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2135 WEST ROSCOE PLACE CONDOMINIUM
2135 WEST ROSCOE PLACE
RECIPROCAL EASEMENT AND OPERATING AGREEMENT

BETWEEN

WEST ROSCOE PLACE, L.L.C.

AND

MIDWEST TRUST SERVICES, INC.,
NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE,
UNDER TRUST AGREEMENT DATED FEBRUARY 24, 2000,
AND KNOWN AS TRUST NUMBER 00-1-7661
("OWNER")

AND

FISHER REAL ESTATE DEVELOPMENT CORPORATION
("DEVELOPER")

THIS INSTRUMENT WAS PREPARED BY AND
AFTER RECORDING RETURN TO:

JOHN D. KLISE, ESQ.
ZOE G. BIEL, ESQ.
KLISE & BIEL, ATTORNEYS AT LAW
2112 NORTH CLARK STREET
CHICAGO, ILLINOIS 60614

PERMANENT TAX IDENTIFICATION NUMBER:
14-19-320-047-0000

ADDRESS:
2135 WEST ROSCOE STREET
CHICAGO, ILLINOIS 60657

2135w.roscoe.reciprocal.agmnt.wpd

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THIS RECIPROCAL EASEMENT AND OPERATING AGREEMENT is made and entered into as of the 13th day of September, 2000 by and between **WEST ROSCOE PLACE, L.L.C. AND MIDWEST TRUST SERVICES, INC., NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE, UNDER TRUST AGREEMENT DATED FEBRUARY 24, 2000, AND KNOWN AS TRUST NUMBER 00-1-7661 ("OWNER")** AND **FISHER REAL ESTATE DEVELOPMENT CORPORATION ("DEVELOPER")**.

RECITALS:

- A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the immediately foregoing paragraph, have the meanings set forth in Article 1 of this Agreement.
- B. The Property is currently improved with a three (3) story building containing street level retail space located at **2135 West Roscoe Street, Chicago, Illinois**.
- C. The Developer intends to convert the top two floors of the Building into residential condominium units. The Condominium, when converted, will consist of four (4) residential condominium units on floors two and three and other common facilities belonging exclusively to the Condominium.
- D. The Owner will grant easements to the Developer for: (1) basement access to utility meters; (2) access and use of the ground floor inner stairways and landings; and (3) access and use of the ground floor outside stairway and landing.
- E. The Developer will grant permanent easements to the Owner for access and use of: (1) the outside stairway; (2) the porch; and (3) the roof.
- F. The Owner's property will consist generally of portions of the basement, ground floor of the Building, consisting of two (2) commercial units, including the ground floor outer and inner stairwells, the first floor Facade, the land and space in which the Building is located and the space above the Building.
- G. The Developer's property will consist generally of portions of the second and third floors of the: (i) Building, (ii) Facade, (iii) inner and outer stairwells, and of the roof and porch.
- H. Owner owns the parcel of real estate legally described on Exhibit J-2 to the property report attached hereto and made a part hereof (the "Owner Property").
- I. Developer owns the parcel of real estate legally described on Exhibit J-1 to the property report attached hereto and made a part hereof (the "Developer Property").
- J. Neither the Developer Property nor the Owner Property will be functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to the efficient operation and intended use of the Developer Property and the Owner Property.
- K. The Owner and Developer desire by this Agreement to provide for the efficient operation of each respective portion, estate and interest in the Property, to assure the harmonious relationship of the Owner of each such respective portion, estate or interest in the Property, and to protect the respective values of each such portion, estate and interest in the Property, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Developer Property which will be binding upon each present and future owner of the Developer Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of the owner of the Owner Property and, or of any portion thereof or interest or estate therein, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the Owner Property, which will be binding upon each present and future owner of the Owner Property, or of any

portion thereof or interest or estate therein, and which will inure to the benefit of each the present and future owners of the Developer Property or of any portion thereof or interest or estate therein, including any Unit in the Developer Property.

L. This Agreement is prepared in connection with the Condominium Declaration for the Property.

NOW, THEREFORE, in consideration of the Recitals and the covenants contained in this Agreement, the parties, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS

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

ACT - This Condominium Property Act of the State of Illinois in effect as of the Date hereof, as the same may be amended from time to time.

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

BUILDING- All improvements situated within and upon the Property which are owned by the Owner or Developer and are used or useful in connection with the ownership or operation of the improvements located within and upon the Property.

CITY - The City of Chicago, Illinois, a municipal corporation.

CONDOMINIUM ASSOCIATION - An Illinois not-for-profit corporation to be formed for the purpose of administering the Condominium Property pursuant to Act.

CONDOMINIUM DECLARATION - Any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits any portion of the Developer Property to the provisions of the Act, namely the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the **2135 West Roscoe Place Condominium Association** which shall be recorded with the Recorder.

CONDOMINIUM PROPERTY - Any portion of the Developer Property from and after its submission to the Act and so long as it has not been withdrawn from the Act.

DEVELOPER PROPERTY - That portion of the Building located within the Developer Property and the public or private areas immediately adjoining the Property consisting generally of (i) the second and third floors of the Building; (ii) the roof; (iii) inside stairways and hallways, excluding the ground floor; (iv) porch; (v) outer stairway, excluding the ground floor; and (vi) facade, excluding the ground floor.

EASEMENTS - All easements declared, granted or created pursuant to the terms and provisions of this Agreement.

EMERGENCY SITUATION - A situation (i) impairing or imminently likely to impair structural support of the Building; (ii) causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Building or any property in, on, under, within, upon or about the Building; (iii) causing or imminently likely to cause substantial economic loss to an Owner; or (iv) substantially disrupting or imminently likely to substantially disrupt business operations in the Owner Property or use of the Developer Property for its intended purposes. The

duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

FACADE - The exterior walls of the Building facing **Roscoe and Hamilton Streets** consisting of the outer materials attached to the structural supports forming the wall of the Building, including joints and seals, window frames and window flashings but excluding the glass, the roof and the structural supports.

LAW OR LAWS - All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and owners, foreseen and unforeseen, ordinary or extraordinary, which now or at any later time may be applicable to the Building, or any parts thereof.

MAINTENANCE - Operation, maintenance, repair, reconditioning refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, restoration, reconstruction and replacement when necessary facilities or desirable of the Building and includes the right of access to and the right to remove from the Building for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Agreement. With respect to the Condominium, Maintenance expressly includes the right of entry with or without notice by the party seeking to perform Maintenance, and its contractors, agents and employees into any Unit and the right to perform Maintenance as and when needed, using reasonable efforts to minimize damage caused by such Maintenance; provided, however that there shall be no responsibility to repair or replace any wall coverings, decorations, fixtures, finishes, improvements and betterments made to a Unit damaged or destroyed as a result of performing Maintenance under this Agreement.

OWNER PROPERTY - That portion of the Building located within the Owner Property and the public or private areas immediately adjoining the Property consisting generally of the (i) ground floor; (ii) the basement; (iii) ground floor inner and outer stairways; (iv) the first floor facade; and (v) all other portions of the Building not submitted to the Act.

PARCEL(S) - The Owner Property or the Developer Property or both of them.

PERMITTEES - All Occupants and the Owners, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, subtenants and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Building.

PERSON - Any individual, partnership, firm, associations, corporation, trust, land trust or any other form of business or not-for-profit organization or governmental entity.

PROPERTY - A collective reference to the Owner Property and the Developer Property.

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

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

SURVEY - Plat of Survey identified as No. 43 dated September 14, 2000, prepared by CERTIFIED SURVEY CO., professional surveyors delineating the boundaries of the Property and showing among other things, the Building.

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

UNIT - Any portion of the Condominium Property described as a "Unit" in the Condominium Declaration.

UNIT OWNER - The person or persons, entity or entities whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit.

ARTICLE 2 EASEMENTS APPURTENANT TO OWNER PROPERTY

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

(a) The Developer is the grantor of the Easements described in this Article 2. The grants of Easements in this Article 2 shall bind and be enforceable against the Developer and its successors in interest and assigns, including, without limitation, the Unit Owners and the Association if the Developer Property is submitted to the Act.

(b) The Owner is the grantee of the Easements described in this Article 2. The Owner, in its sole discretion, may at any time and from time to time after the date of this Agreement, convey all or any portion of the Owner Property to any Person. The Easements shall benefit the Owner, its successors in interest and assigns.

(c) The grant of an Easement by the Developer to the Owner shall bind and burden the Developer Property, before and after the Developer Property is submitted to the Act, which shall, for the purpose of this Article 2, be deemed to be the servient tenement.

(d) The grant of an Easement to the Owner which shall, for the purpose of this Article 2 with respect to such Easement, be deemed to be the dominant tenement (as legally described on Exhibit J to the Property Report) and for the benefit of the Owner Property. No property, other than the Owner Property as it may exist from time to time in accordance with the terms of this Agreement shall constitute part of the dominant tenement.

(e) Unless otherwise expressly provided in this Agreement, all Easements granted to the Owner are irrevocable and perpetual in nature and bind the Developer Property and the Developer, all Unit Owners and the Association, after the Developer Property is submitted to the Act.

2.2 **Ingress and Egress.** The Developer hereby grants to the Owner a non-exclusive easement for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of the Developer Property as are reasonably necessary to permit the use and operation or the Maintenance of (1) the Owner Property, (2) any facilities located in the Developer Property which provide or are necessary to provide the Owner Property with any utilities or other services necessary to the operation of the Owner Property, including, without limitation, the second and third floor outer and inner stairways, porch, roof; and (3) any other areas in the Developer Property as to which an Easement for use or Maintenance has been granted to the Owner.

2.3 **Structural Support.** The Developer hereby grants to the Owner a non-exclusive easement in all Structural Supports located in or constituting a part of the Developer Property for the support of (1) the Owner Property and (2) any area located in the Developer Property with respect to which the Owner is granted an Easement.

2.4 **Common Walls, Ceilings and Floors.** The Developer hereby grants to the Owner a non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal elements existing in and along the common boundaries of the Developer Property and the Owner Property which also serve as walls, ceilings or floors for the Owner Property.

2.5 **Utilities.** The Developer hereby grants to the Owner (and if requested by the applicable Utility Company, the Developer shall grant to such Utility Company) non-exclusive easements for utility purposes required by the Owner Property, in those areas of the Developer Property where such utilities are currently located.

2.6 **Encroachments.** The Developer hereby grants to the Owner an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or result from the renovation of the Developer Property or if, by reason of settlement or shifting of the Building, any part of the Owner Property not currently located within the Developer Property encroaches or shall hereafter encroach upon any part of the Developer Property. This Easement shall exist only so long as the encroaching portion of the Owner Property continues to exist, or replacements are made in the same location which do not materially enlarge the encroachment.

2.7 **Exterior Maintenance.** The Developer hereby grants to the Owner a non-exclusive easement for ingress and egress of persons, machines, materials and equipment through the Developer Property and for the use, existence and attachment of tie inserts, tie-in sleeves and detect pins on the exterior of the Developer Property and davits and davit sockets on the roof and in the Developer Property and otherwise to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Facade and of the Owner Property.

2.8 **Owner Property Roof Use and Access.** The Developer hereby grants to the Owner a non-exclusive easement in, over, on and across the Roof for ingress and egress of persons, materials and equipment to the extent reasonably necessary to permit (1) the existence, attachment, erection and use of scaffolding, (2) for exterior Maintenance of the Owner Property and the Facade, and (3) attachment of any communications systems and (3) heating and air-conditioning equipment necessary for operation of the Owner Property.

ARTICLE 3

EASEMENTS APPURTENANT TO DEVELOPER PROPERTY

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

(a) The Owner is the grantor of the Easements described in this Article 3. The grants of Easements in this Article 3 shall bind and be enforceable against the Owner and its respective successors in interest and assigns.

(b) The Developer is the grantee of the Easements described in this Article 3. The Easements shall benefit the Developer and its successors in interest, assigns and their Permittees (including the Unit Owners and the Association).

(c) The grant of an Easement by the Owner to the Developer shall bind and burden the Owner Property which shall, for the purpose of this Article 3, be deemed to be the servient tenement. Any conveyance of all or any portion of Owner's estate or interest in the Owner Property shall be made subject to the easements and obligations contained in this Agreement. Where only a portion of the Owner Property is bound and burdened by the Easement, only that portion shall be deemed to be the servient tenement.

(d) The grant of an Easement to the Developer is appurtenant to and shall benefit the Developer Property, which shall, for the purpose of this Article 3 with respect to such Easement, be deemed to be the dominant tenement (as legally described on Exhibit J to the Property Report) and for the benefit of the Developer Property. No property other than the Developer Property as it may exist from time to time in accordance with the terms of this Agreement shall constitute part of the dominant tenement.

(e) Unless otherwise expressly provided in this Agreement, all Easements granted to the Developer are irrevocable and perpetual in nature.

(f) The Owner may (1) in connection with the Maintenance of the Owner Property, or (2) in an Emergency Situation, or (3) to prevent a dedication of or accruing of rights by the public in and to the use of any of the Owner Property: temporarily prevent, close off or restrict the flow of pedestrian use in, over, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement.

(h) Any exclusive Easement granted under this Agreement shall in all events be subject to the concurrent use by the Owner of the servient estate as and to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights granted under Section 5.5, Article 9, or elsewhere in this Agreement and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

3.2 **Ingress and Egress.** The Owner hereby grants to the Developer a non-exclusive easement for ingress and egress only for Persons, materials and equipment in, over, on, across and through such portions of the Owner Property as are reasonably necessary to permit the use and operation or the Maintenance of (1) the Developer Property, (2) any facilities where currently located in the Owner Property which provide or are necessary to provide the Developer Property with any utilities or other services necessary to the operation of the Developer Property, including, without limitation, the basement and the stairs to access the basement, the ground floor outer stairwell and the ground floor inner stairwells and landings, and (3) any other areas in the Owner Property as to which an Easement for use or Maintenance has been granted the Developer.

3.3 **Structural Support.** The Owner hereby grants to the Developer a non-exclusive easement in all Structural Supports located in or constituting a part of the Owner Property for the support of the Developer Property.

3.4 **Encroachments.** The Owner hereby grants to the Developer an easement permitting the existence of encroachments if such encroachments presently exist or are replaced in the same location or if, by reason of any settlement or shifting of the Building, any part of the Developer Property not currently located within the Owner Property encroaches or shall hereafter encroach upon any of the Owner Property. No such encroachment shall be placed where such encroachment did not previously exist or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as the encroachment portion of the Developer Property exist.

3.5 **Common Walls, Ceilings and Floors.** The Owner hereby grants to the Developer a non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal elements constructed in and along the boundaries of the Developer Property and the Owner Property after the date the Owner conveys the Owner Property, if ever, which also serve as walls, ceilings or floors for the Developer Property.

3.6 **Utilities.** The Owner hereby grants to the Developer non-exclusive easements for utility purposes required by the Developer Property in those areas of the Owner Property where such utilities are currently located. If at any time it shall become necessary to relocate or add to utility easements other than where currently located in the Building in order to provide required utility service to the Developer Property, the Owner agrees to grant such additional or relocated utility easements (at such location mutually agreed to by the Owner and the Developer) provided (1) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Owner Property for the purposes for which the Owner Property is used and the normal business operations and reasonable use and enjoyment of the Owner Property for the purposes for which the Owner Property is used, (2) the Owner shall not be required to grant an easement which would convert otherwise

available rentable space or space in the Owner Property used for the Owner's business to such Easement, unless such relocation or additional easements are required by Law and no other space is reasonably available and the Owner is equitably compensated for the value of such converted space, and (3) the Developer shall pay the Owner's reasonable costs or expenses in connection with granting such easement.

ARTICLE 4 STRUCTURAL SUPPORT

4.1 Structural Safety and Integrity. The Owner or Developer shall not do or permit any act which would adversely affect the structural safety or integrity of any portion of the Owner Property or Developer Property.

4.2 Construction of Support. The person responsible for the adverse effect on the structural safety or integrity of any portion of the Building shall commence the construction of all necessary remedial structural support within a reasonable time under the circumstances and shall diligently complete or cause completion of such construction in accordance with plans and specifications detailing necessary remedial structural support prepared by or approved by a licensed architect and the Owner (whose approval will not be unreasonably withheld or delayed). The responsible person shall pay all costs and expenses, including all architectural and engineering fees in connection with construction of the remedial structural support, including any ongoing Maintenance costs.

ARTICLE 5 SERVICES TO DEVELOPER AND OWNER

The services which the Owner provides under this Section may not be refused by the Developer. However, the Developer may supplement the services provided by the Owner.

5.1 Services to Developer. The Owner shall furnish or cause to be furnished the following services to the Developer when, as and if required: (a) ground level exterior maintenance and snow removal; and (b) maintenance of the first floor Facade.

5.2 Services to Owner. The Developer shall furnish or cause to be furnished the following services to the Owner when, as and if required: (a) storm duct cleaning; (b) maintenance of second and third floor Facade; and (c) maintenance of ground floor inner and outer stairways and landings.

5.3 Obligation to Furnish Services. The Owner and Developer shall make a good-faith effort to operate their respective facilities and furnish all services as required under this Article V in a manner consistent with its intended respective use as mixed-use commercial and residential property and the level of operation and management of comparable properties in downtown Chicago, Illinois.

5.4 Payment for Services. Payment, if any, for services rendered pursuant to this Article V and other charges and fees related to such services, including overhead and supervision fees, shall be made in accordance with the terms and provisions of the Condominium Declaration.

5.5 Discontinuance of Services. If, at any time, the Developer or Owner fails to perform its obligations under Article IV or Article V or to pay any sum of money payable to the Developer or Owner pursuant to the provisions of Article IV or Article V within ten (10) days after receipt of written notice from the demanding Developer or Owner requiring payment of said sum of money, then, in addition to any other rights or remedies the demanding party, the Developer or Owner may discontinue furnishing services to be furnished by the demanding party under Article V until said sum of money is paid; provided, however, that if the defaulting party in good faith disputes the defaulting party's obligation to pay said sum of money and diligently contests any action

or proceeding brought to collect said sum of money or to enforce any lien therefor, and further provided, however, that the demanding party may not discontinue any such services if such discontinuance would cause an Emergency Situation (other than one involving solely economic loss) or hinder steps to remedy an existing Emergency Situation (other than one involving solely economic loss).

ARTICLE 6
INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS;
ZONING; USE; SIGNAGE; ENVIRONMENTAL AND ENGINEERING REVIEW

6.1 Indemnity by Owners. The Owner or Developer (hereinafter in this Section 6.1, the "Indemnifying Party") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other party (hereinafter in this Section 6.1, the "Indemnitee") from and against any and all claims, including any actions or proceedings, against Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Party's negligent use, possession or management of the Indemnifying Party's portion of the Building or activities therein, or arising out of the Indemnifying Party's negligent use, exercise or enjoyment of an Easement, and from and against all costs, reasonable attorneys' fees (including appeals of any judgment or order), expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom, but only to the extent the Indemnitee is not insured against such losses, liabilities, damages, judgments, costs, or expenses under valid and collectible insurance policies.

6.2 Liens. The Owner or Developer (hereinafter in this Section 6.2, the "Liening Owner") shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's, manager's or broker's or any other similar lien arising by reason of the acts of the Liening Owner, its agents and contractors or any work or materials or services for which the Liening Owner or its agents or contractors has contracted (a) against a portion of the Building, or (b) against its own portion of the Building, if the existence or foreclosure of such lien against its own portion of the Building would adversely affect the Owner or Developer (such other Owner in (a) or (b) being the "Impacted Owner"). The Liening Owner shall not be required to remove such lien within thirty (30) days after its filing if: within said thirty (30) day period, (1) such lien cannot be foreclosed, and (2) the Liening Owner (i) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien and (ii) shall deliver to the Impacted Owner either, at the Impacted Owner's option: (a) cash or a surety bond from a responsible surety company acceptable to the Impacted Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (b) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner. In any case, a Liening Owner must remove or release such lien prior to its foreclosure. If the Liening Owner fails to comply with the foregoing provisions of this Section 6.2, the Impacted Owner may take such action as they may deem necessary to defend against or remove such lien. The Impacted Owner shall be entitled to payment from the Liening Owner for all costs and expenses (including reasonable attorney's fees, including appeals of any judgment or order) paid or incurred under this Section 6.2.

6.3 Zoning. Neither the Developer nor the Owner shall (i) make any Alterations, (ii) allow any use of their respective portions of the Building, or (iii) take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance or other existing zoning, as said ordinances may be amended from time to time.

6.4 Use. No use shall be permitted in the Property which does not comply with Law, or would increase significantly the cost of insurance maintained by the Owner or the Developer.

ARTICLE 7

REAL ESTATE TAXES

7.1 **Separate Real Estate Tax Bills.** Upon recordation of the Declaration, the Assessor of Cook County, Illinois (the "Assessor") will cause the issuance of separate real estate tax parcel identification numbers and separate real estate tax bills for the Developer Property and Owner Property.

7.2 **Joint Real Estate Tax Bills.** Until the Owner Property and the Developer Property are separately assessed and taxed, each Party shall pay its respective portion of such real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon or with respect to the Property. If the Property is not taxed and assessed separately for any year because the tax division the parties may apply for a separate computation of taxes and assessments, if feasible. If there is no separate tax and assessment for other reasons, and if the assessed valuation of each Party's portion of the Property (i.e., fair market value determined by the Assessor multiplied by the applicable percentage for type of property multiplied by the equalization factor) is shown in the Assessor's official records, then each Owner's portion of such taxes and assessments shall be based on the assessed valuation for its portion of the Property divided by the sum of the assessed valuations for the Property. If at any time there is not a separate tax bill for the Developer Property, the Developer shall deliver to the Owner a check made payable to the Cook County Collector for its allocable share, as set forth in the foregoing paragraph, of the tax bills at least ten (10) days prior to the date such taxes are due. The Owner shall notify the Developer of the amount owed by the Developer on account of real estate taxes and deliver to the Developer a copy of the tax bill. The Owner shall forward such check with its payment of the Developer's allocable share of the tax bills to the Cook County Collector and shall forward a copy of the paid receipt to the Developer when it is received.

7.3 **Failure to Pay Real Estate Taxes.** If the Developer or Owner (the "Defaulting Party") shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article 7, and the failure to pay same results in the imposition of a lien on, or forfeiture or foreclosure of, any of the other party's portion of the Property, or subjects the Developer or Owner to personal liability for this obligation, then the other party may, after at least ten (10) days written notice to the other party in default, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the party in default shall, upon demand, reimburse the other party for the amount of such payment, including the amount of any interest or penalty payments thereon, with interest thereon as hereinafter provided, and the non-defaulting party shall also have a lien against the party in default's portion of the Property in accordance with Article 7.

**ARTICLE 8
INSURANCE**

8.1 **Insurance Required.** The Developer and the Owner shall procure and maintain the following insurance:

(a) **Real and Personal Property.** The Developer shall keep the Developer Property insured for no less than "all risk" coverage on real property and personal property owned by the Developer used in the operation of the Developer Property for an amount not less than ninety percent (90%) of the insurable replacement cost thereof, except that if the Developer Property is submitted to the Condominium Act such percentage shall be increased to one hundred percent (100%), if required by the Condominium Act, at all such times the Developer Property remains subject to the Condominium Act. The Owner shall keep the Owner Property insured for no less than "all risk" coverage on real property and personal property owned by the Owner used in the operation of the Owner Property for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal.

(b) **Public Liability.** The Owner and the Developer shall each insure against public liability claims and losses on a comprehensive or commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Property, or as a result of operations thereon (including contractual liability covering obligations created by this Agreement including, but not limited to, those indemnity obligations contained herein), but in all events for limits, as to the Owner or Developer and its portion of the Building, of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage. Each such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds.

8.2 **Insurance Provisions.** Each policy described in Section 8.1 hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party; (ii) shall insure as "named" insureds the Owner and the Developer; (iii) shall provide (except for liability insurance described in Section 8.1(b), for which it is inapplicable) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iv) shall provide, except for liability insurance required by Section 8.1(b), that all losses payable thereunder shall be paid to the Owner, unless the Owner and Developer otherwise agree, subject to the consent of the Mortgagees; (v) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, nonrenewal or material modification thereof to Mortgagees and all insureds thereunder; (vi) shall include a standard mortgagee endorsement or loss payable clause in favor of the Mortgagees reasonably satisfactory to them; (vii) shall not include a co-insurance clause; and (viii) insurance maintained by the Owner or Developer alone and not as part of a joint policy may be carried on a "blanket" basis with other policies.

8.3 **Renewal Policies.** Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by the Developer and Owner to the other and to the Mortgagees at least ten (10) days prior to the expiration date of any such expiring insurance policy.

ARTICLE 9 MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

9.1 **Maintenance of Owner Property.** The Owner shall, at its sole cost and expense, maintain and keep its portion of the Building in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner agrees not to suffer or commit, and shall use all reasonable precaution to prevent, waste to its property.

9.2 **Maintenance of Developer Property.** The Developer shall, at its sole cost and expense, maintain and keep the Developer Property in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Developer further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to such property.

9.3 **Damage Affecting Only Developer Property or Owner Property.** If any portion of the Building is damaged by fire or other casualty and (a) if such damage occurs within the Owner Property only and does not affect Developer Property, or (b) if such damage occurs within the Developer Property only and does not affect Owner Property, then any such damage shall be repaired and restored by the owner of the portion of the Building in which any such damage occurs in as timely a manner as practicable under the circumstances.

9.4 **Joint Damage.** If the Building is damaged by fire or other casualty and if the provisions of Section 9.3 hereof are not applicable because the nature of the damage is such that it does not fall within either of the categories set forth in clause (a) or (b) of Section 9.3, then to the extent such damage does not fall within either of such categories, the repair and restoration of only that portion of such damage which does not fall within those categories shall be the joint responsibility of the Owner or Developer in whose portion of the Building the damage occurs. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed by a contractor jointly selected by the Developer and Owner from contractors who are licensed to do business in the City of Chicago.

9.5 **Cost of Repairs.** If the cost and expense of performing any repair and restoration provided for in Section 9.4 hereof shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage, then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be borne by the owner of the affected area of repair.

9.6 **Excess Insurance Proceeds.** Upon completion of the repair and restoration of any damage to the Building, any remaining insurance proceeds paid by reason of such damage shall be refunded to the Developer or Owner in proportion to the ratio that the insurance proceeds contributed by such person or by such person's insurance company bears to the total insurance proceeds.

9.7 **Agreement Not to Repair.** If the Building is destroyed or substantially damaged, and the Owner and the Developer (in compliance with the requirements of the Act, if the Developer Property has been submitted to the Act) agree not to rebuild, repair or restore the Building, subject to the written approval of the Mortgagees of the Owner and the Developer, and the intent of the Owner and Developer is that the insurance proceeds shall be shared; then any Property owned by a Unit Owner, Developer or Owner is sold hereto, the owner party will take all proceeds from such sale and may retain the proceeds free and clear of the claims of any other owner, subject to the rights of the owner's Mortgagee.

9.8 **Costs Defined.** For purposes of this Article IX, architects' and engineers' fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

9.9 **Restoration of Condominium Property.** Prior to disbursement of any insurance or other proceeds to Unit Owners and no later than ninety (90) days after occurrence of the fire or other disaster in any event, if affirmative action and provision has not been taken by such date by the Developer to repair and restore the Condominium Property, the Developer shall pay the Owner an amount necessary so that the Owner shall have sufficient proceeds to demolish or repair and restore the Building to a condition so as adequately to assure: (a) the structural integrity and safety of the Building; (b) the continuous and efficient operation of Owner Property and all Building electrical, utility, mechanical, plumbing and other systems serving the Owner Property; (c) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction of the Property; and (d) the architectural unity and aesthetic appearance of the restored Building.

ARTICLE 10
LIENS, DEBTS, INTEREST AND REMEDIES

10.1 **Failure to Perform.** If, at any time, the Developer or Owner fails within ten (10) business days after notice or demand to pay any sum of money due to either party (hereinafter the "Creditor Owner") under or pursuant to the provisions of this Agreement or any other time period expressly provided for such payment to be made (thereby becoming a "Defaulting Owner") then, in addition to any other rights or remedies the Creditor Owner may have, they shall have (a) a lien against the portion of the Building owned by the Defaulting Owner and (b) for a default under Article 9, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Building or otherwise under insurance policies carried pursuant to Article 8 hereof, to secure the repayment of such sum of money and all interest thereon. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien through a judicial foreclosure in like manner as a mortgage of real property in the State of Illinois. A Creditor Owner shall release its lien upon payment in full. Notwithstanding the foregoing, a Creditor Owner's lien shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the portion of the Building or Property owned by the Defaulting Owner, except a prior lien.

10.2 **No Diminution of Lien.** No conveyance or other divestiture of title (except foreclosure of a prior lien which is superior to a lien arising under Article 10) shall in any way affect or diminish any lien arising pursuant to this Article 10.

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

10.4 **Interest Rate.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by The First National Bank of Chicago at Chicago, Illinois or any successor thereto as its base or reference rate of interest.

10.5 **Cumulative Remedies.** The rights and remedies of the Developer or Owner provided for in this Article 10 or elsewhere in this Agreement are cumulative and not intended to be exclusive of any other remedies to which such party may be entitled at law or in equity or by statute.

10.6 **No Set-Off.** Each claim of any party arising under this Agreement shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any party shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

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

10.8 **Attorneys' Fees.** A Defaulting Owner shall pay the reasonable attorneys' fees and court costs (including appeals of any judgment or order) paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Agreement. In the case of an appeal, attorneys' fees shall be payable after the decision in such appeal.

10.9 **Self-Help.** Without limiting any other rights or remedies of the Developer or Owner, including any other self-help provision of this Agreement which grants either party the right to perform an obligation which the other party has failed to perform, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral, to perform the obligation which the Defaulting Owner has failed to perform until the Defaulting Owner cures such default. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorney's fees, including appeals from judgments or orders) paid or incurred by the Creditor Owner in performing such obligation which the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Agreement for non-performance of an obligation, such provision shall control the provisions of this Section 10.9.

10.10 **Arbitration.** Except for matters which injunctive relief is appropriate, in the event of any dispute regarding the terms of this Agreement, the matter shall be submitted in writing to binding arbitration in accordance with the rules of the American Arbitration Association or such other arbitrator as may be mutually agreed upon by the parties to the dispute. All parties shall be provided a copy of any such request for arbitration. The prevailing party shall recover reasonable attorneys' fees and costs of arbitration in the award rendered by the arbitrator. The decision of the arbitrator shall be final and binding and not subject to judicial review but may be submitted to any court of competent jurisdiction for enforcement in accordance with its terms.

ARTICLE 11 CONDEMNATION

11.1 **In General.** In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Building by any competent authority for any public or quasi-public use; the award, damages or just compensation (hereinafter in this Article 11, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Building shall be performed in accordance with the requirements of this Article 11.

11.2 **Temporary Taking Awards.** All Awards resulting from the taking of all or any part of the Building, other than damages resulting from a taking for the temporary use of space as hereinafter described, shall be paid to the Owner and Developer.

11.3 **Taking of Only One Parcel.** In the event of a taking of a Unit, that Unit Owner shall be responsible to maintain and repair the structure of that Unit. The Unit Owner shall also be entitled to the condemnation award solely, as it applies to their Unit.

11.4 **Repair and Restoration by All Owners.** In the event of a taking, such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of the Owner and Developer.

11.5 **Excess Award.** The Award for any taking described in Section 11.4 shall first be used to pay for the repair and restoration. Any excess of the Award over the cost of repair and restoration shall then be allocated to a Unit Owner or Owner in the same ratio that the apportionment of the Award to such Unit Owner or Owner bears to the apportionment of the Award to the other Unit Owners and or the Owner.

11.6 **Demolition.** If, as a result of a taking, the Developer or Owner reasonably determines that its portion of the Building no longer can be repaired or restored or operated on an economically feasible basis, then such party shall notify the other party of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its portion of the Building. However, such party not repairing or restoring shall demolish, repair or restore its portion of the Building to the extent, if any, as may be necessary to provide essential services set forth in this Agreement.

11.7 **Allocation of Award.** In the event of a taking of all or substantially all of the Building, the Award for such taking shall be allocated to the Owner and Developer in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the parties in accordance with said apportionment.

ARTICLE 12 NOTICES AND APPROVALS

12.1 **Notice to Parties.** Notice shall be in writing and shall be given or made or communicated by personal delivery (including messenger service), written telecommunication (such as telex or facsimile telecopy) or by United States mail, addressed as follows as amended from time to time:

If to the Owner:

Midwest Trust Services, Inc.
C/o West Roscoe Place, L.L.C.
1041 West Grand Avenue
Chicago, Illinois 60622

If to the Developer:

Mark R. Fisher
Fisher Real Estate Development Corporation
1041 West Grand Avenue
Chicago, Illinois 60622

ARTICLE 13 GENERAL

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

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

13.3 **Headings.** The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles or Sections.

13.4 **Amendments to Agreement.** Except as otherwise provided in this Agreement, this Agreement may be amended or terminated only by an instrument signed by the then Developer and the Owner, and consented to by the Mortgagees. Any amendment to or termination of this Agreement shall be recorded with the Recorder.

13.5 **Perpetuities and Other Invalidity.** The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owner, Developer and Unit Owners and their respective successors and assigns for the term of this Agreement, which shall be perpetual to coincide with the perpetual Easements provided for under this Agreement (or if the law (including any rule against perpetuities or other statutory or common law rule) prescribes a shorter period, then upon expiration of such period). If the law prescribes such shorter period, then upon expiration of such shorter period, said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owner or Developer, except as may be required by law, for successive periods of twenty (20) years, subject to amendment or termination as set forth in Section 13.4.

13.6 **Condominium Association Acting for Unit Owners.** All rights, Easements and benefits under this Agreement appurtenant to or enjoyed by the Condominium shall be exercised by the Association on behalf of the Unit Owners of the Condominium except for Easements which by their nature are exercisable only by Unit Owners individually. Any action to enforce rights, obligations, Easements, burdens and benefits under this Agreement on behalf of the Unit Owners or the Association shall be taken on behalf of all Unit Owners and the Association solely by the Association by its duly authorized Unit Owners acting pursuant to authority granted by law, the Condominium Declaration or resolution of the board of managers of the Condominium. All obligations of the Developer under this Agreement shall be the obligations jointly and severally of both the Association and the Unit Owners collectively so long as the Condominium is subject to the Act; provided, however, that no individual unit owner (or the holder of any mortgage on such owner's unit) shall be liable for any obligation of the Developer in excess of a percentage of such liability equal to the percentage interest in the common elements in the condominium attributable to such Unit as shown in the Condominium Declaration.

13.7 **Abandonment of Easements.** Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building subject to an Easement, unless the owner benefited by such Easement states in writing its intention to abandon the Easement, provided the consent of the Mortgagees shall also be required with respect to any such abandonment.

13.8 **Applicable Laws.** The parties hereto acknowledge that this Agreement and all other instruments in connection herewith have been negotiated, executed and delivered in the City of Chicago, County of Cook and State of Illinois. This Agreement and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Illinois, including without limitation, matters affecting title to all real property described herein.

13.9 **No Third-Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary (except the Mortgagees) under any Laws or otherwise.

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

13.11 **Notice to Mortgagees; Rights of Mortgagee.**

(a) The term "Mortgage" as used herein shall mean any mortgage (or any trust deed) of an interest in the Property given primarily to secure the repayment of money owed by the mortgagor. The term "Mortgagee" as used herein shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed); provided, however, no mortgage or trust deed on an individual condominium unit of the Condominium [(other than a mortgage initially placed on the entire Condominium Property or all Condominium Units)] shall be included within the definition of "Mortgage" unless specifically stated to the contrary.

(b) If a Mortgagee shall have served on the Developer or Owner, by personal delivery or by registered or certified mail return receipt requested, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every notice required to be given by one party to the others at the same time as and whenever such notice shall thereafter be given by one party to the others, at the address last furnished by such Mortgagee. The address of any existing Mortgagee shall be as set forth in its consent to subordination attached hereto. After receipt of such notice from a Mortgagee, no notice thereafter given by either party shall be deemed to have been given unless and until a copy thereof shall have been so given to the Mortgagee. If a Mortgagee so provides or otherwise requires, and notice thereof is given by the Mortgagee as provided above:

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(1) the proceeds of any claim under an insurance policy or condemnation Award required to be delivered to a party shall, upon notice from a Mortgagee, be delivered to such party's Mortgagee to be disbursed by the Mortgagee in accordance with the provisions of this Agreement.

(2) A Mortgagee shall have the right to cure or correct a breach of this Agreement by the Owner or Developer whose property is secured by the Mortgagee's Mortgage within any applicable cure period provided for such breach by such mortgagor owner plus an additional period of twenty (20) days after notice to the Mortgagee of expiration of the cure period allowed the mortgagor owner before the other party may exercise any right or remedy to which it may be entitled as a creditor, except exercise of a self-help right in an Emergency Situation.

(3) Should any prospective Mortgagee require a modification or modifications of this Agreement, which modification or modifications will not cause an increased cost or expense to the Owner or Developer whose property is not subject to the Mortgage of such Mortgagee or in any other way materially and adversely change the rights and obligations of such Owner or Developer, then and in such event, such party agrees that this Agreement may be so modified and agrees to execute whatever documents are reasonably required therefor and deliver the same to the other party within ten (10) business days following written requests therefor by the other party or prospective Mortgagee.

13.12 Binding Effect. The easements, covenants and restrictions created under this Agreement shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

13.13 Trustee Exculpation. This Agreement is executed by **Midwest Trust Services, Inc.**, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as Trustee. No personal liability shall be asserted or be enforceable against the Trustee because or in respect of this Agreement, or its making, issue or transfer. All such liability, if any, is expressly waived by each taker and holder hereof. Nothing herein shall modify or discharge the personal liability assumed by the guarantor(s) hereof, if any.

ARTICLE 14 LIMITATION OF LIABILITY

14.1 Limitation of Liability. The liability under this Agreement of the Owner or Developer shall be limited to and enforceable solely against the assets of such party constituting an interest in the Property and no other assets of such person, except as hereinafter provided in Section 14.1. At any time during which a party is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under said trust agreement by reason of any of the covenants or conditions contained herein.

14.2 Transfer of Ownership. If the Developer or Owner shall sell, assign, transfer, convey or otherwise dispose of its portion of the Property (other than as security for a loan to such party), then (a) such party shall be entirely freed and relieved of any and all covenants and obligations arising under this Agreement which accrue under this Agreement from and after the date such party shall so sell, assign, transfer, convey or otherwise dispose of its interest in such portion of the Property, and (b) the Person who succeeds to party's interest in such portion of the Property shall be deemed to have assumed any and all of the covenants and obligations arising under this Agreement of such party both theretofore accruing or which accrue under this Agreement from and after the date such party shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property.

under this Agreement of such party both theretofore accruing or which accrue under this Agreement from and after the date such party shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property.

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

DEVELOPER:

FISHER REAL ESTATE DEVELOPMENT CORPORATION

**SEE EXCULPATORY RIDER
ATTACHED TO AND
MADE PART HEREOF.**

OWNER:

**MIDWEST BANK AND TRUST COMPANY
As Successor Trustee to Midwest
Trust Services, Inc.**

WEST ROSCOE PLACE L.L.C. AND
MIDWEST TRUST SERVICES, INC., NOT
INDIVIDUALLY BUT SOLELY AS TRUSTEE,
UNDER TRUST AGREEMENT DATED FEBRUARY
24, 2000,
AND KNOWN AS TRUST NUMBER 00-1-7661

By: 

Name:

Title:

By: 

Name: JANE B. ZAKRZEWSKI

Title: LAND TRUST OFFICER

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

**MIDWEST BANK AND TRUST COMPANY
As Successor Trustee to Midwest
Trust Services, Inc.**

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY that Jane B. Zakrzewski, Trust Officer of MIDWEST TRUST
SERVICES, INC., known to me to be acting not personally but as trustee under Trust Number 00-1-7661, and
of said trustee, personally known to me
to be the same persons whose names are subscribed to the foregoing Agreement as such
and appeared before me this day in person and acknowledged that they signed,
sealed and delivered said instrument, on behalf of said trustee as their free and voluntary act, and as the free and
voluntary act of said corporation for the uses and purposes therein set forth.

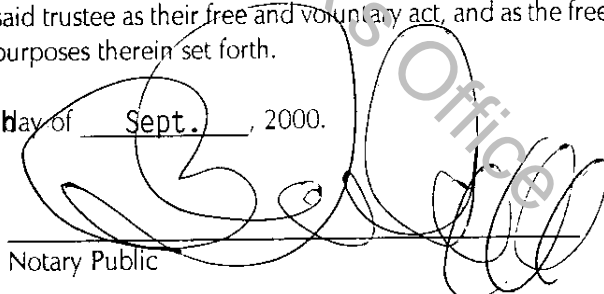
GIVEN under my hand and seal this 12th day of Sept., 2000.

"OFFICIAL SEAL"

Barbara Vandergriff

Notary Public, State of Illinois

My Commission Expires March 28, 2002


Notary Public

CONSENT OF MORTGAGEE

MIDWEST BANK AND TRUST CO., a banking association organized and existing under the laws of the state of Illinois, holder of a mortgage on the Property dated April 12, 2000 and recorded April 13, 2000 as Document No. 00259540 (the "Mortgage"), hereby consents to the execution and recording of the foregoing Reciprocal Easement and Operating Agreement and agrees that such Mortgage is subject thereto.

IN WITNESS WHEREOF, MIDWEST BANK AND TRUST CO., a banking association organized and existing under the laws of the state of Illinois, has caused this Consent of Mortgagee to be signed by its duly authorized officers on its behalf; all done at Melrose Park on this 12th day of September 2000.

MIDWEST BANK AND TRUST CO., an Illinois corporation

By: James D. Watson
Its: Senior Vice President

ATTEST:

[Signature]
Its: [Signature]

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

I, LAURA J SOVCIK, a Notary Public in and for said County and State, do hereby certify that JAMES G WATSON and GERALD J MARSHALL, the SENIOR VICE PRES and ASST. VICE PRES., respectively of MIDWEST BANK AND TRUST CO., a banking association organized and existing under the laws of the state of Illinois, as such JAMES G WATSON and GERALD J MARSHALL, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12th day of Sept, 2000.

[Signature]
NOTARY PUBLIC

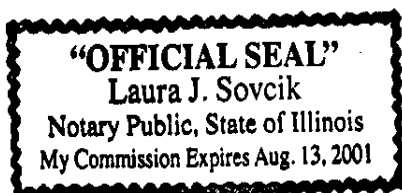


EXHIBIT J-1 TO THE PROPERTY REPORT

LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY

LOTS 1 AND 2, **ABOVE AN ELEVATION OF 17.099 FEET**, IN BLOCK 13 C.T. YERKES SUBDIVISION OF BLOCK 33 TO 36 AND 41 TO 44, IN THE SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 AND THE EAST 1/2 OF THE SOUTHEAST 1/4 THEREOF) IN COOK COUNTY, ILLINOIS.

PIN: 14-19-320-047

Common Address: 2135 WEST ROSCOE STREET, CHICAGO, ILLINOIS 60657

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EXHIBIT J-2 TO THE PROPERTY REPORT

LEGAL DESCRIPTION OF THE COMMERCIAL PROPERTY

LOTS 1 AND 2, **BELOW AN ELEVATION OF 17.099 FEET**, IN BLOCK 13 C.T. YERKES SUBDIVISION OF BLOCK 33 TO 36 AND 41 TO 44, IN THE SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 AND THE EAST 1/2 OF THE SOUTHEAST 1/4 THEREOF) IN COOK COUNTY, ILLINOIS.

PIN: 14-19-320-047

Common Address: 2135 WEST ROSCOE STREET, CHICAGO, ILLINOIS 60657