduct, control, and oversight of its Related Parties. Licensor reserves the right to modify each User's Related Parties by providing Notice (as defined below) thereof.

#### Removal for Prohibited, Unsafe, or Unauthorized Use.

Licensor reserves the right to remove or eject, with or without warning, any individual engaged in any prohibited, unsafe, or unauthorized conduct or activity, and may enforce such removal by private security personnel or public authorities. Licensor further reserves the right to enforce the statutory provisions of 18 Pa.C.S. § 3503 (relating to defiant criminal trespasser) against anyone removed or ejected from the Plaza. Licensor reserves the right to post signage, markings, or

employ private security or law enforcement personnel to communicate and enforce the limits of use to the Plaza.

#### 2. Limitations, Conditions, and Accommodations

Each User's license shall afford routine and ordinary use of the Plaza. The license shall not confer any privilege to exclusionary usage, storage, parking, signage, installation, construction, inhabiting, commercial activities, or for any other prohibited or extraordinary use of the Plaza without written approval from Licensor (See Section 5 below relating to special licenses for extraordinary use).

This is primarily a shared area between neighbors. All Users must make reasonable efforts to:

- Keep the Plaza clean and free of unsightly or odorous materials including, without limitation, pet waste and garbage, and limit sound to reasonable and moderate volumes at all times;
- **Keep the Plaza safe and secure** by immediately, or as soon as practicable, reporting incidents of crime, fire, personal injury, and any other emergencies or situations endangering the welfare of persons or property involving the Plaza, to the proper authorities and notifying Licensor of the same;
- Comply with all federal, state, county, and city laws and regulations, and follow all rules Licensor adopts from time to time regulating the Plaza's use;
- Maintain adequate insurance coverage to satisfy the indemnity requirements hereunder, with coverage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, and shall provide annually, or upon request, evidence of in-force coverage naming Licensor as an additional insured; and
- Act in a manner consistent with the community standards observed by Gateway Towers, Wyndham Hotel, Gateway Center, Point State Park, and the Pittsburgh Renaissance Historic District.

Subject to Hertz's maintenance and landscaping obligations, Licensor shall make reasonable efforts to accommodate the Users' permissive use and enjoyment of the Plaza.

#### 3. Safety and Inspection Protocol; Assumption of Risk

Notwithstanding Licensor's accommodations above, each User acknowledges that:

(a) Use at Own Risk – The Plaza is made available in its "as-is" and "where-is" condition, without warranty, express or implied, as to fitness, safety, or condition, and each User voluntarily assumes all risk of personal injury, death, or property damage arising from its use of the Plaza, except where caused by the gross negligence or willful misconduct of Licensor;

- (b) No Duty to Warn or Patrol Licensor shall have no duty to warn of obvious or naturally occurring conditions, nor to patrol or supervise the Plaza for safety beyond the measures described herein; and
- (c) No Liability for Independent Acts Licensor shall not be liable for the acts or omissions of third parties, including Users and their Related Parties, or other parties lawfully or unlawfully present on the Plaza.

Each User is encouraged to maintain its own safety protocols, report known hazards to Licensor, and inform its invitees of the terms of this license.

#### 4. License Fees; Actual Use

#### Reasonable License Fees.

In consideration of the high visibility, adjacency value, aesthetic value, cultural and historical significance, convenience, accessibility, limited commercial uses, and other benefits that the Plaza provides to Users, Licensor reserves the right to impose a fixed-rate monthly license fee (the "License Fee") on each User for continued use of the Plaza. The reasonableness of such License Fee, including any periodic adjustments, shall be determined by Licensor in its sole discretion, provided that any such fee shall be established in good faith and shall not be unreasonable or oppressive.

#### Charges and Adjustments.

Licensor shall provide Notice (as defined below) at least thirty (30) calendar days prior to imposing or adjusting any License Fee. Notwithstanding the foregoing, any Notice of License Fee issued by Licensor prior to the effective date of this Memorandum shall remain valid and enforceable, and the thirty (30) day advance requirement to provide Notice shall not apply retroactively to such previously issued Notices.

#### Use by Conduct.

Any actual use of the Plaza, or any portion thereof, by a User or its Related Parties, including but not limited to vendors or contractors acting on behalf of or for the benefit of User, observed or documented by Licensor, shall constitute such User's acceptance of and agreement to be bound by the provisions of this Memorandum, including the obligation to pay its applicable License Fee. Licensor's determination of use attributable to any User must be supported by evidence "reasonably demonstrating actual use."

#### Constructive License.

Such use shall constitute a constructive license regardless of any prior written denial of use, express objection, or refusal to enter into a written license agreement by such User. No written acceptance or signature shall be required to enforce this provision.

#### Notice and Opportunity to Rebut.

Licensor may give Notice to a User of observed or documented Plaza use attributable to such User. Within ten (10) calendar days of such Notice, the User may submit an explanation, together with clear and convincing evidence, rebutting such attributed use. Absent a timely and credible rebuttal,

the User shall be deemed to have constructively accepted the license and the associated License Fee shall be deemed due.

#### Continued Application of License Fee.

Once a User has constructively accepted a license through actual use of the Plaza, the license and associated monthly License Fee shall continue in effect on a recurring monthly basis until (i) terminated in writing by the Licensor, or (ii) the User provides Notice, accompanied by clear and convincing evidence, that such use has permanently ceased. Licensor shall not be required to document recurring use on a monthly basis in order to maintain or enforce applicable License Fees.

#### 5. License Fee Collection and Remedies

Each User's License Fee shall be due upon receipt of demand for payment and late after ten (10) calendar days of demand for payment. Failure to pay any License Fee when due, after becoming late, shall constitute a material breach of license. In the event of nonpayment, Licensor shall have the right to pursue any and all legal and equitable remedies available under applicable law, including but not limited to:

- (a) Issuing Notice of default to the User and providing not less than ten (10) calendar days to cure such default;
- (b) Charging interest on unpaid amounts at the highest rate permitted by law, accruing from the date due until paid in full;
- (c) Recovering all costs of collection, including reasonable attorneys' fees, court costs, and administrative fees incurred in connection with enforcement; and
- (d) Suspending or revoking access to the Plaza by the User and its Related Parties until such time as all outstanding License Fees and associated charges are paid in full.

Licensor's election to pursue or defer any remedy under this section shall not constitute a waiver of any other rights or remedies available at law or in equity.

#### 6. No Fixed Term or Expiration; Revocation

Each license shall continue in force on an ongoing basis unless earlier terminated by Licensor, which may revoke this license from any User at will and without cause. Licensor reserves the right to suspend, revoke, or amend any User's license in whole or in part at any time, for any reason or no reason, within ten (10) days of giving Notice.

#### 7. Special Licenses for Extraordinary Use by Users and for Use by Non-Users

Use of the Plaza for any large-scale activity beyond the scope of the licenses granted to Users — including, by way of illustration and not limitation, festivals, private gatherings with twenty (20) or more simultaneous attendees expected, performances, commercial displays, or any event

involving reserved space, equipment staging, crowd management, or exclusive area control — or for any use by non-Users, shall require the prior execution of a separate written license agreement with Licensor (each, a "Special License").

This requirement applies to all third parties, including Users. Each Special License shall:

- Be granted solely at Licensor's discretion;
- Be subject to conditions of insurance, security, indemnification, access control, cleanup, and payment of fees in addition to (not in lieu of) the License Fees; and
- Require an express written agreement signed by the Licensor.

#### Uses Prohibited without Special License.

No party shall rely on this Memorandum as permission to hold events or activities of the type described in this section. Use of the Plaza for such purposes without a Special License shall constitute a trespass and breach of license, subjecting the party to liability and revocation of all other privileges.

#### Remedies.

Licensor shall be entitled to seek temporary, preliminary, or permanent injunctive relief to prevent unauthorized or unlicensed use of the Plaza, in addition to any other remedies available at law or in equity.

#### 8. Indemnity; Governing Law

Each User shall defend, indemnify, and hold harmless Licensor from and against any and all claims, liabilities, damages, losses, or expenses (including reasonable attorneys' fees) arising out of or related to use of the Plaza by such User, except to the extent arising from the gross negligence or willful misconduct of Licensor.

This Memorandum, and all matters arising out of or relating to it, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of laws principles; and any action or proceeding shall be brought exclusively in the Court of Common Pleas of Allegheny County, Pennsylvania (or, if federal jurisdiction exists, the United States District Court for the Western District of Pennsylvania).

#### 9. Reservations of Ownership, Title, and Licensor's Continued Use

#### Rights, Title, and Interest Reserved.

Subject to Hertz's interests referenced above, Licensor retains all ownership rights, title, and interest in and to the Plaza, including control over the Plaza. No use of the Plaza by any User or third party shall constitute legal consideration, reliance, or exchange of value sufficient to convert this license into a leasehold, easement, right-of-way, public dedication, irrevocable license, or any

other permanent interest in or to the Plaza, and nothing in this Memorandum shall be interpreted or construed as creating or conveying such rights, title, or interest therein or thereto.

#### No Rights or Equitable Claims.

The licenses granted in the past have been and shall continue to be permissive, temporary, and revocable at will, and nothing herein shall create any expectation or right of continued access or use, renewal, exclusivity, or permanence. No User shall claim, assert, or acquire any easement, vested interest, or equitable right, whether prescribed, implied, or otherwise, based on any license or use permitted by this Memorandum or by any prior action or omission of Licensor.

#### Licensor's Continued Use.

Licensor reserves the right to continue using the Plaza by and for its own association members, unit owners, occupants, customers, invitees, guests, and staff, in a manner reasonably aimed to be consistent with the standards and practices set forth in this Memorandum for the Users.

#### 10. Notices

Any notice, demand, request, approval, consent, or other communication (each, a "Notice") required or permitted to be given under this Memorandum shall be in writing, unless expressly provided otherwise, and shall be deemed properly given and effective when:

- (a) delivered in person;
- (b) transmitted electronically (i.e., via electronic mail) to the email address on file;
- (c) when deposited in the United States mail, postage prepaid, certified or registered with return receipt requested; or
- (d) sent by reputable national overnight courier (e.g., FedEx, UPS) with confirmation of delivery.

#### Designated Point-of-Contact.

All Notices shall be addressed as follows, or to such other address or email as may be designated by written notice in accordance with this section:

#### To Licensor:

Gateway Towers Executive Office Condominium Attn: Jason C. Knapp, President Gateway Towers, Suite 235 320 Fort Duquesne Boulevard Pittsburgh, PA USA 15222-1102

Email: jason.knapp@gteoc.com Phone: (412) 627-2870 (mobile)

### To a User:

Designated point-of-contact Mailing address: Email address: Phone number:

Each User shall designate for Licensor at least one (1) point-of-contact authorized to represent the User in matters hereunder, provide his or her contact information, and promptly notify Licensor of

any changes to the same. Failure to provide updated information shall not affect the validity of Notices delivered to the last known address or email on file. Phone numbers are provided solely for emergency purposes or, at the parties' option, for courtesy communication, and shall not substitute for required notices to be formally provided in writing. Licensor reserves the right to maintain a publicly accessible registry or webpage where Users may update their contact information, which shall be considered valid for Notice purposes.

#### 11. Integration and Modification of Prior Understandings; Waivers

#### Merger.

Subject to Section 12 below and Licensor's rights expressed or reserved herein, this Memorandum reflects the current and complete understanding of Licensor with respect to the use of the Plaza and supersedes and modifies any and all prior licenses, permissions, consents, understandings, practices, or arrangements, whether written, oral, implied, or otherwise, relating to the use of the Plaza by any party, including the Users.

#### No Reliance.

Except where inconsistent with a recorded instrument granting access or use rights to the Plaza, to the extent any prior agreement, course of conduct, or historical use may be construed as inconsistent with the terms set forth herein, this Memorandum shall control. No party shall rely on any alleged historical right or usage to expand or modify the terms or scope of the licenses expressly granted herein.

#### No Waiver.

No waiver by Licensor of any provision of this Memorandum, or of any breach or default hereunder by any User, shall be deemed a waiver of any other provision, breach, or default, whether of a similar or different nature, nor shall any waiver constitute a continuing waiver. Any waiver shall be effective only if and to the extent expressly set forth in a writing signed by Licensor.

The failure of Licensor at any time to enforce any term, condition, or provision of this Memorandum, or to exercise any right or remedy arising from a breach thereof, shall not be construed as a waiver of such term, condition, provision, right, or remedy, nor shall it prevent or restrict Licensor from thereafter enforcing the same or exercising any other right or remedy available under this Memorandum or at law or in equity.

#### 12. Record Notice Only

This Memorandum is being recorded solely to provide constructive notice to the public of the existence of revocable, non-exclusive licenses to use the Plaza and the information related thereto. Licensor reserves the right, at any time and from time to time, to modify the terms and conditions of its licenses for use of the Plaza, whether for routine use or special use, by providing Notice of the same to Users.

[The remainder of this page is intentionally left blank. Signature page follows.]

IN TESTIMONY WHEREOF the undersigned affirms that, under penalties of perjury and false swearing to authorities, the facts stated herein are true and correct to the best of his knowledge or information and belief. Licensor has hereunto caused this Memorandum to be duly executed as of the date first above written.

Licensor:

Gateway Towers Executive Office

Condominium

Jason & Knapp

President

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ALLEGHENY

ss:

On this 6<sup>th</sup> day of May, 2025, before me, Cassia M. Minich, a notary public and the undersigned officer hereto, personally appeared **Jason C. Knapp**, personally known to me to be the president of **Gateway Towers Executive Office Condominium** and that he, as such officer and being authorized to do so, has executed this instrument on behalf of the corporation for the purposes contained therein.

AND NOW, I hereunto set my hand and official seal.

[SEAL]

COMMONWEALTH OF PENNSYLVANIA

NOTARY SEAL CASSIA M. MINICH, NOTARY PUBLIC ALLEGHENY COUNTY MY COMMISSION EXPIRES AUGUST 16, 2027 COMMISSION NUMBER 1355649

**Notary Public** 

Commission ID: 1355649

Expiration Date: August 16, 2027

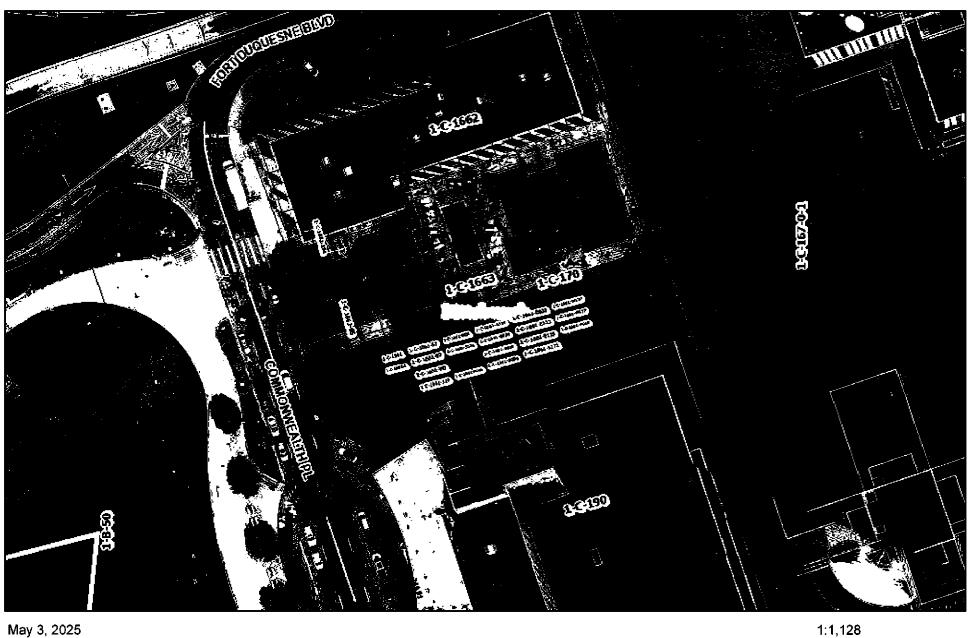
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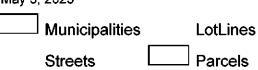
#### Kindly record and mail to:

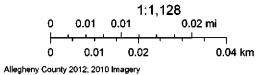
Gateway Towers Executive Office Condominium Attn: Jason C. Knapp, President Gateway Towers, Suite 235 320 Fort Duquesne Boulevard Pittsburgh, PA USA 15222-1102

# Exhibit A

# PIN: 0001C01663000000







# Exhibit B

