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Property of Cook County Clerk's Office

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RECIPROCAL EASEMENTS
FOR
1350 WEST MADISON
CHICAGO, ILLINOIS

45

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✕ LaSalle Bank National Association formerly
known as

THIS DECLARATION is made and entered into as of the 7th day of ~~August~~ ^{September}, 2000, by ✕ LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 16, 1997 AND KNOWN AS TRUST NO. 121312, having its principal office at 135 South LaSalle, Chicago, Illinois 60603 and Near Loop Lofts L.L.C., an Illinois Limited Liability company (collectively hereinafter referred to as "Declarant").

RECITALS:

A. Capitalized terms used and not otherwise defined in the Recitals shall have the meanings set forth in Article I hereof.

B. Declarant is the Owner of the Parcel, which is situated in Chicago, Cook County, Illinois and is legally described in Exhibit A, attached hereto and made a part hereof.

C. The Total Parcel is presently improved with a three (3) story commercial building ("Building") containing approximately Eighty-five (85) parking spaces in the parking lot located on the ground floor (the "Parking Lot") and an ice rink and related facilities and amenities located on two floors above the Parking Lot.

D. Immediately after the recordation of this Declaration, Declarant intends to convey a portion of the Parking Lot which is legally described on Exhibit B attached hereto (the "Parking Property" to LaSalle National Trust, as Trustee under Trust Agreement dated January 24, 2000 and know as Trust Number 122975, and to retain ownership of the remaining portion the of the Parking Lot (the "Commercial Parking Property") and two floors above the Parking Lot (the "Commercial Floors") (the Commercial Floors and the Commercial Parking Property are hereinafter collectively referred to as the "Commercial Property").

E. By virtue of Declarant's separation of the Building, the Total Parcel has been divided into separate parcels and each parcel is designated by its legal description. Neither the Parking Property nor the Commercial Property will be functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, utility services or other Facilities, as hereinafter described, and components necessary to the efficient operation and intended use of the Parking Property and Commercial Property.

F. The survey attached as Exhibit D hereto and made a part hereof illustrates the Total Parcel and the relative locations of the Parking Property and Commercial Property.

G. The Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total

Property, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Parking Property which will be binding upon each present and future Owner of the Parking Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein including leasehold interests, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the Commercial Property, which will be binding upon each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each present and future Owner of the Parking Property, or of any portion thereof or interest or estate therein including leasehold interests, to the extent provided herein.

NOW, THEREFORE, the Declarant hereby declares that the Total Parcel and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Declaration. Declarant does hereby further declare and agree that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of, all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate or leasehold interests in, the Total Parcel and each of the foregoing shall run with the land subjected to this Declaration.

ARTICLE 1

DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1 "Act" means the Condominium Property Act of the State of Illinois in effect on the date hereof, as amended from time to time.

1.2 "Building" means that certain three (3) story commercial building including certain commercial space on the first and second floors and parking located on the ground floor of said building commonly known as 1350 West Madison, Chicago, Illinois.

1.3 "Commercial Property" means all improvements and Facilities constructed or reconstructed within or exclusively serving the commercial space containing approximately 41,699 square feet of net rentable area on the first and second floors of the Building, but excluding any Facilities exclusively serving the Parking Property, which Commercial Property is legally described in Exhibit C, attached hereto and made a part hereof and which consists of the Commercial Parking Property and the Commercial Floors.

1.4 "Common Elements" means any or all portions of the Total Property, except the Units, when submitted to the Act from time to time pursuant to the Condominium Declaration.

1.5 "Common Walls, Floors and Ceilings", means all common structural and partition walls, floors and ceilings situated on or adjoining the Parking Property and the Commercial Property, or, located on one such property but forming the walls, floors or ceilings of the other property.

1.6 "Condominium Association" means an Illinois not-for-profit corporation to be formed pursuant to the Act, for the purpose of administering any or all portions of the Total Property submitted to the Act. . If any portion of the Total Property is submitted to the Act, the Condominium Association shall be the agent and representative of the Owners of that portion of the Total Property . In such instances, whenever this Declaration requires or allows for actions to be taken by the Owner of any portion of the Total Property which has been submitted to the Act, the Condominium Association shall be the party to act for and on behalf of the Owners of the portion of the Total Property which has been submitted to the Act.

1.7 "Condominium Declaration" means any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which will submit any portion of the Total Property to the provisions of the Act, together with any amendments and supplements thereto.

1.8 "Declarant" means LaSalle National Trust N.A., as Trustee under Trust Agreement dated October 16, 1997, and known as Trust Number 121312, and Near Loop Lofts L.L.C., an Illinois limited liability company.

1.9 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements, including all exhibits, amendments and supplement thereto.

1.10 "Depository" means the person or entity from time to time acting pursuant to Article XVII of this Declaration.

1.11 "Easements" means all easements granted, reserved, provided for, declared or created pursuant to or in accordance with the terms and provisions of this Declaration.

1.12 "Emergency Situation" means a situation impairing or imminently likely to impair structural support of the Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Total Property or any property in, on, under, within, upon or about the Total Property. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

1.13 "Facilities" means all components of the chilled and heated hot water, condenser water, domestic water, sanitary waste, storm water, electrical, gas, elevator cars and systems, and all other utility systems forming a part of the Building and designed or utilized to furnish utility and other services to any portion of the Building, including, but not limited to, the following components of such systems: antennae, boilers, boxes, brackets, cabinets, cables, chutes, coils, conduits, controls, control centers, couplers, dampers, devices, ducts, elevator cars, elevator equipment, equipment, fans, fixtures, generators, hangers, heat exchangers, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, switches, systems, transformers, valves, wiring and the like.

1.14 "Improvements" means the Parking Improvements and the Commercial Property.

1.15 "Maintenance" means and includes operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of Facilities or of such other portions of the Improvements and includes the right of access to and the right to remove from the Improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

1.16 "Mortgage" means a mortgage or trust deed in the nature of a mortgage on any portion of the Total Property or the Common Elements, but shall not include a mortgage or trust deed on a Unit in any portion of the Total Property subject to the Act.

1.17 "Mortgagee" means the holder of a Mortgage.

1.18 "Owner" means either an Owner of the Parking Property or an Owner of the Commercial Property, as the context requires. "Owners" means Owners of the Parking Property and Owners of the Commercial Property. If, and as long as any portion of the Total Property constitutes condominium property subject to the Act, the Owner of such Property shall mean collectively all of the Unit Owners in and to such portion of the Total Property and not individually, and the rights of such Owner shall be exercised by the Condominium Association by its Board of Managers administering such portion of the Total Property submitted to the Act on behalf of its Unit Owners, except for such rights or benefits expressly granted to its Unit Owners, and except for Easements which by their nature are exercisable only by Unit Owners. In the event of any action taken by the Condominium Association's Board of Managers, the Unit Owners shall be bound as if such Unit Owners had expressly consented and agreed to such action by the Condominium Association. If any portion of the Total Property is submitted to the Act, all obligations under this Declaration of Owners of the portion of the total Property submitted to the Act shall be obligations jointly and severally of both the Condominium Association and all Unit Owners in such Total Property submitted to the Act and any lien arising against the Owner of the portion of the Total Property submitted to the Act may be imposed against the Units of all such Unit Owners based upon their percentages of interest in the Common Elements.

1.19 "Owner of the Commercial Property" means the person or entity (or persons or entities if more than one), at any time in question, holding fee simple title to the Commercial Property. If the Commercial Property is submitted to the Act and there is no more than one Owner of the Commercial Property and actions are or must be taken by or on behalf of the Owners of the Commercial Property, the Condominium Association shall act for and on behalf of the Owners of the Commercial Property and any lien arising against the Commercial Property may be imposed against the Units of all such Unit Owners based upon their percentage of interest in the Common Elements appurtenant to such Commercial Property.

1.20 "Owner of the Parking Property" means the person or entity (or persons or entities if more than one), at any time in question, holding fee simple title to the Parking Property. If the Parking Property is submitted to the Act and there is more than one Owner of the Parking Property

and actions are or must be taken by or on behalf of the Owners of the Parking Property, the Condominium Association shall act for and on behalf of the Owners of the Parking Property and shall be the sole authorized representative and agent of the Owners of the Parking Property in connection with this Declaration.

1.21 "Parcel" means the parcel of real estate legally described on Exhibit "A" attached hereto.

1.22 "Parking Improvements" means all improvements constructed or reconstructed upon and within the Parcel, including, without limitation, the Building, the Facilities, sidewalks and landscaping located in, on or under the Parcel, but excluding the Commercial Property.

1.23 "Parking Property" means the portion of the Parcel containing the Parking Improvements and the card reader and security gate which is located on the sidewalk immediately West of the Parking Property, as legally described in Exhibit B, attached hereto and made a part hereof.

1.24 "Recorder" means the Recorder of Deeds of Cook County, Illinois.

1.25 "Secured Property Lenders" mean the holder of any mortgage or trust deed in the nature of a mortgage (as the same may be amended and/or replaced from time to time) on any portion of the Total Property, excluding, however, any mortgage or trust deed in the nature of a mortgage securing a loan to any Unit Owner.

1.26 Total Property or the Property means the Parking Property and the Commercial Property.

1.27 "Unavoidable Delay" means a period of time caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense exemptions, acts of God, energy shortages or similar causes beyond the reasonable control of an Owner (other than inability to make payment of money) which excuses the timely performance of any obligation created hereunder. The time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform shall notify the other owner in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. Such non-performing Owner shall, from time to time, upon written request of the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

1.28 "Unit" means any portion of the Total Property submitted to the Act described as a "Unit" in the Condominium Declaration.

1.29 "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit Ownership.

1.30 "Unit Ownership" means a part of any portion of the Parking Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

ARTICLE 2

EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

2.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Parking Property in favor of the Commercial Property are hereby granted, reserved, declared and created (the term "Granted" or "granted" as hereinafter used in describing Easements shall be deemed to mean "granted, reserved, declared and created").

(a) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns, beams and any other supporting components located in or constituting a part of the Parking Property, for the support and Maintenance of (i) the Commercial Property and (ii) any Facilities located in the Parking Property with respect to which the Owner of the Commercial Property is granted an Easement under this Declaration.

(b) A non-exclusive Easement for access to, use and Maintenance of all Facilities located in the Parking Property and connected to Facilities located in the Commercial Property (and any replacement thereof) which exclusively serve the Commercial Property with any utilities or other services, including without limitation, the exhaust vent and fire suppression systems, the HVAC systems serving the Commercial Property, the mechanical and electrical systems of the Building, and all utilities and systems which support the ice rink located in the Commercial Property.

(c) A non-exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Commercial Property or the subsequent settlement or shifting of any part of the Commercial Property, any part of the Commercial Property encroaches or shall hereafter encroach upon any part of the Parking Property. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Commercial Property continues to exist.

(d) An Easement (i) in and to all common walls, floors and ceilings serving the Commercial Property and (ii) for the use of such common walls, floors and ceilings.

(e) A non-exclusive Easement for pedestrian and vehicular ingress and egress in an Emergency Situation to an from, over, on, across and through the Parking Property.

2.2 Each Easement created under this Article 2 which, for its enjoyment, provides or requires ingress and egress on, over, across or through the Parking Property shall be subject (except

in an Emergency Situation) to such reasonable limitations, including, without limitation, rules and regulations, as the Owner of the Parking Property may, from time to time, impose with respect to the use of such Easements including, without limitation, the establishment of limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Parking Property and in order to assure the reasonable security of the applicable portion of the Parking Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement. In the event a locked gate or door of any kind or nature whatsoever is maintained, the Owner maintaining said gate or lock shall provide a key or some means of reasonable access to the adjoining Owner.

2.3 Easements provided for, declared or created under this Article 2 shall be binding upon the Parking Property and each Owner of the Parking Property and shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property and each portion thereof.

ARTICLE 3

EASEMENTS IN FAVOR OF PARKING PROPERTY

3.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Commercial Property in favor of the Parking Property are hereby granted:

- (a) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, column and beams and any other supporting components located in or constituting a part of the Commercial Property for the support and Maintenance of (i) the Parking Improvements and (ii) any Facilities located in the Commercial Property with respect to which the Owner of the Parking Property is granted an Easement under this Declaration.
- (b) A non-exclusive Easement for access to and the use for their intended purposes and Maintenance of all Facilities located in the Commercial Property and connected to Facilities located in the Parking Property (and any replacement thereof) which provide the Parking Property with any utilities or other services.
- (c) A non-exclusive Easement permitting encroachments in the event and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Declaration of the Parking Improvements or the subsequent settlement or shifting of any part of the Parking Improvements, any part of the Parking Improvements encroaches or shall hereafter encroach upon any part of the Commercial Property. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Parking Improvements continues to exist.
- (d) An Easement (i) in and to all common walls, floors and ceilings serving the Parking Property and (ii) for the use of such common walls, floors and ceilings.

(e) Nothing contained herein is meant to, or shall be construed as, conferring upon the Parking Property the right to use the roof of the Building, or the hallways and stairwells to the extent they secure the floors of the Total Property other than the ground floor.

(f) A non-exclusive Easement for pedestrian and vehicular ingress and egress in an Emergency situation to and from, over, on across and through the Commercial Property.

3.2 Each Easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property shall be subject (except in an Emergency Situation) to such reasonable limitations, including, without limitation, rules and regulations, as the Owner of the Commercial Property may, from time to time, impose with respect to the use of such Easements, including, without limitation, the establishment of limited hours of the day or days of the week during which such Easement may be used to prevent any unreasonable interference with the use and operation of the Commercial Property and in order to assure the reasonable security of the Commercial Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

3.3 In the event of a locked gate or door of any kind or nature whatsoever is maintained, the Owner maintaining said gate or lock shall provide a key or some means of reasonable access to the adjoining owner.

3.4 Easements provided for, declared or created under this Article 3 shall be binding upon the Commercial Property and each Owner of the Commercial Property and shall run in favor of and inure to the benefit of and be appurtenant to the Parking Property and each portion thereof.

ARTICLE 4

SERVICES TO OWNER OF PARKING PROPERTY

4.1 The Owner of the Commercial Property shall furnish, or cause to be furnished, as and when necessary, the following services to the Owner of the Parking Property to the extent required and on the same basis as such services are provided to occupants of the Commercial Property:

(a) Facade. Maintenance, repair and replacement of the Building facade, but specifically excluding any decorative work which benefits the Commercial Property only.

(b) Exterior Lighting. Maintenance, repair and replacement of all exterior lighting of the Building;

(c) Snow and Ice Removal. Removal of snow and ice from sidewalks leading to all street level entrances to the Building;

(d) Landscaping. Maintenance, repair and replacement of exterior landscaping in front of the Building;

(e) Domestic Water Supply System. To the extent not directly available to the Parking Property, supply of domestic water reasonably required by the Owner of the Commercial Property from city mains through the water supply systems which may be located in the Parking Property and maintenance of all water lines entering the Parking Property from the city mains and water supply system up to and including the equipment located in the Building domestic water pump room;

(f) Roof. Maintenance, repair and replacement of the roof of the Building;

(g) Other Services. Maintenance, repair and replacement of, and provision for fire and life safety, exterminating; electrical Maintenance of equipment located in the Commercial Property to the extent the Maintenance affects the Parking Property. and

(h) Utilities And Other Similar Services. Provision and maintenance of utility services (e.g., electric, gas, sewer, water, and telephone transmission equipment) to any area of the Commercial Property in which the Facilities serve the Parking Property, including without limitation, the exhaust vent and fire suppression system located in the Building and any capital expenditures with respect to the foregoing services necessary in the reasonable judgment of the Owner of the Commercial Property. The Owner of the Parking Property, may, , separately meter any utility service to the Parking Property.

4.2 The Owner of the Parking Property shall cooperate with the Owner of the Commercial Property in its efforts to secure and furnish the foregoing services.

4.3 The submission of statements for services rendered pursuant to this Article 4, provisions for payment thereof, and provisions for additional payments incurred in connection with such services and the operation, maintenance, repair and replacement of shared Facilities shall be made as follows:

(a) Allocation of Costs. The cost of services and expenditures provided by the Owner of the Commercial Property pursuant to Paragraph 4.1(h) of this Declaration, and the cost of submetering of any Utility, shall be allocated between the Owner of the Commercial Property and the Owner of the Parking Property as may be determined by the Owner of the Commercial Property, acting reasonably. Notwithstanding the foregoing, the Owners agree that it is difficult to make an accurate calculation of actual usage and cost. Therefore, the Owner of the Parking Property will pay the Owner of the Commercial Property Three Hundred Thirty and 00/100 (\$330.00) per month (the "Service Fee") for the services to be provided to the Owner of Parking Property contained in this Article 4. The Service Fee shall be reviewed and revised at the beginning of each calendar year and increased by the amount of the increase in the CPI (as hereinafter defined), if any, for the prior year.

The CPI ("Consumer Price Index") for purposes hereof shall mean the Consumer's Price Index for all Urban Consumers - National Average for all items and commodity groups (1982 - 84=100). In the event the indices shall be converted to a different standard reference base or otherwise revised, the determination of the Service Fee adjustment shall be made by using the

conversion factor, formula or table for converting the indices as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish same, the determination shall be made by using the conversion factor, formula, or tables published by any other governmental agency, or if no such conversion factor, formula or table is so published, then a comparable conversion factor, formula institution, university or recognized financial publication selected by the Owner of the Commercial Property. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Owner of the Commercial Property shall substitute therefor, a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other than a comparable index published by a major bank, other financial institution, university or recognized financial publication.

(b) Submission and Payment of Statements. The Owner of the Commercial Property shall submit statements on or about the first day of each calendar quarter to the Owner of the Parking Property for services rendered pursuant to Paragraph 4.1 of this Declaration, and said statements shall be paid by the Owner of the Parking Property within thirty (30) days.

4.4 If the Owner of the Commercial Property shall fail to render the services described in Section 4.1 above to the Owner of the Parking Property (except when such failure is caused by the Owner of the Parking Property or Unavoidable Delay) and such failure shall continue for a period of thirty (30) days after written notice thereof to the Owner of the Parking Property, the Owner of the Parking Property shall have the right to undertake the performance of such services on its own for its own benefit and at its own cost and expense. The Parking Owner shall then be entitled to reimbursement from the Commercial Owner for the cost and expense related to the cure of the default, plus interest at the Default rate from the date of payment of such cost and expense by the Parking Owner to the date of reimbursement by the Commercial Owner. Such notice shall not be required in an Emergency Situation resulting from such failure.

4.5 If, at any time, the Owner of the Parking Property shall fail to pay to the Owner of the Commercial Property any sum of money payable to it pursuant to the terms of this Declaration for thirty (30) days after written notice from the Owner of the Commercial Property demanding payment of said sum of money, then, subject to Section 10.4, the Owner of the Commercial Property may, in addition to any other rights or remedies hereunder, discontinue furnishing of the services for which payment has not been received until said sum of money is paid. Provided, however, if the Owner of the Parking Property is contesting a sum of money due hereunder and is diligently pursuing the same by appropriate legal action, the services shall not be discontinued until such time as it is finally determined due and owing by court proceedings or arbitration and has not been immediately remitted.

4.6 In addition to the foregoing provisions of this Article 4, and except as provided above, the Owner of the Parking Property shall be solely responsible for all of the cost of the maintenance, repair, and replacement of the awnings, doors, and windows, adjacent to and serving exclusively the Parking Property, the card reader and security gate located on the sidewalk immediately adjacent to the Parking Property, as well as a separate Parking Property management fee, or other costs directly attributable to the Parking Property.

ARTICLE 5STRUCTURAL SUPPORT

5.1 No Owner shall do or permit any act which would adversely affect the structural safety or integrity of the Improvements on any portion of the Parcel.

5.2 Except in the case in which Article 9 is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the Improvements is endangered, then the Commercial Owner shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 13 would not require such approval) the Owner of the Parking Property, and, subject to the provisions of Article 10 hereof, the Owner or Owners responsible for such reduction or endangerment shall pay all costs and expenses, including any architect's and other fees, in connection with construction of substitute or additional support. However, (a) if the responsible Owner cannot be determined, the Owner benefited by such structural support shall pay such costs and expenses and (b) if the reduction in structural support giving rise to the need for such construction results from ordinary wear and tear, the Owner responsible pursuant to Article 9 for maintaining the Improvements requiring such repair shall pay such costs and expenses.

5.3 The Owner or Owners responsible for construction shall commence, within a reasonable time under the circumstances, the construction of such substitute or additional support and having commenced such construction shall proceed diligently to cause the completion of such construction. Upon completion, the construction shall leave the Improvements free of all mechanics' lien claims.

5.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then the Owner of the portion of the Total Property benefited thereby shall, upon not less than thirty (30) days advance written notice to the other Owner (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever may be required, or the Owners may jointly undertake to provide substitute or additional structural support provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of any Owner's provision of any required substitute or additional support.

5.5 If the Owners cannot agree within thirty (30) days on the allocation of responsibility among them, then the dispute shall be submitted to arbitration as provided for herein; provided, that the party responsible for performing the required structural repairs shall continue to perform all necessary repair work during the pendency of such arbitration proceeding. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of the other portion of the Total Property during any period of reconstruction.

ARTICLE 6COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

6.1 The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago, and any other entity or agency now or hereafter having jurisdiction of the Total Property or any portion thereof, if noncompliance by it with respect to its portion of the Total Property or any part thereof would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for the Improvements themselves or would jeopardize the other Owner's right to occupy or use beneficially its portion of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of the other Owner or would impose any threat or danger to any person or property. Neither Owner shall take any action or omit to take any action which could adversely affect (including, without limitation, increase the cost of) any of the insurance maintained by the other Owners. Additionally, if any portion of the Total Property is submitted to the Act, the Owners shall comply with all rules and regulations of the Condominium Association, with respect to use of the Common Elements. Such rules and regulations shall not interfere with the rights and privileges granted hereunder.

6.2 No Owner shall permit the filing of any mechanic's, materialmen's or any other like lien on any other Owner's portion of the Total Property, or on its portion of the Total Property if the existence or foreclosure of such lien on its portion of the Total Property would adversely affect any Easement hereunder or services to be furnished pursuant to Article 4 hereof, arising by reason of its act or any work or materials which it has ordered. In the event an Owner fails to remove any such lien within thirty (30) days after the filing thereof, the other Owner may (but is not required to) take such action as the other Owner may deem necessary to remove such lien. Such Owner shall be entitled to reimbursement from the Owner who has failed to remove such lien for all costs and expenses incurred by such Owner in removing or attempting to remove such lien, plus interest at the Default Rate (as defined in Section 10.4 hereof) from the date of payment of such costs and expenses by such Owner to the date of reimbursement by the other Owner. However, the Owner who has not paid such lien shall not be required to remove such lien within said thirty (30) day period (and the other Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing a Mortgagee under a Mortgage; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed; and (iii) the Owner responsible for the filing of such lien (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the other Owner, and to a Mortgagee if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the other Owner and/or, if loan documents so provide, to a Mortgagee, either: (i) cash or a surety bond from a responsible surety company acceptable to the other Owner and a Mortgagee, if applicable, 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 (ii) other security

reasonably acceptable to the other Owner and each Mortgagee, if applicable. The rights of an Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the Mortgage and in such event the Owner responsible for the filing of such lien shall cause such lien to be discharged or removed within ten (10) days after the occurrence of any of the events in clauses (i) or (ii) or (iii) in this sentence and the other Owner shall have the right (but not the obligation) at any time after said ten (10) day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder. The costs and expenses referred to in this Section 6.2 shall include, but not be limited to, reasonable attorneys' fees.

6.3 Each Owner (hereinafter in this Section 6.3, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner (hereinafter in this Section 6.3, the "Indemnitee") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any action or proceedings arising therefrom, by or on behalf of any person firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim the Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing Insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.

6.4 Without limiting the provisions of Section 6.1, neither Owner shall make any Alterations (as that term is defined in Section 13.1) or allow any use of their respective portions of the Total Property or take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance, as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Total Property or any portions thereof. The Parking Property and Commercial Property shall continue to be combined and treated as one zoning lot for the purposes of complying with the Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning ordinance as applicable to any portions of the Total Property without the written consent of the other Owner. Without limiting the generality of the foregoing, the Owner of the Commercial Property shall not seek any change in the Chicago Zoning Ordinance which changes the character or permitted use of any portion of the Commercial Property without the express written consent of the Owner of the Parking Property.

ARTICLE 7REAL ESTATE TAXES

7.1 The Owners shall make good faith efforts and cooperate with each other so that the Parking Property and the Commercial Property shall, when and as soon as possible, be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor of Cook County, Illinois (the "Assessor"). From and after submission of all or any portion of the Total Property to the Assessor, separate real estate tax numbers and separate real estate tax bills will be applied for with respect to each Unit and this shall be accomplished by the recording of a Condominium Declaration or more than one Condominium Declaration.

7.2 The Total Property currently comprises six (6) tax parcels identified by permanent index number 17-08-335-013, 17-08-335-014, 17-08-335-015, 17-08-335-016, 17-08-335-024, and 17-08-335-025. At such time as the Parking Property and the Commercial Property are separately assessed and taxed, each Owner shall pay the real estate taxes and special assessments for the portion of the Total Property owned by such Owner. Until the Parking Property and Commercial Property are separately taxed, the Owner of the Commercial Property shall pay all of the tax bills for the Total Property prior to their due date; prior to such due date, however, the Owner of the Parking Property shall pay to or as directed by the Owner of the Commercial Property its share of the bill for the Total Property as provided in Section 7.3 below. The obligation of the Owner of the Parking Property to pay the Owner of the Commercial Property as set forth in the immediately preceding sentence does not relieve the Owner of the Parking Property of the obligation to pay taxes as required by its Secured Property Lender, if any.

7.3 Until such a tax division has been completed, the assessed valuation respecting the Total Property and the taxes computed thereon, and the cost of tax counsel and appraisal fees, if any, shall be allocated between the Owners and paid by the respective Owners as follows: **fifteen and one half percent (15.5%) by the Owner of the Parking Property and eighty four and one half percent (84.5%) by the Owner of the Commercial Property**, and the Owner of the Parking Property shall be responsible for and shall pay to or as directed by, or shall reimburse the Owner of the Commercial Property (within thirty (30) days after the demand of the Owner of the Commercial Property therefor) for its share of the total real estate taxes levied and assessed in the tax bill for the Total Property, prorated on an accrual basis from the date of the conveyance of the Parking Property to the Owner of the Parking Property.

7.4 If, at any time prior to the Parking Property and the Commercial Property being separately assessed and taxed, any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such defaulting Owner is obligated to pay pursuant to this Article 7, then the other Owner may, upon ten (10) days' prior written notice to the defaulting Owner pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the defaulting Owner shall, upon demand, reimburse such paying Owner for the amount of such payment, including the amount of any interest or penalty payments incurred by the Owner making such payments together with interest as set forth in Section 10.4 hereof, and the paying Owner shall also have a lien

against the portion of the Total Property owned by the defaulting Owner in accordance with Article 10 hereof.

ARTICLE 8

INSURANCE

8.1 The Owner of the Parking Property and the Commercial Property shall procure and maintain the following insurance:

(a) The Owners of the Total Property shall maintain property insurance on the Total Property and keep the Total Property insured for no less than "all risk" or "special form" coverage on real property and personal property for an amount not less than 100% of the insurable replacement cost thereof and building ordinance coverage in an amount not less than \$1,000,000. The Owners of the Parking Property or the Condominium Association shall keep the Parking Property insured for no less than "all risk" or "special form" coverage on real property and personal property for an amount not less than 100% of the insurable replacement cost thereof and building ordinance coverage in an amount not less than \$1,000,000. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

(b) The Owner of the Parking Property and the Owner of the Commercial Property shall maintain comprehensive general liability insurance with broad form extensions covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon, or about the respective portions of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of similar type buildings in the City of Chicago, but in all events, for limits of not less than \$1,000,000 combined single limit per occurrence with a general policy aggregate of \$2,000,000 for personal and bodily injury or property damage with at least additional \$1,000,000 umbrella coverage.

(c) Unless all Owners otherwise agree in writing, but in any event subject to any required approval of any Secured Property Lender, if applicable, with respect to each of the insurance policies required hereunder, the interest of the Owner of the Parking Property and the Owner of the Commercial Property shall be insured through the same insurance broker. Such policies may be issued in combination with respect to each Owner, but shall be separate policies for each Owner covering one or several items. Insurance policies required herein shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current policyholder's alphabetic and financial size category rating of not less than A/VII according to Best Insurance Reports or substantially equivalent rating from a nationally recognized insurance rating service. If and so long as any portion of the Total Property is subject to the provisions of the Act, insurance on additions, alterations, improvements and betterments to individual Units shall be the responsibility of those persons designated in the applicable condominium declaration as being responsible for such insurance, and any Unit Owner's policies shall be subject to and consistent with the provisions of this article. Each of the Owners hereby

agrees to cooperate to procure and maintain insurance policies which jointly cover the interests of all of the owners.

(d) Each policy described herein shall (i) provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) insure as additional insureds the other Owner and their respective beneficiaries and agents thereunder and the Secured Property Lenders; provided however that so long as any portion of the Total Property shall be subject to the Act, the Condominium Association and not the individual Unit Owners of that part of the Total Property so submitted shall be insured as an additional insured; (iii) shall provide, except for liability insurance described herein, 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 for a minimum of thirty (30) days' advance written notice of cancellation, nonrenewal or material modification thereof to all named insureds and additional insureds thereunder including the Secured Property Lenders on the Property, unless such cancellation is for non-payment of premium, in which case ten (10) days' advance written notice shall be sufficient; and (v) shall, if available, provide except for the liability insurance required herein, that all amounts payable thereunder shall be paid to the Depository in accordance herewith. Nothing contained in this Section shall prevent the naming of any persons (in addition to those mentioned in clause (ii) hereinabove), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of standard mortgage endorsement for Secured Property Lenders on the Property; provided, however, that the mortgagee under any mortgage upon any part of the Total Property receiving any proceeds of any insurance policy described herein shall deposit the insurance proceeds with the Depository in accordance to the extent that the Owner of the mortgaged property receiving such proceeds would be required to do so, except that such obligation for such deposit by a mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then uncured default under the mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depository a sufficient amount, which when added to the proceeds to be deposited by the mortgagee, will be at least equal to the cost, as estimated by the mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds.

(e) Limits of liability or types of insurance specified in this Article or carried by the Owners shall be reasonable and prudent for an Owner of a similar facility and shall be jointly reviewed by the Owners from time to time to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Deductible amounts for insurance required hereunder shall be in such amounts as are customary or

prevalent for an Owner of a similar facility. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable and subject to the right of Secured Property Lenders on the Total Property to approve any such changes, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration.

The Owners shall employ an insurance consultant to perform such review periodically on their behalf and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

(f) Copies of all original insurance policies and all renewal insurance policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner and to the Secured Property Lenders on any portion of the Total Property, at least twenty (20) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Should an Owner fail to provide and maintain any policy of insurance required under this Article or pay its share of the premiums or other costs for any joint policies, then the other Owner may purchase such policy and the costs thereof (or the Owners share of such costs for the owner failing to perform) shall be due from the Owner failing to perform upon the other Owner's written demand therefor plus interest at the rate set forth herein from the date of payment of the paying Owner to the date of reimbursement to the paying Owner.

(g) Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Declaration, each Owner hereby waives all claims for recovery from other Owner for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery actually collected under such insurance policies plus deductible amounts.

(h) The Owner of the Commercial Property or the appropriate tenants thereof shall carry Illinois Liquor Liability Insurance in amounts and to the extent required by law, if liquor is served within the Commercial Property.

ARTICLE 9

MAINTENANCE, REPAIR & DAMAGE TO THE
COMMERCIAL PROPERTY AND PARKING IMPROVEMENTS

9.1 The Owner of the Commercial Property, at its sole cost and expense, shall keep the Commercial Property and such other property which the Owner of the Commercial Property is assigned Maintenance responsibility in this Declaration, and all Facilities located therein (excluding

the pipes, ducts and related equipment and other Facilities which serve only the Parking Property, which Facilities shall be maintained, repaired and replaced by the Owner of the Parking 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 or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty, or otherwise. The plans and specifications for such repair and reconstruction shall provide for the Commercial Property to be rebuilt as nearly as commercially practicable to the Commercial Property as constructed prior to the damage unless prohibited by law or unless the Owner of the Parking Property otherwise agrees. Provisions concerning modifications, alterations, or improvements to the interior or exterior of the Commercial Property are set forth in Article 13 of this Declaration.

9.2 Except as expressly provided in Section 9.1, the Owner of the Parking Property shall, at its sole cost and expense, keep all Facilities located in the Parking Property and all portions of the Parking Property necessary to provide structural support, Easements and other services to the Commercial Property required in this Declaration 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 such said repairs or replacements are to the interior or exterior thereof or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements necessary to keep the same in safe, first-class working order and condition, howsoever the necessary or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty or otherwise. Each Owner shall be responsible for reimbursing the other Owner for any costs and expenses incurred with respect to Maintenance for which such Owner is responsible pursuant to this provision to the extent that such Maintenance results from damage caused by the other Owner.

9.3 If at any time any Owner shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of the other Owner or services to be furnished the other Owner under Article 4 hereto then (i) the Owner benefiting therefrom may give written notice to the other Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then such Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation such Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. Such Owner in so performing such repair and restoration shall be entitled to reimbursement upon demand from the defaulting Owner for all costs and expenses incurred by such Owner and such other rights as provided under Article 10 herein.

9.4 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Parking Property only or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Property only, then any such damage shall be repaired and restored by the Owner of the portion of the Property in which any

such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article XVII hereof, be entitled to withdraw any insurance proceeds held by the Depository by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of the other Owner or services to be furnished by the other Owner, then (i) the Owner may give written notice to the Debtor Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Owner in so performing such repair and restoration shall, in accordance with Article XVII hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Debtor Owner for all costs and expenses incurred by the Owner in excess of said insurance proceeds plus interest at the Default Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner.

9.5 If the Improvements are damaged by fire or other casualty and if the provisions of the preceding section are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clause (a) or (b) of the preceding section, then the repair and restoration of such damage shall be the joint responsibility of the Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on behalf of those Owners which are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Secured Property Lenders on any portion of the Total Property, if required. In the event such Owners, and the Secured Property Lenders on any portion of the Total Property, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration. The plans and specifications for such repair and reconstruction shall provide for the improvements to be rebuilt as nearly as commercially practicable as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Secured Property Lenders on any portion of the Total Property, if required.

9.6 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in the preceding section hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owner's Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.

9.7 In any instance of repair or restoration pursuant to the preceding two sections hereof, any Owner may require that an estimate of the cost of expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owner demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owner, the Depository and the Secured Property Lenders on any portion of the Total Property. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owned or a loan commitment, reasonably satisfactory to the other Owner and the Secured Property Lenders on any portion of the Total Property, if required, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section, or fails to deliver the security provided for herein within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

9.8 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Total Property shall be refunded to the respective Owner or, if applicable, to the holder of a mortgage encumbering the Owner's respective portion of the Total Property in accordance with the terms of such encumbrance, to the extent that such sum exceeds the actual repair or restoration of such Owner's Improvements. Such funds which are paid to each respective Owner or, if applicable, to the aforescribed mortgage holder, shall be payable only from each Owner's respective insurance proceeds.

9.9 If the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Secured Property Lenders on any portion of the Total Property, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes,

rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner pursuant to the terms and the amounts stated in each Owner's policy, subject to the rights of the Secured Property Lenders. Such demolition shall be deemed to be a repair or restoration to which the provisions of Sections 9.4, 9.5, 9.6, 9.7 and 9.8 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a slightly and safe condition (including weatherproofing any exposed portions thereof) and in such a manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any violations of applicable ordinances of the City of Chicago caused by the other party's failure to rebuild. In the event all Owners of the Total Property agree not to rebuild where the Improvements are totally destroyed, any Owner shall have the right to sue for partition (but for purposes of such partition the land shall be deemed not susceptible of division).

9.10 For purposes of this Article 9, architects' and engineers' fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

ARTICLE 10

LIENS, RIGHTS AND REMEDIES

10.1 If, at any time, either Owner (for purposes of this Section 10.1, a "Debtor Owner") fails within ten (10) days after notice or demand to pay any sum of money due the other Owner (for purposes of this Section 10.1, a "Creditor Owner") under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) in the event of a default under Articles 9 or 11, a lien against any condemnation award or insurance proceeds payable to the Debtor Owner for loss or damage to the portion of the Total Property owned by the Debtor Owner or otherwise under insurance policies carried pursuant to Article 8 hereof, or (ii) in the event of a default under any other Section of this Declaration, a lien against the portion of the Total Property owned by the Debtor Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 10 or to secure performance of a covenant or obligation. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The liens provided for in this Section 10.1 shall be subordinate to any prior mortgage (including, without limitation, the prior mortgage made by the Declarant in favor of LaSalle Bank National Association), prior trust deed or other encumbrance constituting a prior lien on the portion of the Total Property owned by the Debtor Owner or other interest of the Debtor Owner including mortgages of Units. Each Owner waives any and all rights to trial by jury in any suit, action or proceeding brought by the other Owner to enforce collection of any monies owed under this Declaration to such other Owner.

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10.2 If any portion of the Total Property is subject to the provisions of the Act, each Unit Owner shall be liable only for such portions of any claim against the Owner of that portion of the Total Property equal to the amount of the claim multiplied by the percentage of interest in Common Elements allocated to such Unit Owner's Unit Ownership as set forth in the Condominium Declaration. Upon payment of such amount for which Unit Owner is liable, (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the Owner of the other portion of the Total Property shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several.

10.3 No conveyance or other divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall in any way affect or diminish any lien arising pursuant to this Article 10, and any lien which would have arisen against any property pursuant to this Article 10 had there been no conveyance or divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

10.4 Interest shall accrue on any sums owed by an Owner to the other Owner pursuant to this Declaration, and shall be payable from the date which is thirty (30) days after demand for any such payment is made until paid in full, at a rate (the Default Rate) of interest equal to the lesser of: (a) the floating rate which is equal to five percent (5%) per annum in excess of the annual rate of interest from time to time announced by LaSalle National Bank in Chicago, Illinois, as its "prime rate" of interest or a reasonably equivalent substitute thereof in the event a prime base rate is no longer announced, or (b) the then maximum lawful rate of interest in Illinois applicable to the defaulting Owner and the nature of the debt. If a "prime rate" or reasonable equivalent thereof is not announced by LaSalle National Bank, and no maximum lawful rate applies, then interest shall accrue at the annual Default Rate of eighteen percent (18%).

10.5 Except as expressly provided in this Declaration, the rights and remedies of each Owner provided for in this Article 10 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. Except as expressly provided in this Declaration, each Owner may enforce, by a proceeding in equity for mandatory injunction, the other Owner's obligation to execute or record any document which the other Owner is required to execute under or pursuant to this Declaration. The exercise by an Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

10.6 Each claim of any Owner arising under this Declaration shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or (other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

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10.7 Actions to enforce any right, claim or lien under this Declaration shall be commenced within three (3) years immediately following the date the cause of action occurred, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, each Mortgagee is diligently proceeding to foreclose the Mortgage, then such period in which an action by the Owner of the Parking Property or Owner of the Commercial Property must be commenced shall be further extended for such additional time as may reasonably be necessary in order for each Mortgagee to obtain possession of the applicable portion of the Total Property.

10.8 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by the other Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs shall be added to the amount of any applicable lien created under this Article 10.

ARTICLE 11

CONDEMNATION

11.1 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 Total Property 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/or restoration of the Improvements shall be performed, in accordance with the requirements of this Article 11.

11.2 In the event of a taking (whether or not a temporary taking) of a part of the Total Property, the Owner of the portion of the Total Property taken shall repair and restore the remainder of such Owner's Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner whose portion of the Total Property is taken. The Owner of the portion of the Total Property taken shall be entitled to receive directly from the taking authority any Award resulting from such taking with in such Owner's portion of the Total Property for application to the cost of said repair and restoration and to retain any excess not required for such repair and restoration.

11.3 Notwithstanding any other provision of this Declaration to the contrary, if, as a result of a taking (other than a temporary taking), an Owner and its Secured Property Lender, if any, reasonably determines that such Owner's portion of the Total Property no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore that Owner's Improvements as may otherwise be required by this Declaration. However, in such case, such Owner shall demolish, repair or restore such Owner's Improvements to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Property, but only if the Owner of the other portion of the Total Property affected thereby requests that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of such Owner's portion of the Total Property and shall restore such Owner's

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portion of the Total Property to a sightly and safe condition and in such a manner as to safeguard the other Owner's portion of the Total Property, and to preserve the use of the Easements granted hereunder.

11.4 In the event of taking of all or substantially all of the Total Property, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners in accordance with said apportionment.

ARTICLE 12

ESTOPPEL CERTIFICATES

12.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from the other Owner, execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate (each, an Estoppel Certificate) in such form as may be reasonably requested. The Owner of the Commercial Property, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may limit the statements made in the Estoppel Certificate to (i) the existence of any defaults hereunder and (ii) the amount of any liens capable of being asserted hereunder.

12.2 If any portion of the Total Property is subject to the provisions of the Act, an Estoppel Certificate requested from an Owner shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by an Owner from the other Owner only be requested by the Condominium Association on behalf of the delivering Owner.

ARTICLE 13

ALTERATIONS

13.1 (a) No changes, modifications, alterations, or improvements to the interior or exterior of the Commercial Property ("Alterations") shall be made without the prior written consent of the Owner of the Parking Property and its Secured Property Lender if such Alterations will:

(i) affect the benefits afforded to the Owner of the Parking Property by any Easement or unreasonably interrupt the Owner of the Parking Property's use or enjoyment of any Easement;

(ii) affect Facilities benefiting the Parking Property; or

(iii) affect the zoning status of the Building or Total Property.

(b) If, at any time, the Owner of the Commercial Property proposes to make any Alterations which require or could possibly require the consent of the Owner of the Parking Property, or materially increases the Service Fees, then before commencing or proceeding with such Alterations, the Owner of the Commercial Property shall deliver to the Owner of the Parking Property, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 13.1. If the Owner of the Parking Property consents in writing to such Alterations, the Owner of the Commercial Property may proceed to make its Alterations in accordance with said plans and specifications. The Owner of the Parking Property shall make a good faith effort to respond to the Owner of the Commercial Property within thirty (30) days after its receipt of said plans and specifications from the Owner of the Commercial Property showing proposed Alterations.

If the Owner of the Parking Property fails to timely respond within thirty (30) days from receipt of the request, the plans and specifications for such Alterations shall be deemed approved. If the Owner of the Commercial Property has not requested the Owner of the Parking Property's consent to the proposed Alterations, and if, in the good faith opinion of the Owner of the Parking Property, the Owner of the Commercial Property has violated or will violate the provisions of this Section 13.1, the Owner of the Parking Property shall notify the Owner of the Commercial Property of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of this Section 13.1 hereof, and shall specify the respect or respects in which its provisions are or will be violated. If the Owner of the Parking Property in good faith asserts a violation of this Section 13.1, then the Owner of the Commercial Property shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Owner of the Parking Property may be entitled by reason of the Owner of the Commercial Property's violation or likely violation of the provisions of this Section 13.1, the Owner of the Parking Property shall be entitled to seek and obtain injunctive relief to enjoin any such violation. Failure of a Mortgagee to approve such plans and specifications, if such consent is required pursuant to a Mortgage, shall be grounds for the Owner of the Parking Property to reject such request.

(c) Each Owner, in making Alterations, shall (i) cause all work to be performed in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code, and (iii) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within the portion of the Total Property owned by such Owner, in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturb any occupant or occupants of the portion of the Total Property of the other Owner.

13.2 Applications for building permits to make Alterations shall be filed and processed by each Owner without the joinder of the other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the Owner. If joinder by such Owner is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided however, each Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.

13.3 The Owner of the Commercial Property and Owner of the Parking Property each shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics Lien Act shall only be enforceable against the portion of the Total Property owned by the Owner who employs such contractor, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against the portion of the Total Property owned by the other Owner and agrees to comply with the provisions of Section 21 of the Illinois Mechanics Lien Act in connection with giving notice of such "no lien" provision.

13.4 No Alterations shall be made to the Parking Property which will: (i) unreasonably diminish the benefit afforded to the Owner of the Commercial Property by any Easement; or (ii) materially adversely affect Facilities benefiting the Commercial Property.

ARTICLE 14

ADDITIONAL RESTRICTIONS

14.1 Notwithstanding anything contained herein to the contrary, the Total Property and the Owners of the Total Property from time to time shall be subject to the following restrictions as to the use of the Commercial Property:

(a) The Owners shall not use or occupy any portion of the Total Property or permit the use or occupancy of any portion of the Total Property for any purpose or in any manner which (i) is unlawful or in violation of any applicable legal or governmental requirement, ordinance or rule, (ii) may be dangerous to persons or property, (iii) may invalidate any policy of insurance affecting the Building, and if any additional amounts of insurance premiums are incurred, the Owner of the portion of the Total Property causing such increase shall pay to the Owner of the other portion of the Total Property the additional amounts on demand, (iv) may create a nuisance, disturb any occupant of the Building or injure the reputation of the Building, (v) may cause an offensive odor, noise or vibration to emanate from their portion of the Total Property, (vi) may be offensive, disreputable, immoral or illegal, which prohibition shall include, but not be limited to use of all or any portion of the Total Property as a massage parlor, for the sale of adult entertainment, books, magazines, videos and other adult products, (vii) is not in keeping with a first-class commercial building, (viii) engages in the business of off-track betting, (ix) operates a bar or nightclub (except a bar serving alcoholic beverages for on-premise consumption), or (x) engages in a retail liquor store

use for off-premise consumption which devotes more than fifteen percent (15%) of the entire display space of the portion of the Total Property being utilized to the display of intoxicants, exclusive of wine and beer, (which intoxicants must be only first class, high grade spirits), sells intoxicants (except wine, beer, and items used in cooking) in containers holding less than one-fifth of a gallon.

The Owners shall not use the sidewalks, alley or other areas adjacent to the Property for any purpose other than ingress and egress, including without limitation, for seating or for the display of advertisements, solicitations or demonstrations. The Owner of the Commercial Property, at its expense, shall obtain and maintain at all times during the Term, all licenses and permits necessary for the Owner of the Commercial Property's operations from the Commercial Property and shall post or display in a prominent place in the Commercial Property such permits and/or notices as required by law.

(b) The Commercial Property's business operation shall be of a quality not less than similar facilities and operations in other buildings in the immediate vicinity of the Building.

The Owner of the Commercial Property agrees to conduct its business at all times in a first-class and reputable manner, maintaining at all times a full staff of experienced and qualified employees for efficient operation of its facility in a proper, workmanlike and dignified manner. The Owner of the Commercial Property shall at all times maintain the Commercial Property in a first-class, clean and sanitary condition, and the Owner of the Commercial Property shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Commercial Property and the cleanliness, safety, occupancy and use of same. The Owner of the Commercial Property shall comply with all of the requirements of all governmental authorities and the Owner of the Parking Property's fire insurance carriers now or hereafter in force pertaining to the use of the Commercial Property.

(c) The Owners shall not cause or permit to occur: (i) any violation of any present or future federal, state or local law, ordinance or regulation related to environmental conditions in or about any portion of the Property, including, but not limited to, improvements or alterations made to the Property at any time by either of the Owners, its agents or contractors, or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any "Hazardous Substances" (as hereinafter defined) in or about the Property, or the transportation to or from the Property of any Hazardous Substances. The Owners, at its expense, shall comply with each present and future federal, state and local law, ordinance and regulation related to environmental conditions in or about the Property or the Owner's use of the Property, including, without limitation, all reporting requirements and the performance of any cleanups required by any governmental authorities. Each Owner shall indemnify, defend and hold harmless the other Owner and its agents, contractors and employees from and against all fines, suits, claims, actions, damages, liabilities, costs and expenses (including attorneys' and consultants' fees) asserted against or sustained by any such person or entity arising out of or in any way connected with an Owners failure to comply with its obligations under this Subsection, which obligations shall survive the expiration or termination of this Declaration. As used in this Subsection, "Hazardous Substances" shall include, without limitation, flammables, explosives, radioactive materials, asbestos containing materials (ACMs), polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, petroleum and petroleum products, chlorofluorocarbons (CFCs) and substances declared to be hazardous or toxic under any present or future federal, state or local law, ordinance or regulation. Notwithstanding the foregoing, users of

any portion of the Property shall be allowed to use substances which are lawfully utilized if they are lawfully disposed of in the normal course of businesses.

(d) The Owners of the Property shall not place any signs on the interior and exterior of the Property without the prior written consent of the other Owner. Installation, repair, replacement and maintenance of any signs shall be at the sole cost and expense of the Owner of the sign. Signs located as of the date hereof are approved.

ARTICLE 15

NOTICES

15.1 All notices, demands, elections or other communications required, permitted or desired to be served hereunder ("Notices") shall be in writing and shall be delivered in person or mailed as certified or registered matter, postage prepaid, return receipt requested, addressed as below stated:

If to the Owner of the Parking Property:

c/o Steven E. Gouletas
505 North Lake Shore Drive, Suite 214
Chicago, Illinois 60611

with a copy to:

Anthony R. DiBenedetto, Esq.
505 North Lake Shore Drive, Suite 214
Chicago, Illinois 60611

For Notices to the Owner of the Commercial Property:

c/o Scribcor, Inc.
400 North Michigan Avenue, Suite 415
Chicago, Illinois 60611
Attn: Richard M. Ross, Jr.

with a copy to:

Susan Ghelerter
Fuchs & Roselli, Ltd.
440 West Randolph, Suite 500
Chicago, Illinois 60606

15.2 Any Notice delivered as aforesaid shall be deemed received when delivered and receipted for or any Notice mailed as aforesaid shall be deemed received two (2) business days after deposit in the United States Mail, or upon actual receipt, whichever is earlier. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least ten (10) days prior to the effective date of any such change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

15.3 If any Owner ("Notifying Owner") gives notice to another Owner ("Notified Owner") that the Secured Property Lender of the Notifying Owner is to receive a copy of any notices given

to the Notifying Owner, then the Notified Owner shall give such Secured Property Lender a copy of any notice it gives the Notifying Owner in the same manner as provided in this Article 15.

ARTICLE 16

LIMITATION OF LIABILITY

16.1 No Owner shall be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. Each Owner obligated hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs or on account of an Emergency Situation.

16.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Total Property: (1) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself freed and relieved therefrom as hereinabove provided in this Section 17.2, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.

16.3 The enforcement of any rights or obligations contained in this Declaration against an Owner of any portion of the Total Property shall be limited to the interest of such Owner in the Total Property. No judgment against any Owner of any portion of the Total Property shall be subject to execution or be a lien on any of the assets of such Owner other than Owner's interest in the Total Property.

ARTICLE 17

DEPOSITARY

17.1 A depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Article 8 hereof and condemnation awards arising in connection with this Declaration shall be paid to the Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then three (3) largest title companies, banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

17.2 As used hereinafter in this Article, the phrase "Damaged Parcel" shall refer to any of the Parking Property and/or the Commercial Property, or any combination thereof if applicable, as to which a casualty loss shall have occurred. In the event of any casualty loss which affects only the

Commercial Property or the Parking Property, then those Secured Property Lenders having a first mortgage lien with respect to the Damaged Parcel shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, to elect either to act as Depository or to appoint the Depository with regard to such funds. If such right of election is not exercised within said thirty (30) day period, then the Owner of the Damaged Parcel shall have the right to appoint the Depository with regard to such funds.

17.3 In the event of any casualty loss which affects more than one portion of the Total Property and if each Damaged Parcel is subject to a mortgage or trust deed held by Secured Property Lenders, then those Secured Property Lenders having a first mortgage lien with respect to the Damaged Parcels shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, acting jointly, to appoint the Depository with regard to such funds.

17.4 In the event of any casualty loss which affects more than one portion of the Total Property and if one or more but less than all of the Damaged Parcels is or are encumbered by a mortgage or trust deed held by Secured Property Lenders, then such Secured Property Lenders and the Owner or Owners of the unencumbered Damaged Parcel or Parcels shall have the right, within thirty (30) days after such casualty loss, acting jointly, to appoint the Depository with regard to such funds.

17.5 If none of the provisions of Section 17.3 or 17.4 are applicable, or if none of the rights of election or appointment conferred by said Sections are exercised within thirty (30) days after the casualty loss has been finally adjusted, then the Owners of the Damaged Parcels shall mutually appoint the Depository. Upon the failure of such Owners to appoint the Depository within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration and the arbitrator shall appoint the Depository.

17.6 Each Owner whose portion of the Total Property is the subject of any such casualty loss or condemnation shall be obligated to pay the reasonable fees and expenses of the Depository in proportion to the proceeds from their respective insurance policies or respective condemnation awards, as the case may be. Any Depository appointed to act hereunder shall execute an agreement with the Owners whose portion of the Total Property is the subject of any such casualty loss or condemnation accepting said appointment in form and content acceptable to such Owners and in accordance with the provisions of this Declaration.

17.7 The Depository shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award or awards unless the Depository shall have been given an express written authorization from the Owners provided that if only one Owner claims said insurance proceeds or condemnation awards, then said Owner alone may authorize the Depository to so proceed; provided further, however, that if the Commercial Parcel and/or the Parking Property is in any material way affected by the disbursement of any such insurance proceeds or condemnation award or awards, then the consent of the holder of the appropriate Secured Property Lenders shall be required.

17.8 The monies on deposit shall be held in an interest bearing account pursuant to an agreement among the Depository and the Owners whose portion of the Total Property has been the subject of any casualty loss or condemnation. The Depository, within thirty (30) days after receipt of funds, shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depository on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Declaration shall not be mingled with the Depository's own fund and shall be held by the Depository in trust for the uses and purposes herein provided.

17.9 The Depository may resign by serving written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall jointly, with the consent of the Secured Property Lenders, appoint a substitute who qualifies under Section 17.1 hereof, and the Depository, to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, then the Secured Property Lenders shall appoint a substitute who qualifies under Section 17.1 hereof within thirty (30) days thereafter, and the Depository shall transfer all funds, together with copies of all records held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Secured Property Lenders shall fail to appoint a substitute within said additional thirty (30) day period, then the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois who qualifies under Section 17.1 hereof

17.10 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policies required to be carried pursuant to Article 8 hereof or condemnation awards of less than \$50,000.00 shall be paid directly to the party so entitled rather than to the Depository unless the insurance proceeds or condemnation award are to be paid to more than one Owner.

17.11 Notwithstanding anything contained herein to the contrary, in the event a Secured Property Lender does not allow funds to be held and/or disbursed pursuant to the terms of this Declaration, the Parties hereto agree that the provisions of Articles 17 and 18 are subordinate and subject to the terms of the loan by the Secured Property Lender and the terms of the secured Property Lender's loan documents shall govern the disposition of such funds.

ARTICLE 18

DISBURSEMENTS OF FUNDS BY DEPOSITARY

18.1 (a) Each request by an Owner acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any condemnation award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a

certificate of the applicable Owner, and with respect to the information described in Section 18.1(a)(ii) below, verified by the Architect, dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:

(i) That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the Work up to the date of said certificate and any other information required by the Illinois Mechanics' Liens Act set forth in 770 ILCS 60/0.01 et seq. (the "Mechanics' Liens Act") and any title insurer affording coverage against mechanic's liens;

(ii) That the sum requested, plus all sums previously disbursed, does not exceed the cost of the Work actually in place up to the date of such certificate plus the cost of materials supplied and actually stored on site (which materials shall be adequately insured against fire, theft and other casualties);

(iii) That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and

(iv) That the cost to complete the unfinished Work will not exceed the funds or security therefor held by the Depositary after payment of then current request.

(b) Upon compliance with the provisions of Section 18.1(a) (but not more frequently than once in each calendar month (thirty (30) day period)) and

(i) upon receipt of contractors' and subcontractors' sworn statements required under the Mechanics' Liens Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by any title insurer affording coverage against mechanics' liens from the persons named in the sworn statement; and

(ii) approval by the title insurer, the Owners, the Secured Property Lenders holding mortgages on portions of the Total Property on which or for the benefit of which will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics' lien claims relating to Work in place and the continued priority of the lien of the mortgage securing the Secured Property Lenders whose approval is required above, the Depositary shall, out of the monies so held by the Depositary and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects, and other persons named

in the Owner's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners of the Secured Property Lenders or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner to the Depository in accordance with the provisions of Section 18.1(a) hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

ARTICLE 19

GENERAL

19.1 In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owner to promote the efficient operation of each respective portion of the Total Property and the harmonious relationship between the Owners and to protect the value of each Owner's respective portion, estate or interest in the Total Property. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Declaration, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation and which such Owner is prohibited from revealing pursuant to court order. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) (i) such other instruments, documents, materials and information as any other Owner hereto may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owner hereunder or increase such Owner's burdens hereunder; and (ii) such grants of Easements to and agreements with utility companies as any other Owner hereto may reasonably request in order to enable such utility company to furnish utility services as required by such Owner, provided that any Mortgagee which holds any Mortgage on the portions of the Total Property on which such Easement is granted has first consented in writing to such Easements.

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

19.3 The headings of Articles in this Declaration are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles.

19.4

(a) Except as otherwise provided herein, this Declaration may be amended or terminated only by an instrument signed by the Owners and the Mortgagee. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

(b) Declarant reserves the right and power to record a special amendment (a "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. Only with the consent of the Owner of the Parking Property may a Special Amendment be made to contain such complementary and supplemental grants and reservations of Easements as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Property. Declarant also reserves the right to include within a Special Amendment revisions to the legal descriptions of the Parking Property and Commercial Property to correct scrivener's errors.

19.5. The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law and as provided below, for successive periods of ten (10) years, subject to amendment or termination as hereinabove set forth in Section 19.4; provided, however, that this Declaration, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated (i) as may be provided in Section 9.5 or (ii) upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the date of the last to survive of the class of persons consisting of all of the lawful descendants of William J. Clinton, the President of the United States of America, and Albert Gore, the Vice President of the United States of America, living at the date of this Declaration.

19.6 If the Owner of the Commercial Property is required to obtain the consent of the Owner of the Parking Property for any matter hereunder, the Owner of the Commercial Property shall deliver to the Owner of the Parking Property a written request for such consent together with all information and documentation necessary for the Owner of the Parking Property to evaluate such request. If the Owner of the Parking Property shall not have responded to such request within thirty (30) days from the date of receipt of such request and all such information and documentation, the matter for which the request was sought shall be deemed approved.

19.7 The provisions of this Declaration shall be construed to the end that the Total Property shall remain a first-class commercial property.

19.8 All the Easements, covenants, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent

holder of any interest in any portion of the Total Property and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Total Property or any part thereof.

19.9 Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Improvements subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon the Easement or unless the Easement has been abandoned for a period in excess of two (2) years.

19.10 The parties hereto acknowledge that this Declaration, 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 Declaration and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of Illinois including, without limitation, matters affecting title to all real property described herein.

19.11 This Declaration 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 any Mortgagee) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

19.12 Each provision of the Recitals to this Declaration and each Exhibit attached hereto is hereby incorporated in this Declaration and is an integral part hereof.

19.13 No charges shall be made for any Easements or rights granted hereunder unless otherwise provided or permitted under the terms of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and sealed as of this ____ day of _____, 2000.

NEAR LOOP LOFTS L. L.C.
An Illinois Limited Liability Company

By: Bilger Corporation, Manager

By: [Signature]
Richard M. Ross, Jr., President

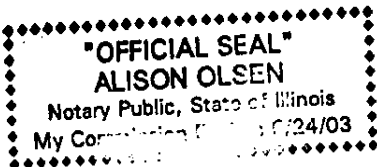
STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

I, Alison Olsen, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Richard M. Ross, Jr., President of Bilger Corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as such, as his/her own free and voluntary act, as the free and voluntary act of said _____ acting in its capacity as President of Bilger Corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of September, 2000.

Alison Olsen
Notary Public

My Commission Expires: _____



NEAR LOOP LOFTS L.L.C.,
An Illinois Limited Liability Company

By: Annie Properties, Inc., Manager

By: [Signature]
Lewis S. Kostiner, President

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

I, Alison Olsen, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Lewis S. Kostiner, President of Annie Properties, Inc., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as such, as his/her own free and voluntary act, as the free and voluntary act of said _____ acting in its capacity as President of Annie Properties, Inc. for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of September, 2000.

Alison Olsen
Notary Public

My Commission Expires: _____



UNOFFICIAL COPY

00730333

00730333

LaSalle Bank National Association f/k/a
LaSalle National Bank successor trustee to
LASALLE NATIONAL TRUST, N.A., as Trustee
Under Trust Agreement dated 10/16/97
And known as Trust Number 121312

By: _____

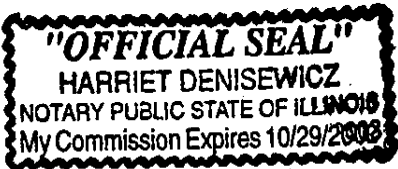
Name: Nancy A. Carlin
Title: Assistant Vice President

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

This instrument is executed by LASALLE BANK National Association, not
personally and solely on trust, as aforesaid, in the exercise of the power
granted to it by the terms and provisions of such Trust. All the terms,
conditions and provisions to be performed by
the Trust are set forth in the Trust Agreement, and the Trustee, under authority for
the Trust, hereby certifies that all statements herein made are true and
correct. The Trustee shall be construed accordingly, and no per-
son shall be held liable or be enforceable against LASALLE BANK
National Association by reason of any of the terms, provisions,
representations, covenants and/or statements contained in this instrument.

I, Nancy A. Carlin, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Nancy A. Carlin, a Asst Vice President of **LASALLE NATIONAL TRUST, N.A.**, as Trustee under Trust Agreement dated 10/16/97 and known as Trust Number 121312, who personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AVP, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as such AVP of said trust, as his/her own free and voluntary act, as the free and voluntary act of said _____ acting in its capacity as _____ of _____, a(n) _____, and as the free and voluntary act of said _____, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of September, 2000.
**LaSalle Bank National Association f/k/a
LaSalle National Bank successor trustee to



Harriet Denesewicz
Notary Public

My Commission Expires: _____

UNOFFICIAL COPY

00730333

~~00730333~~

EXHIBIT A

Legal Description of Total Parcel

The West 15.00 feet of Lot 21 and Lots 22 to 28, in Block 6 in Malcolm M. McNeil's subdivision of Blocks 6, 7 and 8 in Wright's Addition to Chicago in the Southwest Quarter of Section 8, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

1350 W. Madison
Chicago IL
17-08-335-013 to 016 ; 024 & 025

Property of Cook County Clerk's Office

EXHIBIT B

Legal Description of Parking Property

That Part of Lots 23 to 28 in Block 6 in Malcolm M. McNeil's Subdivision of Blocks 6, 7 and 8 in Wright's Addition to Chicago in the Southwest Quarter of Section 8, Township 39 North, Range 14, East of the Third Principal Meridian lying below a horizontal plane of 24.13 above Chicago City Datum and falling within the boundaries projected vertically of that part of said lots, Described as Follows; Commencing at the Northwest Corner of Lot 28 Aforesaid; Thence South 89° 58' 44" East Along the North Line of Said Lots for a Distance of 6.79 feet; Thence South 00° 00' 50" West 1.10 feet to the Interior Face of an Exterior Wall of a Three Story Concrete Block Building also being the Point of Beginning, Thence North 89° 59' 49" East along said Wall 94.54 feet to a corner in said Wall; Thence South 00° 00' 50" West along said Wall 3.00 feet to a corner in said Wall; Thence North 89° 59' 49" East along said Wall 6.65 feet to a corner in said Wall; Thence North 00° 00' 50" East along said Wall 3.00 feet to a corner in said Wall; Thence North 89° 59' 49" East along said Wall 26.54 feet; Thence South 00° 01' 44" 57.22 feet; Thence North 89° 58' 44" West 119.44 feet; Thence North 00° 00' 50" East 1.46 feet; Thence North 89° 59' 10" West 11.30 feet; Thence South 00° 00' 50" West 0.66 feet; Thence North 89° 59' 10" West 2.66 feet to the Interior Face of an Exterior Wall; Thence North 00° 00' 50" East along said Wall 53.36 feet to a corner in said Wall; Thence North 89° 59' 49" East along said Wall 5.69 feet to a corner in said Wall; Thence North 00° 00' 50" East along said Wall 3.00 feet to the point of Beginning, in Cook County, Illinois.

1350 W. Madison
Chicago, IL

17-08-335-013 #016, 024 #025

Cook County Clerk's Office

UNOFFICIAL COPY

00730333

00730333

EXHIBIT C

Legal description of Commercial Property

The West 15.00 feet of Lot 21 and Lots 22 to 28, in Block 6 in Malcolm M. McNeil's Subdivision of Blocks 6, 7 and 8 in Wright's Addition to Chicago in the Southwest Quarter of Section 8, Township 39 North, Range 14, East of the Third Principal Meridian, Except That Part Described as Follows; That Part of Lots 23 to 28 in Block 6 in Malcolm M. McNeil's Subdivision of Blocks 6, 7 and 8 in Wright's Addition to Chicago in the Southwest Quarter of Section 8, Township 39 North, Range 14, East of the Third Principal Meridian, lying below a horizontal plane of 24.13 above Chicago City Datum and falling within the boundaries projected vertically of that part of said lots. Described as Follows; Commencing at the Northwest Corner of Lot 28 Aforesaid; Thence South $89^{\circ} 53' 44''$ East Along the North Line of Said Lots for a Distance of 6.79 feet; Thence South $00^{\circ} 00' 50''$ West 1.10 feet to the Interior Face of an Exterior Wall of a Three Story Concrete Block Building also being the Point of Beginning, Thence North $89^{\circ} 59' 49''$ East along said Wall 94.54 feet to a corner in said Wall; Thence South $00^{\circ} 00' 50''$ West along said Wall 3.00 feet to a corner in said Wall; Thence North $89^{\circ} 59' 49''$ East along said Wall 6.65 feet to a corner in said Wall; Thence North $00^{\circ} 00' 50''$ East along said Wall 3.00 feet; to a corner in said Wall; Thence North $89^{\circ} 59' 49''$ East along said Wall 26.54 feet; Thence South $00^{\circ} 01' 57.22$ feet; Thence North $89^{\circ} 58' 44''$ West 119.44 feet; Thence North $00^{\circ} 00' 50''$ East 1.146 feet; Thence North $89^{\circ} 59' 10''$ West 11.30 feet; Thence South $00^{\circ} 00' 50''$ West 0.66 feet; Thence North $89^{\circ} 59' 10''$ West 2.66 feet to the Interior Face of an exterior Wall; Thence North, $00^{\circ} 00' 50''$ East along said Wall 53.36 feet to a corner in said Wall; Thence North $00^{\circ} 00' 50''$ East along said Wall 3.00 feet to the point of Beginning in Cook County, Illinois.

1350 W. Madison
Chicago, IL

17-08-335-013 & 014, 024 & 025

Cook County Clerk's Office

UNOFFICIAL COPY

00730333

EXHIBIT D

00730333

Survey

Property of Cook County Clerk's Office

EXHIBIT ATTACHED