

**This instrument prepared by
and after recording return to:**

Byron L. Faermark
Williams & Kite, LLC
1900 S Highland Ave
Ste 100
Lombard, IL 60148

Space Above This Line Is For Recorder's Use Only

**FIRST AMENDMENT AND RESTATEMENT
PARCEL A ACCESS EASEMENT AGREEMENT**

THIS FIRST AMENDMENT AND RESTATEMENT of the Parcel A Access Easement Agreement (“Parcel A Easement”) by and between 83 West, LLC, an Illinois limited liability company (“Company”) successor in interest to Elmhurst Chicago Stone Company, a Delaware corporation N/K/A Elmhurst-Chicago Stone Holdings Co., and the County of DuPage, Illinois, a body politic (“County”) (collectively the “Parties”).

RECITALS

WHEREAS, On February 27, 1992, the Parties consummated a Real Estate Purchase and Sale Agreement wherein the County acquired certain interests in the Company’s Elmhurst limestone quarry (the “Elmhurst Quarry”) in furtherance of its Flood Control and Mitigation Project; and

WHEREAS, the intent of the Parties at the time of the acquisition, was for the County to acquire those portions of the Elmhurst Quarry necessary to support the County’s flood control and mitigation project, while the remainder of the Elmhurst Quarry was to be retained by the Company to support its ongoing business operations; and

WHEREAS, the County currently owns the property legally described in **Exhibit A** (the “County Property”) attached hereto and incorporated herein; and

WHEREAS, the Company currently owns the property legally described in **Exhibit B** (the “Company Property”) attached hereto and incorporated herein; and

WHEREAS, the Parties wish to clarify and refine certain provisions of the Parcel A Easement as set forth in the original Parcel A Access Easement Agreement, recorded as Document Number 92-033709 in the Office of the Recorder of Deeds of DuPage County, Illinois, which was

one of several easements entered into between the parties, ancillary to the acquisition of the Elmhurst Quarry in order to effectuate the Parties' intent; and

WHEREAS, County acknowledges that Company and its respective executors, administrators, grantees, directors, officers, employees, contractors, agents, successors, tenants, sublessees, licensees, invitees and assigns (collectively, "**Permittees**") use certain portions of the County Property to gain access to and from the Company Property as depicted in the areas entitled "**Access Easement Area**" on Exhibit C attached hereto and to park and store vehicles, trailers and equipment as depicted in the areas entitled "**Parking Easement Area**" on Exhibit C attached hereto and as permitted herein; and

WHEREAS, County and Company desire to define the rights and obligations of County and Company with respect to the Access Easement Area and the Parking Easement Area (collectively, the "**Easement Premises**"); and

WHEREAS, County and Company desire to confirm that the Access Easement Area is intended to be an appurtenant, perpetual, non-exclusive easement for vehicles, trucks, trailers, equipment and pedestrian ingress and egress upon the County Property for the benefit of Company and its Permittees; and

WHEREAS, County and Company desire to confirm that the Parking Easement Area is intended to be an appurtenant, perpetual, exclusive easement for vehicle, truck, equipment and trailer storage and parking over and upon the County Property for the benefit of Company and the Permittees; and

WHEREAS, County and Company desire to establish certain terms and conditions arising from and related to the use and maintenance of the Access Easement Area and Parking Easement Area.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Accuracy of Recitals**. The Parties hereby acknowledge the accuracy of the above referenced recitals and incorporate them herein by this reference.

2. **Access Easement**. Upon and subject to the terms, conditions and restrictions set forth herein, County hereby acknowledges its previous grants to the Company and its Permittees of a non-exclusive, perpetual easement over, across, and upon that portion of the County Property as legally described on and depicted as the "Access Easement Area" on **Exhibit C** attached hereto and incorporated herein, to provide the Company access for vehicles, trucks, trailers, equipment and pedestrians to and from the Company Property. For the avoidance of doubt, no parking or storage of vehicles, trailers or equipment is allowed over, across or upon the Access Easement Area, but will be allowed in the Parking Easement Area as set forth below.

3. **Parking and Vehicular and Equipment Storage Easement.** Upon and subject to the terms, conditions and restrictions set forth herein, County acknowledges its previous grant to the Company and its Permittees for exclusive, perpetual easement over, across, and upon that portion of the County Property legally described on and depicted as the “Parking Easement Area” on **Exhibit C** attached hereto and incorporated herein, to provide the Company pedestrian vehicle, truck, trailer and equipment access, and vehicle, truck, trailer and equipment parking and storage for the benefit of the Company Property.

4. **Construction of New Bridge and Passageway.** The County hereby covenants and agrees that, in the event that the existing vehicle bridge and passageway currently providing vehicular access to and from Company Property, the County Property and State Route 83 over and across the Easement Premises shall become unsuitable for such purposes, the County shall, at its sole cost and expense, construct a new vehicle bridge and passageway at a location within the Easement Premises to be jointly determined by the Parties. The County shall construct such bridge and passageway in a good and workmanlike manner and within a reasonable time period, so that vehicular access to and from the Company Property, the County Property and State Route 83 is not disturbed. Furthermore, the County shall not disturb or eliminate the traffic signal currently located at State Route 83 and the Easement Premises for any reason whatsoever.

5. **Not a Public Dedication.** Nothing contained in this Parcel A Easement shall be deemed to be a gift or dedication of any portion of the County Property or the Easement Premises to or for the general public or any municipality, and this Parcel A Easement shall not be construed as creating any rights in the general public whatsoever, including but not limited to use by the public, it being the intention of the parties that this Parcel A Easement be strictly limited to and for the purposes expressly stated herein. Nothing herein, express or implied, shall confer upon any municipality or the general public any rights or remedies under or by reason of this instrument.

6. **Retained Rights.** Subject to the terms of this Parcel A Easement, the Parties and their assigns, tenants, easement beneficiaries shall retain all rights to cultivate, use, and occupy the Access Easement Area in any manner that will not disturb, damage, destroy, injure, or obstruct the Easement Premises, and will not obstruct or interfere with each other’s exercise of any rights or privileges granted by this Parcel A Easement at any time whatsoever, without the prior written consent of the other party.

7. **Maintenance and Improvement of Easement Premises.** The Company shall be solely responsible for all maintenance, including snow removal, of the Easement Premises. The Company shall have the right to improve the Easement Premises in any manner not inconsistent with the terms of this Parcel A Easement.

8. **Additional Easements.** The County shall have the right to grant additional access, utility or other easements over, upon and under, and the right to grant others the right to use the Access Easement Area, provided said additional grants of easement do not interfere with the Company’s use of the Parcel A Easement Area without the prior written consent of the Company.

9. **Covenants to Run with Land.** It is intended that the easements granted herein are for the benefit of and appurtenant to the Company Property and burdens the County Property.

Each of the easements, agreements, covenants, privileges, conditions, restrictions, rights and obligations set forth in this Parcel A Easement shall run with the land of the County Property and the Company Property and create equitable servitudes in favor of the real property benefited thereby, shall be binding upon and inure to the benefit of the Parties to this Parcel A Easement, their respective heirs, executors, administrators, grantees, directors, officers, employees, contractors, agents, successors, tenants, sublessees, licensees, invitees, assigns, legal representatives and every person or entity having any fee, leasehold or other interest in each of the County Property and the Company Property.

10. Assignment of Rights. The County and the Company each agree that the other Party may assign its rights or delegate its duties under this Parcel A Easement to an assignee approved by the other Party: (a) who is reasonably competent to exercise the rights granted herein and the obligations imposed herein; and (b) who makes reasonable assurances to the other Party that any activity performed pursuant to such assignment or delegation shall be conducted in a good and workmanlike manner.

11. Release of Claims; Indemnity by Company. To the fullest extent permitted by law, Company assumes sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly due to the activities, operations or use of the Easement Premises (including, without limitation, any such loss, injury or damage due to the construction, maintenance, restoration, operation, existence, replacement or repair) by Company, its agents, employees and contractors, and for those claiming through any of them (collectively the “**Company Group**”). Company, for itself and for those claiming through Company, hereby releases County, County’s beneficiaries and all of their respective partners, employees, agents, mortgagees, licensees, contractors, insurers, tenants, guests and invitees (and their respective commissioners, officers, directors, shareholders, insurers, partners, employees, agents, mortgagees, licensees, contractors, guests and invitees, subsidiaries, affiliates, successors, grantees and assigns) (collectively the “**County Indemnites**”) from any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses (including, without limitation, reasonable attorneys’ fees and litigation costs incurred in connection therewith) and for damage, destruction or theft of property that may arise from Company’s operations on, or the use of, the Easement Premises (including, without limitation, any such liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses that may arise as a result of the construction, maintenance, restoration, operation, existence, replacement or repair) by the Company Group or any member thereof. To the fullest extent permitted by law, Company hereby agrees to indemnify, defend, save and hold harmless the County Indemnites from and against any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses (including, without limitation, reasonable attorneys’ fees and litigation costs incurred in connection therewith) and for any and all loss of life, injury to persons or damage to property which is directly or indirectly due to the activities, operations or use of the Easement Premises, the existence of the Easement Premises therein, or the exercise of Company’s rights hereunder, by Company Group or any member thereof (including, without limitation, any such loss, injury or damage due to the construction, maintenance, restoration, operation, existence, replacement or repair). Nothing contained herein shall be construed as prohibiting the County, its officers, agents, or its employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against

them. The Company shall likewise be liable for the cost, fees and expenses incurred in the County's or the Company's defense of any such claims, actions, or suits. Company will be responsible for all safety measures during the construction, maintenance, restoration, operation, existence, replacement, or repair undertaken by Company to prevent injury to person or damage to property.

12. Release of Claims; Indemnity by County. To the fullest extent permitted by law, County assumes sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly due to the activities, operations or use of the Easement Premises (including, without limitation, any such loss, injury or damage due to the construction, maintenance, restoration, operation, existence, replacement or repair) by County, its agents, employees and contractors, and for those claiming through any of them (collectively the "**County Group**"), except such losses, injuries, damages, etc., which may be attributed to the Company by virtue of it failing to satisfy its maintenance/improvement responsibilities under paragraph seven (7) above. County, for itself and for those claiming through County, hereby releases Company, Company's beneficiaries and all of their respective partners, employees, agents, mortgagees, licensees, contractors, insurers, tenants, guests and invitees (and their respective commissioners, officers, directors, shareholders, insurers, partners, employees, agents, mortgagees, licensees, contractors, guests and invitees, subsidiaries, affiliates, successors, grantees and assigns) (collectively the "**Company Indemnitees**") from any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation costs incurred in connection therewith) and for damage, destruction or theft of property that may arise from County's operations on, or the use of, the Easement Premises (including, without limitation, any such liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses that may arise as a result of the construction, maintenance, restoration, operation, existence, replacement or repair) by the County Group or any member thereof, except such liabilities, losses, claims, demands, liens, etc., which may be attributed to the Company by virtue of it failing to satisfy its maintenance/improvement responsibilities under paragraph seven (7) above. To the fullest extent permitted by law, the County hereby agrees to indemnify, defend, save and hold harmless the Company Indemnitees from and against any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation costs incurred in connection therewith) and for any and all loss of life, injury to persons or damage to property which is directly or indirectly due to the activities, operations or use of the Easement Premises, the existence of the Easement Premises therein, or the exercise of County's rights hereunder, by County Group or any member thereof (including, without limitation, any such loss, injury or damage due to the construction, maintenance, restoration, operation, existence, replacement or repair), except such liabilities, losses, claims, demands, liens, etc., which may be attributed to the Company by virtue of it failing to satisfy its maintenance/improvement responsibilities under paragraph seven (7) above. County will be responsible for all safety measures during the construction, maintenance, restoration, operation, existence, replacement or repair undertaken by County to prevent injury to person or damage to property.

13. Exceptions. The easements granted herein shall be subject to all covenants, easements and restrictions of fact or record, building and zoning ordinances, resolutions and

regulations, questions of survey, and rights of any parties which would be revealed by a physical inspection of the Easement Premises.

14. **Severance.** In the event any term or provisions of this Easement shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Parcel A Easement shall not be affected thereby and shall remain valid and in full force and effect.

15. **Company.** Company joins in the execution of this Parcel A Easement for purposes of evidencing its agreement to be bound by Company's covenants and agreements herein set forth.

16. **Compliance with Laws.** The Company shall use the Easement Premises only in compliance with all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations, and shall obtain any permits, licenses, easements or other permission that may be required for use of the Easement Premises.

17. **Amendment.** This Parcel A Easement may be modified, amended, or annulled only by the written agreement of the County and the Company or their respective successors and assigns.

18. **Recording.** The Parties agree that this Parcel A Easement shall be recorded in the office of the DuPage County Recorder of Deeds.

19. **Governing Law; Venue; Remedies and Attorneys' Fees.** This Parcel A Easement shall be governed by, and construed in accordance with, the internal laws of the State of Illinois, without reference to the choice of law provisions thereof. The Parties agree that the only proper venue for any litigation under or regarding this Parcel A Easement shall be the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, and the Parties hereby consent to the personal jurisdiction of said court. In the event a Party or its successors breaches any of the covenants contained herein, the non-breaching Party or its successors may enforce the terms of this Parcel A Easement by appropriate action for damages and/or injunction.

20. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be (i) sent by a recognized national courier service (such as Federal Express) for next-business day delivery, pre-paid and addressed as set forth below (provided an electronic copy shall be promptly sent via e-mail), or (ii) sent via e-mail to the e-mail address(es) set forth below. Notices shall be deemed effective and received hereunder (i) one (1) business day after being deposited with a recognized national courier service for next-business day delivery, or (ii) at the time the e-mail is sent with respect to e-mail notices.

To County:	THE COUNTY OF DUPAGE 421 N. County Farm Road Wheaton, IL 60187 Attention: DuPage County Board Chair Email: _____
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With a copy to:	DuPage County State Attorney 503 N. County Farm Road Wheaton, IL 60187 Email: _____
To Company:	83 WEST, LLC 400 W 1st St. Elmhurst, IL 60126 Attention: Manager (630) 832-4000 Email: JBrown@Ecstone.com
With a copy to:	Byron L. Faermark Williams & Kite, LLC 1900 S Highland Ave Ste 100 Lombard, IL 60148 (630) 873-8500 Email: bfaermark@fmwlaw.biz

21. **Remedies and Enforcement.**

a. All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by a Party of any of the terms, covenants, restrictions or conditions of this Parcel A Easement, any one or more of the Permittees (defined below) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach.

b. Self-Help. In addition to all other remedies available at law or in equity, upon the failure by a Party to cure a breach of this Parcel A Easement within thirty (30) days following written notice thereof by the other Party (unless, with respect to any such breach which cannot reasonably be cured within such 30-day period, the breaching Party commences such cure within such 30-day period and thereafter diligently pursues such cure to completion), the non-breaching Party shall have the right to cure such breach on behalf of such breaching Party and be promptly reimbursed by such breaching Party upon demand for the reasonable costs thereof together with interest at the rate of ten percent (10%) per annum. Notwithstanding the foregoing, in the event of a breach which constitutes (i) an emergency, and/or (ii) material impairment of the easement rights, a Party may cure the same following twenty-four (24) hours advance notice (or if not practicable, as soon as possible thereafter) and be reimbursed by the breaching Party upon demand for the reasonable cost thereof together with interest at the rate of ten percent (10%) per annum.

c. Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

d. No Termination for Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Party to cancel, rescind, or otherwise terminate this Parcel A Easement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any property subject hereto made in good faith for value, but the easements, covenants, conditions and restrictions of this Parcel A Easement shall be binding upon and effective against any Party of such property covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

22. Waiver. The failure of County or Company on one or more occasions to enforce any one of the provisions of this Parcel A Easement or to exercise any right, remedy or privilege hereunder shall not be construed as a waiver of any subsequent breach or default of a similar nature or as a waiver of any such provision, right, remedy or privilege.

23. Counterparts and Electronic Signatures. This Parcel A Easement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.

24. Miscellaneous. In addition to the Releases in Sections 11 and 12, this Parcel A Easement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the Parties as to the subject matter hereof. This Parcel A Easement shall be binding upon County and Company, and their respective successors, assigns and Permittees.

SIGNATURES ON FOLLOWING PAGE

**FIRST AMENDMENT AND RESTATEMENT
PARCEL A EASEMENT AGREEMENT
SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Parcel A Easement as of the Effective Date.

County

THE COUNTY OF DUPAGE, a body politic

By: _____

Name: _____

Its: _____

ATTEST:

Company

83 WEST, LLC, an Illinois limited liability company

By: _____

Name: _____

Its: _____

ATTEST:

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE) SS

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY that _____ as _____ of **THE COUNTY OF DUPAGE**, a body politic, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said Authority.

GIVEN under my hand and notarial seal as of this ____ day of _____, 2025.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE) SS

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY that Jeff Brown as Manager of **83 West, LLC, an Illinois limited liability company**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said municipal corporation.

GIVEN under my hand and notarial seal as of this ____ day of _____, 2025.

Notary Public

My Commission Expires: _____

Parcel A Easement Agreement Exhibits

- Exhibit A: Grantor (County) Legal Description for entire parcel (Parcel 1 of 1992 Deed)
- Exhibit B: Grantee (Company) Legal Description for entire parcel (Exhibit B-Parcel A Easement)
- Exhibit C: Access Easement Legal Description and Depiction
- Exhibit D: Parking Easement Legal Description and Depiction