



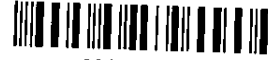
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Cook County Recorder 277.00



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Property of Cook County Clerk's Office

## DECLARATION OF EASEMENTS AND OPERATING REQUIREMENTS

FOR

RIVER EAST CENTER  
CHICAGO, ILLINOIS

CTE 7612440 DB K 2 of 3

Prepared by:

Thomas J. Kelly, Esq.  
Pedersen & Houpt, P.C.  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60601

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PINs: 17-10-218-001  
17-10-218-002  
17-10-218-003

Property Address: 300 - 360 East Illinois Street  
Chicago, Illinois 60611

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## LIST OF EXHIBITS

Exhibit A	Legal Description of the Property
Exhibit B	Legal Description of Garage Parcel
Exhibit C	Legal Description of Retail Parcel
Exhibit D	Legal Description of Hotel Parcel
Exhibit E	Legal Description of Condominium Parcel
Exhibit F	Legal Description of Residential Parcel
Exhibit 2.7.1	Docks
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Exhibit 4.1(b)	Detector and Alarm
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Exhibit 4.1(d)	Maintenance of Condenser, water riser and cooling tower wiring

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Exhibit 4.1(e)	Maintenance of Domestic Water Facilities
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Exhibit 4.1(f)	Lightning Protector
Exhibit 4.1(g)	Maintenance of Loading Dock Facilities
Exhibit 4.1(h)	Maintenance and Snow Removal of Street Level Exterior
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Exhibit 4.1(j)	Janitorial Services
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Exhibit 4.1(o)	Facade Repair and Maintenance
Exhibit 4.1(p)	Window Washing
Exhibit 4.1(q)	City Privileges
Exhibit 4.3	Parking
Exhibit 4.4	Payment for Services
Exhibit 4.7	Reallocation of Costs
Exhibit 4.11	Easement and Operation Agreement Ratio Derivation

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Prepared by and after  
recording return to:

Thomas J. Kelly, Esq.  
Pedersen & Houpt, P.C.  
161 North Clark Street  
Suite 3100  
Chicago, Illinois 60601

PINs: 17-10-218-001  
17-10-218-002  
17-10-218-003

Address: 300 - 360 East Illinois Street  
Chicago, Illinois 60611

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RIVER EAST CENTER  
CHICAGO, ILLINOIS

## DECLARATION OF EASEMENTS AND OPERATING REQUIREMENTS

THIS DECLARATION OF EASEMENTS AND OPERATING REQUIREMENTS is made into as of the 14th day of November, 2001, by Center at River East, L.L.C., a Delaware limited liability company.

### RECITALS:

A. The terms used in the Recitals, if not otherwise defined in the Recitals or in the immediately foregoing paragraph, have the meanings set forth in **Article I** hereof.

B. The Declarant is the record legal title holder of that parcel of real estate situated in the City of Chicago, County of Cook, State of Illinois which is legally described on **Exhibit A**, attached hereto and made a part hereof (the "Property").

C. The Building has been constructed on the Property and has become part thereof. The Property has been vertically subdivided pursuant to the Plat of Subdivision and consists of the five (5) parcels described below:

The garage parcel described on **Exhibit B**, attached hereto and made a part hereof (the "Garage Parcel");

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The retail parcel described on **Exhibit C**, attached hereto and made a part hereof (the "Retail Parcel");

The hotel parcel described on **Exhibit D**, attached hereto and made a part hereof (the "Hotel Parcel");

The condominium parcel described on **Exhibit E**, attached hereto and made a part hereof (the "Condominium Parcel"); and

The residential parcel described on **Exhibit F**, attached hereto and made a part hereof (the "Residential Parcel").

Each such Parcel is herein a "Parcel" and together are the "Parcels".

D. The persons or entities owning from time to time the respective Parcels (excluding occupants, tenants and mortgagees) are herein designated as follows:

<u>Parcel</u>	<u>Owner</u>
Garage Parcel	Garage Owner
Retail Parcel	Retail Owner
Hotel Parcel	Hotel Owner
Condominium Parcel <sup>1</sup>	Condominium Owner <sup>2</sup>

<sup>1</sup> The Condominium Parcel as currently configured is described on **Exhibit E** and the Residential Parcel as currently configured is described on **Exhibit F**. It is contemplated that portions of the Residential Parcel shall be subjected to the Condominium Act from time to time. Upon such submission of such portion to the Condominium Act: (1) such portion shall become part of the Condominium Parcel; (2) the description of the Condominium Parcel shall be deemed amended to include such portion and the description of the Residential Parcel shall be deemed amended to exclude such portion; (3) the Condominium Parcel or Condominium Owner, as appropriate, shall be allocated a portion of the expenses and other payments and obligations hereunder which are at such time attributable to the Residential Parcel or Residential Owner; (4) the allocations to the Condominium Parcel or Condominium Owner shall be increased, and the allocation to the Residential Parcel or Residential Owner shall be decreased accordingly; and (5) all allocations under this Declaration as between the Condominium Parcel and the Residential Parcel or as between the Condominium Owner and the Residential Owner shall be based on the respective square footage of the Residential Parcel and the Condominium Parcel from time to time. At such time an appropriate amendment to this Declaration shall be executed solely by Declarant. Upon transfer of all of the residential units in the Residential Parcel to the Condominium Parcel, all references therein to the Residential Parcel and the Residential Owner shall be deemed deleted.

<sup>2</sup> See **Section 21.13**.

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Residential Parcel<sup>1</sup>

Residential Owner

F. The Plat of Subdivision illustrates the Building and the relative locations of the Parcels which collectively comprise the Property.

G. No Parcel is or will be structurally or functionally independent of the others and each Parcel will depend upon the others, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities, easements and components necessary for the operation and use of such Parcel.

H. The Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Property, to assure the harmonious relationship among the Owners of each such respective portion, estate or interest in the Property or any Parcel, and to protect the respective values of each such portion, estate and interest in the Property and each Parcel, by creating certain easements, covenants and restrictions against and affecting the Property, each Parcel and portions thereof which will be binding upon Owners of each Parcel, or any portion thereof interest or estate therein, and which will inure to the benefit of Owners of all or some of the Other Parcels, or of any portion thereof or interest or estate therein.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the parties hereto, it is hereby agreed as follows:

## ARTICLE I

### DEFINITIONS

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

AFFECTED OWNERS - Those Owners whose interest in a Parcel or under an Easement or with respect to any Facilities, or any portion thereof, is actually or potentially affected by an event of casualty, the intentional or negligent act of another Owner, including by an actual or proposed Alteration, or by a taking effected pursuant to the exercise of a power of eminent domain or with respect to whom any services required to be provided under this Declaration have been suspended, denied or otherwise adversely affected.

ALTERATIONS - As defined in **Section 13.1 (a)**.

ALTERING OWNER - As defined in **Section 13.1 (a)**.

ARBITRABLE DISPUTE - Any dispute arising under this Declaration which is expressly made subject to arbitration under the provision of **Article X** hereof or which is designated as an Arbitrable Dispute.

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ARCHITECT - As defined in **Section 17.1**.

AREA PERCENTAGES - As defined in **Section 3.3(b)**.

ASSOCIATION - As defined in **Section 18.2**.

AWARD - As defined in **Section 12.1**.

BUILDING - A collective reference to the building located on the Property, the Facilities and any other improvements located on the Property.

CCEMA - Cityfront Center East Maintenance Association.

CONDOMINIUM ACT - The Condominium Property Act or any successor statute of the State of Illinois as in effect from time to time.

CONDOMINIUM DECLARATION - The instrument by which all or any portion of the Property is submitted to the provisions of the Condominium Act, as such instrument is amended from time to time.

CONDOMINIUM OWNER - As defined in **Recital D**.

CONDOMINIUM PARCEL - As defined in **Recital C**.

CONDOMINIUM PROPERTY - Any portion of the Property which has been submitted to the Condominium Act.

CONDOMINIUM UNIT - A residential Condominium Unit described in the Condominium Declaration.

CREDITOR OWNER - An Owner (A) to whom payment of money or other duty or obligation is owed under this Declaration by another Owner who has failed to make such payment or to perform such duty or obligation as and when required hereunder, or (B) who has exercised any self-help remedy provided for in this Declaration.

DECLARANT - Center at River East L.L.C., and its assignees.

DECLARATION - This Declaration of Easements and Operating Requirements, together with all Exhibits, amendments and supplements hereto.

DEFAULTING OWNER - An Owner who has failed to perform any of its duties or obligations as and when required under this Declaration or to make payment of money owed under this Declaration to another Owner.

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DEPOSITARY - As defined in **Section 15.1**.

DOMINANT OWNER - As defined in **Section 2.1(c)**.

DOMINANT TENEMENT - As defined in **Section 2.1(c)**.

EASEMENTS - A collective reference to any and all easements provided for, declared, granted, reserved or created pursuant to the terms and provisions of this Declaration (and including easements provided for in this Declaration which are reserved or granted by deed).

EMERGENCY SITUATION - A situation impairing or imminently likely to impair structural support of any Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Building or any property in, on, under, within, upon or about the Building or substantial economic loss to an Owner. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

ESTOPPEL CERTIFICATE - As defined in **Section 14.1**.

FACILITIES - Any annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment (including, without limitation, heating, ventilating, air conditioning and plumbing equipment), fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring and the like used in providing services from time to time in any part of the Building including, without being limited to, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, and any replacements thereof.

FINAL ALLOCATION DATE - As defined in **Section 4.7**.

FINAL ALLOCATION PERIOD - As defined **Section 4.7**.

FIRST MORTGAGE - As defined In **Section 21.12(a)**.

GARAGE PARCEL - As defined in **Recital C**.

GROSS FLOOR AREA - The Gross Floor Area as defined in the PUD.

HOTEL OWNER - As defined in **Recital D**.

HOTEL PARCEL - As defined in **Recital C**.

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IMPACTED OWNER - As defined in **Section 5.2.**

IMPOSITIONS - All taxes and other governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against the Property, the improvements located therein, or any part thereof or any interest therein, including, without limiting the generality of the foregoing, all general and special real estate taxes and assessments or taxes assessed specifically in whole or in part in substitution of general real estate taxes or assessments, any taxes levied or assessed upon the rents, revenues or receipts therefrom which may be secured by a lien on the interest of an Owner therein, all ad valorem taxes lawfully assessed upon the Property or the improvements located therein, all utility and other charges incurred by an Owner in the operation, maintenance, use, occupancy and upkeep of the Property or the improvements therein and any other charges lawfully made for improvements that may be secured by a lien on any portion of the Property, but specifically excluding income taxes of an Owner.

INDEMNIFYING OWNER - As defined in **Section 5.1.**

INDEMNITEE - As defined in **Section 5.1.**

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

LIENING OWNER - As defined in **Section 5.2.**

MAINTENANCE - Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, restoration and replacement when necessary or desirable of the Building or Facilities and includes the right of access to and the right to remove from the Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration. As used in **Article IV** and in the Exhibits to this Declaration relating to **Article IV**, the term "Maintenance" excludes obligations for which another Owner is responsible under **Articles III, VIII or XII**, and further excludes the costs for providing electrical energy or water to any portion of the Property unless (i) otherwise expressly provided, or (ii) to the extent that such costs are indicated as being a component of annual variable charges under **Article IV**.

MECHANIC'S LIEN ACT - As defined in **Section 13.3.**

MORTGAGE - As defined in **Section 21.12(a).**

MORTGAGEE - As defined in **Section 21.12(a).**

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NOTICE - As defined in **Section 18.1**.

OBJECTING PARTY - As defined in **Section 13.1(c)**.

OTHER OWNER - With respect to any Owner, any other Owner.

OTHER PARCEL - With respect to any Parcel, any other Parcel.

OWNER(S) - The Condominium Owner, the Residential Owner, the Retail Owner, the Garage Owner, the Hotel Owner, or any of them.

OWNERS' ASSOCIATION - As defined in **Article XIX**.

PERMISSIVE REPAIR - As defined in **Section 8.2(a)**

PERMITTEES - The Owners, all Persons entitled by lease or license to use or occupy space within the Building, and their respective beneficiaries, officers, directors, employees, agents, partners, shareholders, contractors, invitees and licensees.

PERSON - Individuals, partnerships, associations, corporations, trusts, land trusts, and any other form of business or not-for-profit organization, or one or more of them.

PLANS - Plans means those architectural and construction drawings prepared by DeStefano and Partners as well as other consultants retained by Declarant for use in the construction of the Building.

PLAT OF SUBDIVISION - Plat of subdivision delineating the boundaries of the Garage Parcel, the Retail Parcel, the Hotel Parcel, the Condominium Parcel and the Residential Parcel, including the various elevations of the horizontal planes and location of the vertical planes separating the Parcels recorded in the Office of the Recorder on November \_\_\_\_, 2001 as Document No. \_\_\_\_\_.

PODIUM - means the portion of the Building above ground level and lying below a horizontal plane having an elevation of 101.25 feet above Chicago City Datum plus the elevator penthouse located on the roof at such elevation.

PRIOR LIEN - As defined in **Section 9.1**.

PROPERTY - The Building and the Parcels collectively.

PROVIDING OWNER - Any Owner required to provide services hereunder.

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PUD - Residential/Business Planned Development Number 368 of the City of Chicago, as amended from time to time.

RBOS MORTGAGE - As defined in **Section 9.1**.

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

RESIDENTIAL OWNER - As defined in **Recital D**.

RESIDENTIAL PARCEL - As defined in **Recital C**.

RETAIL OWNER - As defined in **Recital D**.

RETAIL PARCEL - As defined in **Recital C**.

SERVIENT OWNER - As defined in **Section 2.1**.

SERVIENT TENEMENT - As defined in **Section 2.1**.

SHORTFALL - As defined in **Section 8.4**.

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

UNIT OWNER - The owner of a Condominium Unit.

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

1.2 Construing Various Words and Phrases. Wherever it is provided in this Declaration that a party "may" perform an act or do any thing, such term shall be construed so that the applicable party "may, but shall not be obligated to," so perform such act or do such thing. The following words and Phrases shall be construed as follows: (i) "at any time" shall be construed as "at any time or from time to time;" (ii) "any" shall be construed as "any and all;" (iii) "including" shall be construed as "including but not limited to;" (iv) "will" and "shall" shall each be construed as mandatory; and (v) the word "in" with respect to an easement granted or reserved "in" a particular Parcel shall mean "in," "to," "over," "within," "through," "upon," "across," "under," and any one or more of the foregoing. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Declaration and all references to Exhibits or Appendices shall refer to the Exhibits and Appendices attached to this Declaration. The



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words "herein" "hereof," "hereunder," "hereinafter," and words of similar import shall refer to this Declaration as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions and the index are used in this Declaration for convenience only and shall not be used to construe the meaning of any part of this Declaration.

## ARTICLE II

### EASEMENTS APPURTENANT TO PARCELS

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

(a) Each Parcel or portion thereof subject to an easement declared under this **Article II** (a "Servient Tenement") and the Owner thereof (a "Servient Owner") shall be subject to the Easements described in this **Article II** affecting such Servient Tenement. The Easements declared in this **Article II** shall bind and be enforceable against the Servient Owner, and its respective successors and assigns each with respect to those portions of the Parcel it owns.

(b) The grant of an Easement by the Servient Owner shall bind and burden the Servient Tenement, which shall, for the purpose of this **Article II**, be deemed to be the Servient Tenement. Where only a portion of a Parcel is bound and burdened by the Easement, only that portion shall be deemed to be the Servient Tenement.

(c) The Easements declared in favor of any Owner ("Dominant Owner") are appurtenant to and shall benefit such Dominant Owner's Parcel which shall, for the purpose of this **Article II**, be deemed to be the dominant tenement ("Dominant Tenement"). Where only a portion of a Parcel is so benefitted, only that portion shall be deemed to be the Dominant Tenement. No property other than the Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the Dominant Tenement.

(d) Unless otherwise expressly provided in this Declaration, all Easements granted to the Dominant Owner are irrevocable and perpetual in nature.

(e) In using any Easements granted under this **Article II**, each Dominant Owner shall minimize the impact of its exercise on the Servient Owner, taking into consideration the economic impact of any disruption on the Servient Owner and the Servient Tenement, and shall comply with the provisions of **Section 13.1(e)** whether or not the work being performed or the use of the Easement constitutes "Alterations."

(f) Any Owner of a portion of a Servient Tenement may, (i) in connection with the Maintenance, repair or restoration of its portion of the Servient Parcel, or (ii) in an Emergency Situation, or (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of any of its portion of the Servient Tenement, temporarily prevent, close off or restrict the flow of

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pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the Dominant Owner and its Permittees. Each Owner of a portion of the Servient Tenement may, from time to time, impose (x) reasonable limitations on any Dominant Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the portion of the Servient Tenement described in this **Article II**, including, without limitation, establishing paths of ingress and egress and hours of the day or days of the week during which any Dominant Owner or Permittee may use such Easement, (y) reasonable security controls consistent with the operation by such Servient Owner of its business on its portion of the Servient Tenement, and (z) any overall security system for the Servient Tenement. In imposing any such limitations or controls in accordance with the preceding sentence, an Owner of a portion of the Servient Tenement shall take into consideration the reasonable needs and requirements of the Dominant Owner and its Permittees as well as the imposing Servient Owner's own needs and requirements.

(g) Any disputes concerning the existence, location, nature and scope of any of the Easements granted under this **Article II** shall constitute an Arbitrable Dispute.

(h) Any Easement granted under this Declaration shall in all events be subject to the concurrent use by the Servient Owner reasonably necessary for the Maintenance of the Servient Tenement and for other uses which do not unreasonably interfere with the exercise of the Easement granted to the Dominant Owner.

2.2 Ingress and Egress. A non-exclusive easement is declared over each Parcel for the benefit of each Other Owner for ingress and egress only for Persons, material and equipment in, over, on, across and through such portions of such Parcel as are, and only to the extent reasonably necessary, to permit the Maintenance, replacement, restoration or reconstruction (but only if and when such Maintenance, replacement, restoration or reconstruction is required or permitted under this Declaration) of (a) each Other Parcel, (b) any Facilities located in the Servient Tenement which provide or are necessary to provide any Other Parcel with any utilities or other services necessary to the operation of such Other Parcel, including, without limitation, the Facilities and (c) any other areas in such Parcel as to which an Easement for use or Maintenance has been granted to any Other Owner.

2.3 Structural Support. A non-exclusive easement is declared over each Parcel for the benefit of each Other Owner in all Structural Supports located in or constituting a part of the Servient Tenement for the support of (a) the Other Parcel, (b) any Facilities or areas located in the Servient Tenement with respect to which such Other Owner is granted an Easement.

2.4 Use of Facilities. A non-exclusive easement is hereby declared over each Parcel for the benefit of each Other Owner (a) for the use for their intended purposes of all Facilities located in such Parcel and connected to Facilities located in the respective Other Owner's Parcel which provide or are necessary to provide such Other Owner with any utilities or other services necessary

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to the operation of such Other Owner's Parcel and (b) permitting the exercise of the rights granted to each Other Owner pursuant to **Section 4.5(a)** hereof during any period in which said rights may be exercised.

2.5 Common Walls, Ceilings and Floors. A non-exclusive easement for the benefit of each Other Owner is declared over each Parcel for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs constructed in and along the common boundaries of such Parcel which also serve as walls, ceilings or floors for one or more Other Parcels.

2.6 Utilities. A non-exclusive Easement is declared on, over and through each Parcel for the benefit of each Other Owner (and also, if requested, for each Utility Company requesting such an easement) for utility purposes, including the right to install, lay, maintain, repair, and replace electrical conduits, wires and equipment, water mains and pipes, sewer lines, gas mains, wires and equipment and cables for transmission of telephone, television or other electrically transmitted information on, over and through such Parcel within the areas therefor as shown on the Plans. If, at any time, it shall become necessary to relocate or add to utility easements on, over or through a Parcel other than as shown in the Plans in order to provide utility service to any Other Owner, the Owner of such Parcel agrees to grant such additional or relocated utility easements (at such location as shall be mutually agreed to by such Owner and Other Owner requesting such additional or relocated utility easements), provided (a) such additional or relocated easements do not unreasonably interfere with the reasonable use and enjoyment of such Parcel for the purposes for which such Parcel was initially designed and constructed, (b) the Owner of such Parcel shall not be required to grant additional or relocated easements to the extent that such a grant of easement would convert otherwise available commercially or residentially useable space from such use, unless such additional or relocated utility easement is required by law and no other alternative location for such additional or relocated utility easement is reasonably available, and (c) the Other Owner shall compensate the Owner of such Parcel for any damages, decrease in value, costs or expenses incurred by the Owner, including lost revenues in the case of a conversion of otherwise available rentable or salable space or from damages incurred from the breach of any lease based on such conversion. Any additional or relocated utilities shall be designated on the Plans, and, if necessary the Plans shall be revised, acknowledged by the Owners, and incorporated as an amendment to this Declaration. If any improvements for utility purposes are relocated or abandoned, or the improvements are no longer used, then, at the written request of the Owner of the Servient Tenement, such improvements shall be removed in a workmanlike manner and any damage caused thereby shall be repaired at such Other Owner's expense by the Other Owner for whose benefit such improvements were originally installed or the Other Owner for whose predecessor such improvements were originally installed.

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2.7 Deliveries. A non-exclusive easement for each Other Owner is declared over the Retail Parcel for the use of the loading docks identified as "Loading Docks" shown on **Exhibit 2.7.1** hereto as necessary or desirable for the efficient delivery or dispatch of materials, supplies, goods, refuse and the like to and from such Dominant Tenement and for any other similar purposes for which such loading dock areas are customarily used but subject to the limitations on use set forth in this Declaration. The use of the Loading Docks by the Condominium Owner and the Residential

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Owner shall be limited to deliveries which, because of size limitation or scheduling, cannot practically be made at the loading dock located in the Condominium Parcel. The Residential Owner is granted a non-exclusive easement to use the loading dock in the Condominium Parcel. Such use by the Residential Owner shall be in common with the Condominium Owner and shall be non-discriminatory as between the Residential Owner and the Condominium Owner. Each Other Owner acknowledges and agrees that the use of the Loading Docks described on **Exhibit 2.7.1** by such Other Owners and their Permittees shall be subject to reasonable rules and regulations promulgated by the Retail Owner from time to time concerning the use of such Loading Docks. Such rules and regulations may provide that the Loading Docks shall only be used during reasonable hours and may govern the coordination of the use of the Loading Docks by each Other Owner and its Permittees with the use of such Loading Docks by the Retail Owner, the Other Owners and their Permittees. Such rules and regulations shall also include the matters set forth on the schedule attached hereto as **Exhibit 2.7.2**.

2.8 Trash Compactors. A non-exclusive Easement is declared for the benefit of the Garage Owner and the Hotel Owner for the use of the trash compactors on the Loading Dock described in **Section 2.7** for use for compaction and temporary storage of trash. The Garage Owner and the Hotel Owner each acknowledges and agrees that the use of such trash compactors by the Retail Owner and any Other Owners and their Permittees shall be subject to reasonable rules and regulations promulgated by the Retail Owner from time to time concerning the use thereof. The cost of maintenance and repair of the trash compactors shall be shared as provided in **Exhibit 2.8**.

2.9 Hallways. A non-exclusive easement is declared for the benefit of the Condominium Owner and the Residential Owner, over the hallways designated on **Exhibit 2.9** for ingress and egress to and from the Loading Dock for the uses permitted in **Section 2.7** and **Section 2.8**.

2.10 Emergency Stairway and Lobbies. A non-exclusive easement is hereby declared for the benefit of each Owner on, over, across and through the lobbies and the stairways in the Retail Parcel identified on **Exhibit 2.10** for pedestrian ingress and egress in an Emergency Situation.

2.11 Encroachments. An easement is hereby declared for the benefit of each Owner permitting any encroachments existing, if any, by reason of the construction of the Building or any Parcel or any Facility or by the subsequent settlement or shifting of the Building or any Parcel or Facility, or to the extent that any part of the Building or the Parcels or the Facilities not originally designed to be located within the Servient Tenement encroaches or shall hereafter encroach upon any part of the Servient Tenement. No such encroachment shall be placed or enlarged deliberately. Such Easement permitting encroachments shall exist only so long as the encroaching portion of the Other Parcel or such Facilities continues to exist.

2.12 Emergency Generators. A non-exclusive easement is declared for the benefit of each Other Owner for Maintenance of emergency generators serving such Owner's Parcel as depicted on **Exhibit 2.12**.

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2.13 Supporting Girders and Structural Components. A non-exclusive easement is declared for the benefit of each Owner for the Maintenance of girders and other structural components which support such Owner's Parcel.

2.14 Parking Shuttle. Non-exclusive easements are declared (a) for the benefit of the Retail Owner and Garage Owner for the use of the elevators designated as RT1, RT2 and RT3 (Parking Shuttle) on **Exhibit 2.14** for transportation of persons to and from the Garage Parcel and the Retail Parcel, (b) for the benefit of the Garage Owner and Hotel Owner for the use of the elevators identified as P1 and P2 on the Plans, (c) for the benefit of the Garage Owner, the Residential Owner, and the Condominium Owner of the elevators identified as P3 and P4 on the Plans, and (d) for the benefit of all Permittees for pedestrian ingress and egress over, on, across and through the theater lobby shown on **Exhibit 2.14** to and from the Garage Parcel.

2.15 Exterior Maintenance. Declarant hereby grants to the Retail Owner a non-exclusive easement for the use of the inserts and tie back buttons on the exterior facade of the Condominium Parcel, the Residential Parcel, and the Hotel Parcel and davits and davit sockets on the roofs of the Condominium Parcel, the Residential Parcel, the Retail Parcel, and the Hotel Parcel and otherwise to the extent reasonably necessary to permit window washing and exterior Maintenance, repair and restoration of the Retail Parcel. The Retail Owner is granted a non-exclusive license to access the roof of the Podium through the Condominium Parcel at reasonable locations designated by the Condominium Owner and at reasonable times and subject to reasonable restrictions by the Condominium Owner for the purpose of such exterior maintenance. Maintenance, repair and replacement of such equipment to the extent located on their respective Parcels shall be provided by the Hotel Owner and the Residential Owner upon the terms and conditions set forth in **Exhibit 2.15**. The Garage Owner shall maintain the exterior walls of the Garage and all ramps servicing the Garage Parcel. The Condominium Owner, the Residential Owner, and the Hotel Owner shall maintain the exterior of their respective Parcels above the Podium. The Retail Owner shall maintain the exterior of the balance of the Building.

2.16 Antennae and Satellite. Declarant hereby declares a non-exclusive easement across certain areas of the roofs of the Hotel Parcel and the Retail Parcel for the benefit of each Other Parcel, for the installation and use of satellite dishes and antennae, subject to (i) the requirements for such installation and use as described on **Exhibit 2.16** and (ii) the location restrictions for such equipment as depicted on **Exhibit 2.16(a)**. The Servient Owner will not unreasonably withhold its consent to changes in the size of the subject equipment nor its location within these easement areas, or to the designation of additional areas on the roofs of these Parcels for similar uses nor of changes or substitutions of the subject equipment within the easement areas as a result of changes in technology. Each piece of equipment located within the easement areas depicted on **Exhibit 2.16(a)** shall have sizes and dimensions satisfactory to the Servient Owner and such Other Owner. The Other Owner's use of such equipment shall not interfere with any Easements nor with the reception or transmission of other similar equipment or Facilities on the roofs. The Other Owner shall remove all equipment permitted under this **Section 2.16** when same is no longer being used. Installation of any equipment permitted by this **Section 2.16** shall constitute an Alteration under **Article XIII**, plans

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and specifications for which shall require the consent of the Servient Owner and the respective Other Owner(s).

2.17 Utility Service Entrance and Utility Distribution Facilities. A non-exclusive easement is declared for the benefit of each Owner using telephone, electricity, water, sewer or other utilities for entrance or exit of such service into the Building at the location shown on the Plans and for the use of Utility distribution facilities and access to and Maintenance of such Service and Utility distribution facilities for the benefit of such Owner's Parcel when such point of entry or exit, or the subject Utility distribution facility itself is in another Parcel. A non-exclusive easement is further declared for the benefit of the Owners described on **Exhibit 2.17** in order for such Owners to utilize certain utility and storage rooms located within the Garage Parcel for the purpose of installing and maintaining utility Facilities therein for the benefit of their respective Parcels and for such other or additional purposes as are described on **Exhibit 2.17**.

## ARTICLE III

### STRUCTURAL SUPPORT

3.1 Structural Safety and Integrity. No Owner shall do or permit any act which would adversely affect the structural safety or integrity, of any portion of the Building, including any act described in **Section 13.1(b)(v)**.

3.2 Substitute or Additional Structural Support. If for any reason the structural support for any portion of the Building is inadequate or is reduced below the support required to maintain the structural safety or integrity of said portion of the Building, any or all Owners may request that the Architect or another structural engineer (who shall then act in the capacity of "Architect" under this **Article III**) and a contractor (in each case reasonably acceptable to all Owners) review the adequacy of the support or extent of any such reduction and the need for or adequacy of any substitute or additional structural support. The Architect and contractor shall also estimate, if possible, the time reasonably necessary to provide adequate substitute or additional structural support. If the structural support has been reduced or is inadequate, the Owners shall attempt in good faith to determine which Owners are responsible (including such Owner's agents, contractors, engineers, architects and Permittees) for such inadequacy or reduction, and any Owner may submit such question to the Architect for its advice.

### 3.3 Construction of Additional Support.

(a) If substitute or additional structural support is required in a portion of the Building as a result of action taken by any Owner or Owners ("Responsible Owner"), then the Responsible Owners (except as provided in **Section 3.3(b)**, where the Owners are expressly made jointly responsible) shall commence the construction of such substitute or additional supports within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction in accordance with plans and specifications

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prepared by or approved by the Architect and approved by the Affected Owners. The Responsible Owner or Owners shall be severally liable to pay all costs and expenses, including the Architect's and any other architectural fees, in connection with construction of the substitute or additional support, including any ongoing Maintenance costs, and if a Responsible Owner has paid more than its share, such Owner shall be entitled to contribution or reimbursement from the other Responsible Owners in proportion to the other Responsible Owners' share of liability. The provisions of **Section 8.3** and **Section 8.4** shall apply, in lieu of the provisions of this **Article III**, if the reduction or inadequacy in structural support results from a fire or other casualty.

(b) If the Responsible Owner or Owners cannot be determined for any reason, or if the reduction or inadequacy in structural support results from a defect in the original construction of any portion of the Building and occurs after the period the applicable warranties in construction contracts with the Declarant are enforceable or occurs prior to the expiration of such warranties but is not covered by any enforceable warranty under such contracts with Declarant, then all Owners shall jointly be responsible for substitute or additional structural support and shall share all costs and expenses as hereinafter provided. For purposes of this **Section 3.3**, a defect in the original construction of a portion of the Building shall not include structural conditions arising from improper maintenance by any Owner or for which ordinary or mandatory Maintenance is required by virtue of the nature of the condition, or which is required hereunder. In any instance where the party responsible for the subject condition is a party other than an Owner, the Owners will jointly pursue appropriate legal and equitable remedies against such responsible party. If joint action is not legally possible, then the Owner or Owners who have a remedy against the responsible party will pursue enforcement of such remedy for the benefit of all Owners. Where damages are recovered from such a responsible party, the Owners shall apply amounts recovered in the following priority: first, to the costs of suit; second, to payment of the costs and expenses for providing substitute or additional support; third, to damages suffered by the Owners as a result of the reduction or inadequacy in structural support caused by the subject condition (which shall be paid to each Owner in the ratio of damages suffered by such Owner to total damages suffered by the Owners); and fourth, the balance, if any, to the Owners in the following percentages (the "Area Percentages"):

<u>Owners</u>	<u>Percentage</u>
Hotel Owner	21.07%
Retail Owner	16.95%
Garage Owner	22.99%
Condominium Owner/ Residential Owner	38.99%

Each Owner, whether pursuing enforcement or not, shall share the costs and expenses including any fees of the Architect for advice or preparation of plans and specifications for providing substitute or

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additional support, and any enforcement action under this **Section 3.3(b)**, in accordance with the Area Percentages, to the extent such costs and expenses are not recovered from third parties.

(c) The construction of such substitute or additional support shall be performed by a contractor or contractors jointly selected by the Owners and their First Mortgagees. In the event the Owners and their First Mortgagees fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners and their First Mortgagees cannot agree on a contractor or contractors to construct such substitute or additional support, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. For purposes of this **Article III**, provision or construction of substitute or additional structural support shall also include any Maintenance required to remedy or prevent the inadequacy or reduction in structural integrity or safety of the Building.

(d) If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portion of the Building, and if it is not likely that such work will be commenced in time to avoid a reduction in structural integrity or safety, then the Owner or Owners of that portion of the Building in which the reduction occurred or is occurring shall, upon not less than ten (10) days advance written Notice to the other Owners (except that such advance written Notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever required, or the Owners shall jointly undertake to provide substitute or additional structural support, provided however, that the Responsible Owner (or the Owners otherwise liable for a share of costs and expenses of providing substitute or additional structural support) shall be liable for and pay all costs and expenses incurred as a result of any other Owner's provision of any required substitute or additional support.

## ARTICLE IV

### SERVICES TO BE PROVIDED BY VARIOUS OWNERS

4.1 Services to be provided. The Providing Owners hereinafter designated shall furnish or cause to be furnished the following services to the Other Owner hereinafter designated when, as and if required:

(a) Kitchen Waste. Kitchen waste drainage shall be provided by the Retail Owner to the Hotel Owner, the Condominium Owner, and the Residential Owner at the respective locations designated on **Exhibit 4.1(a)** upon the terms and conditions set forth in **Exhibit 4.1(a)**.

(b) Detector and Alarm, Maintenance of Facilities providing for detector, security and alarm related functions shall be provided by the Retail Owner for the benefit of the Garage Parcel upon the terms and conditions set forth in **Exhibit 4.1(b)**.



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(c) Hot and Chilled Water. Maintenance of Facilities providing for chilled water circulation shall be provided by the Hotel Owner for the benefit of the Retail Owner upon the terms and conditions set forth in **Exhibit 4.1(c)**.

(d) Condenser Water Risers and Cooling Tower Control Wiring. Maintenance of condenser water riser and cooling tower control wiring shall be provided by the Hotel Owner for the benefit of the Retail Owner upon the terms and conditions set forth in **Exhibit 4.1(d)**.

(e) Domestic Water. Maintenance of Facilities providing for the delivery of domestic water for the use of all Parcels shall be provided by the Hotel Owner and the Condominium Owner for the benefit of all Other Owners upon the terms and conditions set forth in **Exhibit 4.1(e)**.

(f) Lightning Protection. Maintenance of Facilities providing for Lightning protection for the benefit of all Other Owners shall be provided by the Hotel Owner, the Condominium Owner, and the Residential Owner with respect to those portions of such Facilities located on the respective Parcels of such Other Owners, upon the terms and conditions set forth in **Exhibit 4.1(f)**.

(g) Loading Dock. Maintenance of loading dock Facilities shall be provided by the Retail Owner for the benefit of all Other Owners upon the terms and conditions set forth in **Exhibit 4.1(g)**.

(h) Street Level Exterior Maintenance and Snow Removal. Street level exterior maintenance and snow removal shall be provided by the Retail Owner for the benefit of all Other Owners upon the terms and conditions set forth in **Exhibit 4.1(h)**.

(i) Elevator Service. Operation of certain elevators shown on **Exhibit 4.1(i)** for parking and emergency and other services shall be provided by the Retail Owner for the benefit of the Garage Owner and Hotel Owner upon the terms and conditions set forth in **Exhibit 4.1(i)**.

(j) Janitorial Services. Certain janitorial services shown on **Exhibit 4.1(j)** shall be provided by the Retail Owner for the benefit of all Other Owners upon the terms and conditions set forth in **Exhibit 4.1(j)**.

(k) Pest Control. Pest control services shall be provided by the Retail Owner for the benefit of the Other Owners upon the terms and conditions set forth in **Exhibit 4.1(k)**.

(l) Roof Repair and Maintenance. Roof repair and maintenance shall be provided by various Providing Owners as indicated, and upon the terms and conditions set forth in **Exhibit 4.1(l)**.

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(m) Landscaping Maintenance. Landscaping maintenance shall be provided by the Retail Owner for the benefit of all Other Owners upon the terms and conditions set forth in **Exhibit 4.1(m)**.

(n) Security Services. Security services shall be provided by the Retail Owner for the benefit of all Other Owners upon the terms and conditions set forth in **Exhibit 4.1(n)**.

(o) Facade Repair and Maintenance. Facade repair and maintenance shall be provided by the Retail Owner for the benefit of all Other Owners upon the terms and conditions set forth in **Exhibit 4.1(o)**.

(p) Window Washing. Window washing shall be provided by the Retail Owner for the benefit of certain Other Owners as indicated, and upon the terms and conditions set forth in **Exhibit 4.1(p)**.

(q) City of Chicago Services. Each Owner shall pay its share of the costs for the services described on **Exhibit 4.1(q)** in accordance with the provisions of **Exhibit 4.1(q)**.

#### 4.2 Emergency Stairways:

(a) Emergency stairways, which are located in the Retail Parcel shall be maintained and provided by the Retail Owner;

(b) Emergency stairways which are located in the Garage Parcel shall be maintained and provided by the Garage Owner for the benefit of all Other Owners; and

(c) Emergency Stairways above the Podium located in the Hotel Parcel, the Condominium Parcel, and the Residential Parcel shall be maintained and provided by the Hotel Owner, the Condominium Owner, and the Residential Owner, respectively, for the benefit of all Other Owners without cost.

4.3 Obligation to Furnish Services. Each Owner shall make a good faith effort to operate its Parcels and the Facilities located thereon and to furnish all services as required under this **Article IV** in a manner consistent with the intended use of such Parcel as a first-class commercial or residential property and at the level of operation and management of comparable properties. Each Owner shall use reasonable diligence in performing the services required of such Owner as set forth in this **Article IV** but shall not be liable under this **Article IV** for interruption or inadequacy of service or loss or damage to property or business arising out of such interruption or inadequacy except to the extent resulting from such Owner's wanton or willful misconduct and except as may be provided in **Section 4.5**. Each Owner who is obligated to furnish services hereunder shall be entitled to curtail or halt the performance or provision of any service required to be provided hereunder at any time, and in reasonable respects, upon reasonable advance Notice under the circumstances (except in an Emergency Situation) and for reasonable periods of time in order to

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perform Maintenance or in an Emergency Situation. Each Owner who is obligated to maintain, repair and replace any Facilities in accordance with the requirements of **Section 8.1** or **Section 8.2** and which are connected to other Facilities in the Building, the responsibility for the Maintenance of which is another Owner's responsibility under this **Article IV**, shall perform its obligations under **Article VIII** in such a manner and to such standards as will permit and facilitate the Other Owner's performance of its obligations under this **Article IV**.

4.4 Service Management Fee and Payment for Services. The charges for the services described in this **Article IV** shall be based upon the reasonable cost thereof to the extent provided in the Exhibits. Each Owner providing a service for which such Owner is entitled to be reimbursed hereunder, in addition to the costs to be reimbursed, shall be entitled to a "Service Management Fee" equal to eight percent (8%) of the aggregate value of such costs, which Service Management Fee shall be payable by the Owner obligated to reimburse the Providing Owner at the time that the reimbursement is payable. Payment for services rendered pursuant to this **Article IV** and for any other charges payable in connection with such service, including any Service Management Fees, shall be made in accordance with terms and provisions of **Exhibit 4.4** attached hereto and made a part hereof.

4.5 Providing Owner's Failure to Perform Services.

(a) If the Providing Owner shall fail to perform its obligations as required by **Section 4.1** (except when such failure is caused by the Other Owner or by Unavoidable Delay or except when the Providing Owner is entitled to discontinue such service pursuant to **Section 4.6** hereof) and such failure shall continue for a period of ten (10) days after written Notice thereof to the Providing Owner from any Other Owner, such Other Owner shall have the right to perform the subject service (without limiting any other rights or remedies available to such Other Owner until such time as the Providing Owner cures its failure to perform). The Notice required by the preceding sentence shall not be required in an Emergency Situation affecting the Other Owner's Parcel or any of its occupants.

(b) If a dispute exists as to whether the Providing Owner has failed to perform its obligations under this **Article IV**, then such dispute shall constitute an Arbitrable Dispute which may be submitted to arbitration under **Article X** if not resolved within thirty (30) days after the dispute arises. Failure to submit the matter to arbitration shall not vitiate or cause a waiver of the Other Owner's rights under **Section 4.5(a)**.

4.6 Discontinuance of Services. If, at any time, any Defaulting Owner shall fail to pay a Providing Owner any sum of money payable to such Owner pursuant to the provisions of **Article IV** within ten (10) days after receipt of written Notice from the Creditor Owner demanding payment of said sum of money, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner may discontinue furnishing those services required to be furnished by the Creditor Owner under **Article IV** until said sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes the Defaulting Owner's obligation to pay said sum

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of money (other than an objection regarding allocation of costs for various services provided to more than one Owner as described in **Section 4.7**) and such Defaulting Owner diligently contests any action or proceeding brought to collect said sum of money or to enforce the lien of the Providing Owner, or brings an action or initiates an arbitration proceeding (where permitted or provided for under **Article X**) to determine the respective rights of the parties to such dispute and diligently prosecutes same, then provided the Defaulting Owner continues to pay for all such services as provided in the final sentence of this **Section 4.6**, the Creditor Owner shall not be entitled to discontinue furnishing any services which such Creditor Owner is required to furnish in accordance with this **Article IV**, unless and until it shall finally be determined by arbitration in accordance with **Article X** hereof, or a final non-appealable order of a court of competent jurisdiction, that the Defaulting Owner is obligated to pay the contested sum of money and that thereafter the contested sum of money remains unpaid; and further provided, however, that the Creditor Owner may not discontinue such services if the discontinuation would cause an Emergency Situation (other than one involving solely economic loss) or hinder the efforts of any Owner to remedy an existing Emergency Situation (other than one involving solely economic loss). Notwithstanding that an Owner may have elected to invoke the procedure set forth in **Exhibit 4.7** relating to the reallocation of costs governed by this Declaration, or that ratios described in **Section 4.11** are being recalculated in accordance with such Section, or that there may be a dispute as to the amount owed as a result of the foregoing, an Owner shall nevertheless continue making payments as required under this **Article IV** and under **Exhibits 4.1(a)-4.1(q)** until the subject costs are reallocated, the subject ratios recalculated or the subject dispute resolved, at which time the Owners shall refund any overpayment or pay any deficiency, as applicable, including any interest thereon as required under **Section 9.4**.

**4.7 Change in Cost Allocation.** If any Owner in good faith, believes that the cost of any item of service under this **Article IV** is not reasonably allocated among the Owners, except for any recalculation due to a variation in ratios as described in **Section 4.11**, then the Owner desiring to reallocate the costs for such service may, at its option, and prior to the Final Allocation Date, request a reallocation and thereupon shall be obligated to follow the procedure described in **Exhibit 4.7** attached hereto and made a part hereof relating to reallocation of such costs, and in such case the Other Owners shall also follow such procedure; provided, however, that the consent of the First Mortgagees of the Affected Owners shall not be required unless any reallocation by agreement of the Owners results in a material change in the allocation or reallocation of any such cost or costs. The Owners shall be obligated to reallocate costs if an Owner shall have overcome the presumption of accuracy and shall have clearly and convincingly proved before the end of the Final Allocation Period that such costs have not been reasonably allocated. The "Final Allocation Period" means that period of time which constitutes the first opportunity under **Exhibit 4.7**, after operation of the Building for a period of two (2) years after all Parcels other than the Residential Parcel and Condominium Parcel have been first opened for business or occupancy, during which an Owner may notify Other Owners of its objection to allocation (the last date for such Notice being the "Final Allocation Date"). The opening for business or occupancy of any Parcel shall be the date when any portion of such Parcel opens for business or occupancy. Except as set forth above or in **Section 4.11**, the Owners are not obligated in any other case to reallocate costs of services under **Article IV**, notwithstanding the procedure set forth in **Exhibit 4.7**. In considering whether allocation of a cost

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is reasonable or whether the cost should be reallocated, certain expenses which are minor or relatively minor, except on a cumulative basis, should be disregarded, it being understood that certain expenses which would otherwise be borne by one Owner benefitting from a service or Facility should, for the purpose of administrative simplicity and avoidance of additional metering, labor, accounting or attorneys' fees and costs, be absorbed by the other Owners without reimbursement so long as an unfair result is not caused to such other Owners. Likewise for the same reasons, it has been determined in making the initial allocations that no allocations of costs for Maintenance of the roofs of the Condominium Parcel, the Residential Parcel or the Hotel Parcel or the exterior Maintenance or lighting and window washing of the Condominium Parcel, the Residential Parcel or the Hotel Parcel, other than portions thereof located in the Podium, shall be made because projected costs are likely to be fairly allocated to the Owners of the respective Parcels over time. Further, temperature and operating hours of the Garage have been disregarded as factors in allocating the costs of Maintenance. If the Affected Owners cannot agree on any allocation under this **Section 4.7**, the matter may be submitted to Arbitration.

4.8 Replacement of Facilities. An Owner, in replacing Facilities, may replace such Facilities with Facilities of substantially equivalent or superior quality or utility and which provide substantially the same or superior function or service. Any Owner may correct the description of the Facilities described in the Exhibits to **Article IV** by Notice to the other Owners if such correction is due to error in the description or due to the replacement of such Facilities.

4.9 Change in Services by Condominium. As of the date of this Declaration, the Condominium Parcel is owned by a single Owner having management personnel experienced in the ownership and operation of properties comparable to the Condominium Parcel. The Owners recognize and acknowledge that if the Condominium Parcel or any portion thereof is submitted to the Condominium Act, the Condominium Owner may be unable to consistently provide the type of services or the standards of performance required under **Article V** since the Condominium Act will entitle the Association to select a new manager of the Condominium Parcel. If at any time after all or a portion of the Condominium Parcel has been submitted to the Condominium Act, the Condominium Owner fails to perform those services required of it under **Section 4.1**, and the provisions of **Section 4.5** entitle an Other Owner to perform such services, then upon written Notice by the respective Other Owner to the Condominium Owner, such Other Owner may elect to assume any or all of the Condominium Owner's obligations to provide services required by **Section 4.1** and to relieve the Condominium Owner of those obligations. Upon such election, the Owners shall negotiate in good faith to amend this Declaration within sixty (60) days after service of such Notice to effect such election and, in connection therewith, grant necessary easements and to reallocate the costs of such services and the responsibilities for their performance consistent with the transfer of such obligations.

4.10 Data Unavailable From Metering Where the allocation of the cost of a service under **Article IV** is based on usage recorded by meters, and if at any time the actual allocation of the costs of such service based on an Owner's usage so recorded by meters cannot be determined because the meters or the system for recording metered information are not installed or operative, then for such

period when the usage data from meters is unavailable, the Owner performing such service shall make a reasonable determination of costs based on usage, using such experts or systems as such Owner may consider helpful to achieve such an estimate. Such Owner shall notify the other Owners in detail of its determination of estimated usage and the method for such determination at the time such Owner sends a Notice of estimated cost or of net capitalized cost relating to such service. If, within thirty (30) days after receipt of such Notice, the Owner receiving such Notice does not, in good faith, dispute that estimated usage has been determined reasonably, such determination of usage shall be final and conclusive upon the parties; provided further, however, if the Owner receiving such Notice, in good faith, disputes that the estimated usage has been determined reasonably, such Owner shall so notify the other Owner. If the Owners fail to agree concerning the method of estimated usage within thirty (30) days after receipt of the disputing Owner's Notice, then either Owner may submit the question to the Architect for its advice. The Architect shall advise the Owners concerning a resolution of the question within a reasonable period of time after the dispute has been submitted to the Architect. Subsequent failure to agree upon the method for estimating usage shall constitute an Arbitrable Dispute.

4.11 Ratios Used in Allocation Formulas. Some formulas for allocations of the costs of services under **Exhibits 4.1(a)** through **4.1(q)** use ratios based on quantities, areas, loads, percentages or other factors, which ratios have been calculated and are represented herein as being the ratio as of the date of this Declaration and are based on the Plans. The derivations of these ratios are contained in the "Easement and Operating Agreement Ratio Derivation" attached as **Exhibit 4.11**. Such ratios are not fixed but may vary based on adjustments in the factors upon which the ratios are based. However, until a new ratio is determined as provided below, the applicable ratio expressed in this Declaration shall continue to be used in the allocation formula. Any Owner affected by an allocation using a ratio which should be recalculated due to an adjustment in the factors upon which such ratio is based may, not later than forty-five (45) days after the end of any calendar year for which a new ratio would be effective, give to the other Affected Owners Notice of the need to recalculate such ratio. Such Notice shall specify the ratio to be calculated and the reason why such ratio should be recalculated. Within thirty (30) days after receipt of such Notice, the Affected Owners shall recalculate and agree upon the new ratio. The Affected Owners may employ the Architect or another expert to perform such calculations. If the Affected Owners cannot agree on a new ratio, the issue may be submitted to arbitration. Any new ratio shall be effective as of the first day of the calendar year with respect to which such allocation has been recalculated, but in no event earlier than January 1 of the calendar year in which the allocation has been recalculated and agreed upon (or the January 1 of the prior calendar year if Notice has been given within the 45-day period after expiration of such prior calendar year as required above), unless the parties elect a later effective date. The Owners shall use reasonable efforts to make all required adjustments in ratios only once each calendar year. Such agreement on any new ratio shall be in writing and if the Affected Owners so elect, may be recorded with the Recorder. Recalculation of ratios under this **Section 4.11** shall be obligatory and binding; provided, however, that recalculation from the ratio in effect shall not be made (unless the Affected Owners agree) if the area factor in the numerator or denominator used in calculating the allocation in any of **Exhibits 4.1(a), 4.1(b), 4.1(c), and 4.1(f)**

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would be increased or decreased by less than ten percent (10%). Any dispute under this **Section 4.11** is subject to arbitration.

4.12 Conflicts With Other Provisions. The provisions of **Articles III, VIII and XII** control over the provisions of **Article IV** where such provisions are inconsistent with provisions of **Article IV**. The provisions of **Article IV** requiring any Owner to contribute to the Maintenance of Facilities do not supersede the provisions of **Articles III, VIII or XII** which would require a different allocation or payment of costs or use of a different source of funds.

## ARTICLE V

### INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS; ZONING; PARKING

5.1 Indemnity by Owners. Each Owner (hereinafter in this **Section 5.1**, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owners (hereinafter in this **Section 5.1**, collectively the "Indemnitee") from and against any and all claims including any actions or proceedings, against Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Parcel, Building, Property, Facilities or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement or Facility, and from and against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding by reason of any such claim. Each Indemnifying Owner, upon Notice from Indemnitee, covenants to defend such action or proceeding with attorneys reasonably satisfactory to Indemnitee. Any counsel for an insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee.

5.2 Liens. Each Owner ("Liening Owner") shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien arising by reason of its act or acts of its agents and contractors or any work or materials which it or its agents or contractors has ordered (a) on the Other Owners' respective portions of the Building or Property or Parcel, or (b) on its own portion of the Building or Property, if the existence or foreclosure of such lien on its own portion of the Building or Property or Parcel would adversely affect any Easement or Facility benefiting any other Owners (which, along with the Owners described in **Section 5.2(a)** are referred to as "Impacted Owners") or any services required to be furnished to Impacted Owners pursuant to **Article IV** hereof. The Liening Owner shall not be required to remove such lien within thirty (30) days after its filing if, within such thirty (30) day period, the Liening Owner (i) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written Notice to the Impacted Owners of its intention to contest the validity or amount of such lien and (ii) shall deliver to the Impacted Owner either, at the Impacted Owner's option: (A) cash or a surety bond from a responsible company acceptable to the Impacted Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such

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greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim, or (B) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner. In any case, a Liening Owner must remove or release such lien prior to its foreclosure. In the event the Liening Owner fails to comply with the foregoing provisions of this **Section 5.2**, the Liening Owner shall become a Defaulting Owner, and the Impacted Owners shall become Creditor Owners. The Creditor Owners may take such action as the Creditor Owners may deem necessary to defend against or remove such lien. The Creditor Owners shall be entitled to payment from the Defaulting Owner for all costs and expenses (including reasonable attorney's fees) paid or incurred by the Creditor Owners in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owners for such purposes and for any other damages from Defaulting Owner's breach under this **Section 5.2**.

## 5.3 Compliance With Laws. Each Owner:

(a) shall comply with all Laws if noncompliance by such Owner with respect to its portion of the Property, or any part thereof, or Facilities benefitting such Owner or areas for which such Owner has been granted an Easement would subject any Other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any Other Owner or for the Building itself or would jeopardize any Other Owner's rights to occupy or utilize beneficially its respective portion of the Property or any part thereof or Facilities or Easements benefitting such Other Owner, or would result in the imposition of a lien against any portion of the Property of any Other Owner; and

(b) shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Property, or any portion thereof, or the requirements of any insurance coverage on any Owner's portion of the Property, Easements or Facilities for the benefit of such Owner if noncompliance by it with respect to its respective portion of the Property, or any portion thereof, or Easements or Facilities for the benefit of such Owner would (i) increase the premiums of any policy of insurance maintained by any Other Owner or the premiums of any policy of insurance maintained by all Owners (unless the non-complying Owner pays all such increases), or (ii) render any Other Owner's portion of the Property, Easements or Facilities for the benefit of such Owner uninsurable, or (iii) create a valid defense to any Other Owner's right to collect insurance proceeds under policies insuring such Other Owner's portion of the Property, Easements or Facilities for the benefit of such Owner; provided further, however, that if such compliance is hereafter required solely because of the nature of the use, possession and management of or activities in the Other Owner's portion of the Property, Easements or Facilities benefitting such Other Owner, such Other Owner shall be liable for the costs and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance, and such failure to proceed shall adversely and materially affect the Other Owner, then such Other Owner shall become a Creditor Owner and the Owner not complying shall become a Defaulting Owner and the Creditor Owners may give written Notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration

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of ten (10) days after the receipt of such Notice, any such cure of the noncompliance is still not proceeding diligently, then the Creditor Owners may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owners shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owners in connection with causing any such compliance to occur.

## 5.4 Zoning; Use.

(a) Without limiting the provisions of **Section 5.3(a)**, no Owner shall (i) make any Alterations, (ii) allow any use of their respective portions of the Building, or (iii) take or fail to take any action which would violate the provision of the Chicago Zoning Ordinance or the PUD, as said ordinances may be amended from time to time.

(b) The Owners agree that the Gross Floor Area of the improvements which may at any time be constructed on their respective Parcel shall not exceed the Gross Floor Area of such Parcel provided for in the Plans as of the date of this Declaration, and that the use of their respective Parcels shall not be changed in a manner to affect the use of any other Parcel or any other property under the PUD. The Condominium Owner and the Residential Owner agree that the Condominium Parcel and the Residential Parcel, in the aggregate, shall contain no more than 630 residential units. No other change of any Parcel which violates the PUD shall be permitted.

(c) Applications for variations in the application of the provisions of the Chicago Zoning Ordinance and PUD applicable to the Property which conform to the restrictions contained in **Section 5.4(b)** above and do not change the permitted use under such ordinances or this Declaration, may be filed and processed solely by the Owner or Owners of the portion of the Parcels directly affected by such application and shall not require the joinders of an Other Owner or the Other Owners.

(d) Each Owner shall execute such applications or other instruments as may be necessary to obtain any zoning variation or amendment conforming with the provisions of this **Section 5.4**; provided, however, the Owner requesting such zoning variations or amendment shall indemnify and hold harmless the Other Owners from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the Other Owners' execution of such applications or other instruments. If any Other Owner fails to execute said applications or instruments when required hereunder to do so, the Other Owner requesting such zoning variation or amendment is hereby irrevocably appointed attorney-in-fact for such Other Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such Owner.

(e) The Condominium Owner and the Residential Owner may not use the Condominium Parcel and the Residential Parcel, respectively, for any use other than residential purposes and uses ancillary to residential purposes.

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(f) The Declarant or its affiliates are the owners of other property located within the PUD. Without the prior written consent of the Declarant, no Owner shall suffer or permit any expansion or change of use of its respective Parcel or portion thereof which would affect the size of the improvements or the nature of the use permitted on any other land subject to the PUD.

5.5 Parking. Subject to the rights of the Condominium Owner and the Residential Owner, the Garage Owner shall: (a) provide parking to the Retail Owner for up to eight hundred (800) automobiles within the Garage Parcel at all times during hours when the Retail Parcel is open to the public for business; and (b) at all times provide to the Hotel Owner parking for up to sixty-five (65) automobiles within the Garage Parcel. The Retail Owner and the Hotel Owner may extend their rights to parking under this Section 5.5 to their Permittees patronizing the Retail Parcel or Hotel Parcel. Such parking shall be available at rates and terms comparable to those charged for parking for businesses in the vicinity of the Building. The Garage Owner will reasonably cooperate with the Retail Owner and the Hotel Owner to establish a parking validation program for each Owner's Permittees, if requested by such Owner. The nominees of the Condominium Owner and the Residential Owner shall have the first right to rent on a monthly basis up to six hundred twenty (620) parking spaces. The Garage Owner shall attempt to have a separate area in the Garage Parcel designated for use by such nominees. Such nominees shall be charged the normal rates charged to other monthly parkers in the Garage Parcel, or, if there are no other monthly parkers in the Garage Parcel, at rates not in excess of the rates charged for monthly indoor parking in the area. A key card or similar entry system shall be provided for such nominees using monthly parking.

Garage Owner shall reserve up to one hundred forty-seven (147) parking spaces (of the 620 parking spaces so allocated to the nominees of the Condominium Owner and Residential Owner), one identified space for each such nominee of the Condominium Owner and Residential Owner for which an identified space is requested. Such users shall be charged the normal rate charged to other monthly parkers in the Garage Parcel, or, if there are no other monthly parkers in the Garage Parcel, at rates not in excess of the rates charged for monthly indoor parking in the area. A key card or similar entry system shall be provided for such identified space nominees using monthly parking.

## ARTICLE VI

### REAL ESTATE TAXES & CCEMA OBLIGATIONS

6.1 Separate Assessment. By reason of the filing of the Plat of Subdivision, it is expected that with respect to the real estate taxes assessed for the year 2002 and subsequent years, each Parcel will have one or more separate tax parcels which will not include any portion of any Other Parcel. If at any time there are not separate tax bills but there is a separate assessed valuation determinable based on an examination of the Assessor's records (but not a separate tax bill or bills) for each of the five (5) Parcels, real estate taxes for any combined Parcels shall be allocated between the Parcels based on the ratio of the assessed valuation for such Parcels. Each Owner shall pay the real estate taxes levied upon its Parcel during any period when its Parcel is separately assessed and taxed.

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6.2 Taxes. For purposes of this Declaration and any other documents or instruments, such as leases, which refer to the allocation of real estate taxes pursuant to this Declaration, the real estate taxes allocated to a portion of the Property or Parcel shall mean those taxes assessed and payable with respect to such portion of the Property or Parcel, as long as such portion of the Property or Parcel is separately assessed and taxed. If not separately assessed and taxed, except as provided in **Section 6.1**, the taxes for the entire Property shall be allocated in accordance with the following percentages:

Hotel Parcel:	21.07%
Retail Parcel:	16.95%
Garage Parcel:	22.99%
Condominium Parcel/Residential Parcel:	38.99%

If some, but not all, of the Parcels are separately assessed, the remaining Parcels shall share the common tax bills *pro rata* in accordance with each such Parcel's relative percentage above. If only a portion of a Parcel is separately assessed, the tax bill for portion shall be added to the common tax bills and the total shall be shared by those Parcels which are not totally separately assessed *pro rata* in accordance with each such Parcel's percentages above.

6.3 Failure to Pay Taxes. If a Defaulting 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 VI**, and if such unpaid tax or charge is a lien or encumbrance on any portion of the Property and any lawful authority would thereafter have the right to sell or otherwise foreclose against any portion of the Property owned by any Other Owner or to impair or extinguish any Easement benefitting any Other Owner by reason of such nonpayment, then the Creditor Owner or Creditor Owners may, after ten (10) days 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 the Creditor Owners for the amount so paid plus interest thereon at the rate specified in **Section 9.4**. The Creditor Owner shall have all rights with respect thereto under **Article IX**.

6.4 CCEMA Obligations. Each Owner shall pay all amounts assessed by the CCEMA to such Owner or such Owner's Parcel pursuant to the Declaration of Protective Covenants, Conditions and Restrictions for CityFront Center East, Chicago, Illinois, dated August 31, 1989, which was recorded in the Office of the Recorder on August 31, 1989 as Document No. 89410218, as subsequently amended.

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## ARTICLE VII

### INSURANCE

#### 7.1 Insurance Coverage.

(a) Public Liability. Each Owner shall (1) insure against public liability claims and losses on a commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the portion of the Building owned by it, or as a result of operations thereon (including contractual liability covering obligations created by this Declaration, including, but not limited to those indemnity obligations contained herein), and (2) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage in such amounts as may be required by law and as may from time to time be carried by prudent owners of first-class commercial or residential buildings (as the case may be) in the City of Chicago, Illinois, but in all events for limits, as to each Owner and its portion of the Building, of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with an amount of not less than \$25,000,000 umbrella coverage. Each such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds.

(b) Property and Casualty Insurance. Each Owner shall keep the portion of the Building owned by it and all Facilities located therein insured for no less than ISO "Special Form" coverage for one hundred percent (100%) of the actual full replacement cost thereof. Each Owner shall separately insure on an ISO "Special Form" basis its loss of rental income or use caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts and with such deductibles as may be carried by prudent owners of first-class commercial or residential buildings (as applicable) in the City of Chicago, Illinois, and shall pay all premiums for such coverage. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal.

(c) Boiler and Machinery. The Owners shall jointly insure their boiler and machinery risks, on a comprehensive, blanket basis covering all Building equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air-conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis for not less than \$25,000,000 limit each accident and also providing coverage as to each Owner in accordance with its own needs for loss of rental income or use caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts as may be carried from time to time by prudent owners of first-class commercial or residential buildings (as the case may be) in the City of Chicago, Illinois. Alternatively, each Owner may separately insure its loss of rental income or use.

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(d) Flood and Earthquake. The Owners, in addition to "all risk" property insurance required under **Section 7.1(b)**, shall each insure their respective portions of the Building against earthquake, flood risks and sewer back-up in an amount equal to the replacement cost thereof or such lesser amount as then may be reasonably available in the insurance market, both subject, however, to deductibles available in the insurance market: both subject, however, to deductibles available and reasonable for such types of insurance.

(e) Builder's Risk. Each Owner shall carry "all risk" builders risk insurance (including loss of income and "soft costs") for not less than the completed value of the work then being performed by such Owner or Owners under **Section 8.3** or **8.4** or for any Alterations which require another Owner's consent under **Section 13.1**. Such insurance shall include coverage for items stored off-site and items in transit for an amount sufficient to cover fully any loss. Loss of rental income or use and "soft costs" occurring during the period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of first class commercial or residential buildings (as the case may be) in the City of Chicago.

(f) Worker's Compensation. Each Owner shall carry worker's compensation insurance in amounts as required by law and employer's liability insurance in not less than the following amounts: bodily injury by accident, \$500,000 each accident; bodily injury by disease, \$500,000, each employee; bodily injury by disease, \$1,000,000 policy limit.

7.2 Insurance Companies. Unless each Owner and First Mortgagee otherwise agrees in writing with respect to each insurance policy required in **Sections 7.1(b)**, **7.1(c)**, **7.1(d)** and **7.1(e)** (for work being performed under **Section 8.4**), the interest of all Owners shall be jointly insured under the same policy for each such risk insured. For each such insurance policy covering the Owners jointly, the Owners shall apportion the premium based on the manner in which the insurance company has underwritten the risks. If each Owner and First Mortgagee consents to the issuance of separate policies for each Owner for one or more such risks, such separate policies covering the same risk shall nevertheless be issued by the same insurance company and shall be coordinated so that there are no gaps in coverage as evidenced by the insurance company's agreement that the entire Building will be covered for such risk among the Owners' separate policies. The Owners will consult with one another at least annually (and may retain a consultant to advise them (the cost of employing such consultant to be shared in the same manner as provided in **Section 7.4**) concerning the advantage and disadvantages to each Owner and the Building as a whole) of separate insurance policies as opposed to joint policies. In the event the Owners cannot agree upon the insurance companies to provide the insurance required under **Sections 7.1(b)** and **7.1(e)**, or in the case of a joint policy any Owner disagrees with the apportionment of the insurance premium, the question of selection of an insurance company or apportionment of a premium shall constitute an Arbitrable Dispute. A sum equal to 4.58% of the Retail Parcel's portion of the cost of the insurance required under **Section 7.1** shall be attributed to the cost of insuring the Loading Docks. This cost shall then be allocated between the Retail Owner and the Hotel Owner such that the total cost to insure the

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Loading Dock by the Retail Owner shall be borne 44.57% by Retail Owner and 55.43% by Hotel Owner. If the Hotel Owner disagrees with such allocation, such allocation shall be an Arbitrable Dispute. Insurance policies required by **Section 7.1** hereof shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current Policyholder's Alphabetic and financial Size Category Rating of not less than A/XIV (or such lesser rating as the Owners and Mortgagees may agree) according to *Best Insurance Reports* or a substantially equivalent rating from a nationally-recognized insurance rating service.

7.3 Insurance Provisions. Each policy described in **Section 7.1** hereof: (i) shall provide that the 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 part under any such policy; (ii) shall insure as "named" insureds each Owner (except that the Owners other than the primary insured shall be "additional" insureds under policies described in **Section 7.1(a)**) **Section 7.1(a)**; (iii) shall provide (except for liability insurance described in **Section 7.1(a)**, for which it is inapplicable) by endorsement or otherwise, that the insurance shall not be invalidated; should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and do not unreasonably increase the premiums for such policy; (iv) shall provide, except for liability insurance required by **Section 7.1(a)** and Workers Compensation insurance under **Section 7.1(f)**, that all losses payable thereunder shall be paid to the Depository in accordance with the terms of **Article XV** hereof unless the Owners otherwise agree, subject to the consent of the First Mortgagees; (v) shall provide for a minimum of thirty (30) days' advance written notice of the cancellation, nonrenewal or material, modification thereof to Mortgagees and all insureds thereunder; (vi) shall include a standard mortgagee endorsement or loss payable clause in favor of the First Mortgagees reasonably satisfactory to them; and (vii) shall not include a co-insurance clause. Unless otherwise specified herein, the "all-risk" form of property-related insurance required to be procured and maintained by the Owners shall provide no less coverage (with the exception of deductible amounts) than the standard form of insurance currently promulgated by the Insurance Services Office, its successor, or other substantially similar insurance organization having responsibility for the design and publication of standardized insurance coverage forms for use by the insurance industry.

7.4 Limits of Liability. Insurance specified in this **Article VII** or carried by the Owners shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than annually (unless there is a substantial change in the Building or operations conducted in the Building), 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 the financial responsibility of the insureds, and to determine whether such limits, deductible amounts are 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. Initially, deductible amounts for insurance required

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under **Section 7.1(a)** (other than rent loss and business interruption insurance), **Section 7.1(c)**, **Section 7.1(d)** and **Section 7.1(e)** shall not exceed \$250,000. Deductible amounts for insurance required under **Section 7.1(a)** shall not be more than is reasonable considering the financial responsibility of the insured and shall also be subject, in any case, to the consideration to be given deductible amounts described above in this **Section 7.4**. Where separate policies are issued under **Section 7.1(b)** or **7.1(e)**, then deductibles shall be the same, if reasonably possible. Limits of liability may not be less than limits required by First Mortgagees, notwithstanding amounts set forth above in this **Article VII**. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said review and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration; provided, that no agreement regarding a decrease in limits of liability, increase in deductible amounts or elimination of any types of coverages shall be effective without the written consent of the First Mortgagees. With the consent of all the Owners, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such Consultant shall be shared by the Owners in the ratio their annual insurance premiums for joint policies of insurance required or provided for hereunder bear to each other.

7.5 **Renewal Policies.** Copies of all renewal insurance policies or binders with summaries of coverages afforded and evidencing renewal shall be delivered by each Owner to the other Owners and to the First Mortgagees at least ten (10) days prior to the expiration date of any such expiring insurance policy. Binders shall be replaced with certified full copies of the actual renewal policies as soon as reasonably possible. Should an Owner fail to provide and maintain any policy of insurance required under this **Article VII** or pay its share of the premiums or other costs for any joint policies, then the Other Owners may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten days after the Creditor Owner's written demand therefor.

7.6 **Waiver.** 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 benefitted 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 the Other Owners 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 collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies plus any deductible amounts.

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## ARTICLE VIII

### MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

8.1 Maintenance. Except as expressly provided in **Section 4.1** hereof (and the Exhibits related to such Section) relating to Maintenance of certain Facilities and areas of the Property or hereinafter in this **Article VIII** in the event of fire or other casualty, and except as provided in and without limiting or diminishing such Owner's obligations under **Article III**, each Owner shall, at its sole cost and expense, maintain and keep such Owner's Parcel, including all Facilities located therein (other than Facilities solely for the benefit of Other Parcels, and except as otherwise required by **Article IV**), and the respective portions of the Facilities which benefit such Owner, 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 order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Each Owner shall also be responsible for maintenance of Facilities where such obligation is specifically stated in **Section 4.1**. Each Owner further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to its property.

8.2 Damage Affecting Only One Owner. If any portion of the Building is damaged by fire or other casualty and if (and to the extent) such damage occurs within one Parcel and if (and to the extent) such damage (i) does not adversely affect the use or operation of the other Parcels for their respective intended purposes, (ii) does not deprive an Other Owner of the benefit of any Easement granted to such Other Owner by this Declaration, or any Facility for the benefit of such Other Owner or any service to be performed for the benefit of such Other Owner, (iii) does not adversely affect the physical appearance of the exterior of the Building, and (iv) does not constitute a nuisance or an unreasonable risk of damage to any Persons or to property not owned by the Affected Owner, then any such damage may, in the Affected Owner's sole discretion, be repaired and restored by the Affected Owner (a "Permissive Repair"). Repair and restoration under this **Section 8.2** shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the Other Owners' consent for such repair or restoration if such consent would not otherwise be required under **Article XIII**, and if **Section 13.1(b)** shall not apply.

8.3 Damage Affecting Multiple Owners. If the Building is damaged by fire or other casualty and if the provisions of **Section 8.2** hereof are not applicable because the nature of the damage is such that it has occurred with respect to more than one Parcel or one or more criteria (i) through (iv) of Section 8.2 are not satisfied, then, to the extent such damage does not fall within the parameters described in **Section 8.2**, the repair and restoration of only that portion of such damage which does not fall within **Section 8.2** shall be the joint responsibility of the Affected Owners and failure to perform such repair or restoration shall constitute an Arbitrable Dispute. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and



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shall be performed on behalf of the Affected Owners by a contractor or contractors jointly selected by the Affected Owners, which selection shall be subject to the approval of their First Mortgagees if the approximate cost of the repair and restoration is greater than \$500,000.00 (in 2001 equivalent dollars). Participation by an Affected Owner in selecting an Architect or contractor shall be limited to the selection of the Architect preparing plans and specifications for, and the contractor performing repair or restoration of, its affected portion of the Property or the Facilities serving such Affected Owner. In the event the Affected Owners, and their First Mortgagees, if required, fail to agree upon the selection of a contractor or contractors, the Affected Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Affected Owners and their First Mortgagees still cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be an Arbitrable Dispute. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Affected Owners otherwise agree upon another person or entity to prepare them, subject to the approval of their First Mortgagees, in accordance with instructions given by all Affected Owners. Such plans and specifications shall provide for the damaged portion of the Building to be rebuilt as nearly identical as commercially practicable to the damaged portion of the Building as constructed prior to the event of casualty unless prohibited by law, or unless the Affected Owners otherwise agree, subject to the approval of their First Mortgagees and subject to the consent of the Other Owners unless not required under **Section 13.1(b)**. The Architect (or other architect or engineer preparing the plans and specifications) shall furnish to each of the Affected Owners, and their First Mortgagees, a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Affected Owners otherwise agree (subject to the approval of their First Mortgagees if the approximate cost of the repair and restoration is greater than \$500,000 in 2001 equivalent dollars) any contractor or contractors shall work under the supervision of the Architect (or other architect or engineer preparing the plans and specifications), and the Architect (or other architect or engineer preparing the plans and specifications) is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Affected Owners and their First Mortgagees, as such repair and restoration progresses, to disburse in accordance with **Article XVI** hereof, the insurance proceeds (including deductible amounts) held by the Depository and any other monies deposited with the Depository pursuant to **Section 8.4** hereof for application against the cost and expense of any such repair and restoration.

8.4 **Shortfall.** If the cost and expense of performing any repair and restoration provided for in **Section 8.3** hereof shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage, including deductible amounts ("Shortfall"), then such excess cost and expense (or the entire amount of such cost and expense, if there are no insurance proceeds) shall be borne by the Affected Owners responsible as follows: with respect to Facilities or Easements the cost of the Maintenance of which is borne by more than one Owner, in such proportion as such costs are allocated until such costs are recouped; and in all other cases, in proportion to the cost and expense of repairing and restoring to their former condition their respective portions of the Building. Notwithstanding the foregoing, if an Owner has not carried the insurance required under **Article VII** and, therefore, is a Defaulting Owner, then such Defaulting Owner shall deposit with the Depository an amount equal to the costs and expenses of such repair or restoration not covered by insurance which another Owner is obligated to pay which would not have been payable by such Owner if

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proper insurance had been carried by the Defaulting Owner to the extent of the amount which would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

8.5 Costs. An Affected Owner who performs a repair or restoration permitted or required pursuant to this **Article VIII** shall, in accordance with the provisions of **Article XVI** hereof, be entitled to withdraw any insurance proceeds (including deductible amounts) held by the Depository by reason of the applicable damage, for application to the cost and expense of the repair and restoration of any such damage. For purposes of this **Article VIII**, architects' fees, engineers' fees, attorneys' 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.

8.6 Restoration of Condominium Property. To the fullest extent permitted by law, the provisions of **Article VIII** of this Declaration shall be controlling over the provisions of the Condominium Act or Condominium Declaration insofar as the provisions of the Condominium Act or the Condominium Declaration limit (i) the obligation of the Unit Owners to repair or restore the Condominium Property or (ii) the use of insurance proceeds for repair and restoration of the Condominium Property. In the event of fire or other "disaster" (such term being used in the Condominium Act) causing damage to the Condominium Property which would entitle the Condominium Owner, under the Condominium Act or Condominium Declaration, not to repair and restore the Condominium Property as required by this Declaration or not use insurance proceeds for repair and restoration of the Condominium Property, should a final non-appealable order of a court of competent jurisdiction determine that the Condominium Owner is not required to repair and restore the Building, and use the insurance proceeds therefore, as required by **Section 8.2** and **8.3**, then prior to disbursement of any insurance or other proceeds to Unit Owners and no later than ninety (90) days after occurrence of the fire or other disaster in any event, if affirmative action and provision has not been taken by such date by the Condominium Owner to repair and restore the Condominium Parcel, the Condominium Owner shall pay the Other Owners an amount necessary so that the Other Owners shall have sufficient proceeds to demolish or repair and restore the Building to a condition so as adequately to assure:

- (a) the structural integrity and safety of the Building;
- (b) the continuous and efficient operation of Facilities and Easements benefitting the Other Parcels and all Building electrical, utility, mechanical, plumbing and other systems, Easements and Facilities serving the Other Parcels; and
- (c) the architectural unity and aesthetic appearance of the restored Building as first-class property.

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## ARTICLE IX

### LIENS, DEBTS, INTEREST AND REMEDIES

9.1 Failure to Perform. If, at any time, any Owner fails within forty-five (45) days after Notice or demand to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Declaration (thereby becoming a Defaulting Owner), then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) a lien against the portion of the Building or Property owned by the Defaulting Owner, and for a default under **Article VIII**, (ii) a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Building or Property or otherwise under insurance policies carried pursuant to **Article VII** hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this **Article IX**. If at any time an obligation arises under **Section 8.3** on the part of the Condominium Owner, then, in addition to any other rights or remedies any Other Owner may have, such Other Owner shall become a Creditor Owner and shall immediately have the liens described above to secure payment of amounts payable by the Condominium Owner (who shall be deemed a Defaulting Owner), notwithstanding that the time period for payment has not yet expired. Such liens shall arise immediately upon the recording of a Notice by the Creditor Owner with the Recorder and after default in any required payment, may be enforced by proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity or as provided for in **Section 9.2**. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon in accordance with **Section 9.4** ("Default Amount") shall have been paid in full. A Creditor Owner's liens provided for in this **Section 9.1** shall be superior to and take precedence over any mortgage, trust deed or other encumbrance (including a mortgage or trust deed on a Condominium Unit) other than a Prior Lien (hereinafter defined) constituting a lien on the portion of the Building or Property owned by the Defaulting Owner; provided, however, the lien securing amounts payable to the Creditor Owner under **Section 8.6** shall be superior to and take precedence over any mortgage, trust deed or other encumbrance (other than the RBOS Mortgage to the extent of that portion of the Property it encumbers) constituting a lien on the Condominium Property or any portion thereof, including any Condominium Units and their percentage interest in the common elements, whether or not a Prior Lien. "Prior Lien" means a First Mortgage (including a mortgage or trust deed on a Condominium Unit) which has been recorded against the Building, Property or Parcel, or against a portion of either prior to the time of the recording of the Creditor Owner's Notice of lien and shall in all cases, prior to the release thereof as to the Property, include the Mortgage described in the Consent of Mortgagee hereto (the "RBOS Mortgage").

9.2 No Diminution of Lien. No conveyance or other divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this **Article IX**) shall in any way affect or diminish any lien arising pursuant to this **Article IX** had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien which is superior to a lien arising under this **Article IX**). Further, if at any time after the Condominium Parcel or a portion thereof has been submitted to the Condominium Act, the Creditor Owner has recorded a Notice of lien under

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**Section 9.1** of this Declaration against a Condominium Unit which is not encumbered by the RBOS Mortgage, which lien has not been foreclosed, released, or satisfied in full, and if such Condominium Unit is thereafter sold, then the Creditor Owner, shall be entitled to receive from the proceeds of sale of such Condominium Unit the lesser of (a) an amount sufficient to satisfy that portion of the unpaid Default Amount for which such Unit Owner is liable, as provided in **Section 21.13**, and (b) the entire proceeds from the sale of such Condominium Unit. The Creditor Owner shall notify the Association of the recordation, foreclosure, release or satisfaction of liens against Condominium Units. The Association shall notify the Creditor Owner in advance of any sale of a Condominium Unit known to the Association against which such lien exists, and the Creditor Owner shall issue an Estoppel Certificate under **Section 14.1** of this Declaration.

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

9.4 Interest Rate. Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by Bank One at Chicago, Illinois or any successor thereto as its base or reference rate of interest or (b) the then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a base or reference rate is not announced or available, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

9.5 Cumulative Remedies. Subject to the limitations set forth in **Section 9.7** hereof, the rights and remedies of an Owner provided for in this **Article IX** 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. An Owner may enforce, by a proceeding in equity for mandatory injunction, another Owner's obligation to execute or record any document which such Other Owner is required to execute under or pursuant to this Declaration. The exercise by such 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.

9.6 No Set-Off. 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.

9.7 Period of Limitation. 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 accrued, or such other shorter period as may be provided by law or statute.

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9.8 Attorneys' Fees. A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration.

## ARTICLE X

### ARBITRATION

10.1 Disputes Subject to Arbitration; Arbitration Procedure. All questions, differences, disputes, claims or controversies arising among or between Owners under this Declaration:

(a) constituting a monetary claim involving an amount as to any one claim not exceeding \$100,000 (in 2001 equivalent dollars); or

(b) expressly made an Arbitrable Dispute or subject to arbitration under this **Article X** by the terms of this Declaration; or

(c) involving any of the following matters:

(i) selection of an insurance company or apportionment of insurance premiums under **Section 7.2** hereof;

(ii) appointment of a contractor or contractors pursuant to **Section 8.3** or **Section 12.4** hereof;

(iii) replacement of the Architect pursuant to **Section 17.3** hereof;

(iv) other failure to agree on a matter described in **Section 2.6, 4.7, 4.10, 4.11, 8.3, or 15.1** which this Declaration expressly requires the Owners or their First Mortgagees to jointly decide or agree upon;

(v) disputes arising generally under **Articles III, IV, VI, VII, VIII, or XIII**; or

(vi) matters otherwise not constituting Arbitrable Disputes but which are incidental to and not easily divisible from an Arbitrable Dispute being submitted to Arbitration,

which, with respect to any of such matters, shall not have been resolved by settlement after submission for consideration to the Owners' Association in accordance with **Article XIX**, and which shall otherwise be not resolved within sixty (60) days after such matter shall have arisen (or such other shorter or longer time period expressly provided herein), shall be submitted for arbitration to one (1) arbitrator at the Chicago, Illinois office of the American Arbitration Association in

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accordance with its then existing Commercial Arbitration Rules. Each Owner who is a party to the arbitration shall cause the arbitrator to be selected within seven (7) days, and proceedings shall commence within five (5) business days after selection of the arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules. In the case of disputes under **Section 10.1 (c)(i), (ii) or (iii)** above, or where the subject for arbitration is otherwise the joint selection or appointment of an individual, company or other entity to perform professional or other services, the decision of the arbitrator shall be limited to the individuals, companies and other entities proposed by the Owners in their attempt to agree, or from those included in an approved list submitted by the Owners. In the case of any other matter which the parties fail to agree upon which this Declaration expressly requires the Owners to jointly decide or agree upon, the decision of the arbitrator shall be limited to the terms (or a compromises of such terms) or within the scope of the terms proposed by each of the Owners in their negotiations of the issue. Any award issued by the arbitrator shall take into account and be consistent with any standards, terms or conditions contained in this Declaration expressly governing the subject of the dispute, except in those instances where the arbitrator is required to select an individual, company or entity from those selected by the Owners and none meets such standards, terms or conditions. Such arbitration may be initiated by any Owner. The Owner initiating arbitration shall notify the First Mortgagees of the filing of any injunctive relief in the arbitration. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne equally by the Owners involved in the arbitration; provided that the arbitrator may include in its award any of the fees and costs of arbitration. Any award of the arbitrator shall be final and binding upon the Owners and judgment thereon may be entered by any court of competent jurisdiction. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the rate set forth in **Section 9.4**.

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10.2 Monetary Adjustment (Equivalent Dollars). For purposes of this Declaration "2001 equivalent dollars" means the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2001. The 2001 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction (but not less than zero) (expressed as a percentage), the numerator of which is the difference obtained by subtracting (x) the Consumer Price Index for January, 2002 from (y) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for January, 2002. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, City of Chicago. All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

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## ARTICLE XI

### UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and as long as non-performance of such obligation shall be directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, unavailability of labor or materials to projects generally in the Chicago metropolitan area, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner applicable to projects generally in the Chicago metropolitan area (other than inability to make payment of money) ("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. However, if non-performance is due to an Unavoidable Delay which does not affect another Owner's self-help remedy which may otherwise be exercised for such non-performance, then notwithstanding such Unavoidable Delay, such Other Owner shall still be entitled to such remedy with respect to those obligations to have been performed by the Non-Performing Owner (hereinafter defined) which are the subject of Unavoidable Delay. The Owner unable to perform (hereinafter in this **Article XI** the "Non-Performing Owner") shall notify the Other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any Other Owner, keep such Other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

## ARTICLE XII

### CONDEMNATION

12.1 In General. In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Building or Property or any Parcel by any competent authority for any public or quasi-public use, the award, damages or just compensation thereafter in this **Article XII**, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Building shall be performed, in accordance with the requirements of this **Article XII**. The Owners shall cooperate with one another to maximize the amount of the Award.

12.2 Payment of Award to Depositary; Temporary Taking Awards. All Awards resulting from the taking of all or any part of the Building, Property or Parcel, other than damages resulting from a taking for a temporary use of such space as hereinafter described, shall be paid to the Depositary by the Owners regardless of the identity of Owner who received the Award and shall be disbursed by the Depositary as hereinafter provided. In the event of a taking for a temporary use of any space, not including Facilities or Easements, for the benefit of any Other Parcel or affecting services described in **Section 4.1** hereof, the Owner of the space so taken shall be entitled to receive

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directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Property.

12.3 Taking Affecting Only One Owner. If any portion of the Building is taken (other than a temporary taking) and if (and to the extent) such taking occurs within one Parcel and if (and to the extent) such taking (i) does not adversely affect the use or operation of the other Parcels for their respective intended purposes, (ii) does not deprive an Other Owner of the benefit of any Easement granted to such Other Owner by this Declaration or any Facility for the benefit of such Other Owner or any service to be performed for the benefit of such Other Owner, (iii) does not adversely affect the physical appearance of the exterior of the Building, and (iv) does not constitute a nuisance or an unreasonable risk of damage to any Persons or to property not owned by the Affected Owner, then such Affected Owner may, but shall not be obligated, to repair or restore that portion of its Parcel affected by such taking. Repair and restoration under this **Section 12.3** shall constitute Alterations, except that the Owner performing the repair and restoration shall not be required to obtain the Other Owners' consent for such repair or restoration if such consent would not otherwise be required under **Article XIII**, and if **Section 13.1(b)** does not apply.

12.4 Taking Affecting Multiple Owners. In the event of a taking other than (a) a temporary taking described in **Section 12.2** hereof, (b) a taking described in **Section 12.3** hereof, or (c) a taking of all or substantially all of the Building or Property, then, subject to the provisions of **Section 12.6** hereof, the Affected Owners shall cooperate to repair and restore the remainder of the Building in accordance with plans and specifications (hereinafter described) jointly approved by the Affected Owners and their First Mortgagees. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of all of the Affected Owners by a contractor or contractors jointly selected by the Affected Owners, except as hereinafter provided, and subject to the approval of their First Mortgagees if the approximate cost of repair and restoration is greater than \$500,000.00 in 2001 equivalent dollars. In the event the Affected Owners (with approval of their First Mortgagees, when required above) fail to agree upon the selection of a contractor or contractors, the Affected Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Affected Owners (with the approval of their First Mortgagees if required above) cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall constitute an Arbitrable Dispute. The approval of any Owner other than an Affected Owner (a "Non-Affected Owner"), and such Owner's respective First Mortgagees, shall not be required with respect to the plans and specifications therefor which do not materially affect any Non-Affected Owner and which do not constitute Alterations, nor shall the consent of any Non-Affected Owner, or its respective Mortgagee, be required with respect to the selection of a contractor. In such event, however, the Affected Owners shall consult with the non-Affected Owners (and their respective First Mortgagees, if the approximate cost of repair and restoration is greater than \$500,000 in 2001 equivalent dollars) regarding those matters. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Affected Owners shall otherwise agree in accordance with instructions given by all Affected Owners, all subject to the approval of their First Mortgagees, if required. Such plans and specification shall provide for repair and restoration of the remainder of



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the Building to form an architectural and functional whole with such changes in the Building as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for easements of access, ingress and egress and use of Other Parcels or Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under **Article II** hereof and for the furnishing of services under **Article IV** hereof. The Architect will furnish to each of the Owners (but only if, and to the extent, such Owner's approval is required) and their First Mortgagees if and only to the extent such First Mortgagees' approval is required, a set of such plans and specifications for their approval. Unless the Affected Owners otherwise agree (subject to the approval of their First Mortgagees, if the approximate cost of the repair and restoration is greater than \$500,000.00 in 2001 equivalent dollars), the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Affected Owners, as such repair and restoration progresses, to disburse, in accordance with **Article XVI** hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration. The failure of any Owner or its First Mortgagee to agree on any matter, render any consent or perform any act required or described in this **Section 12.4** shall constitute an Arbitrable Dispute.

12.5 Demolition. If, as a result of a taking (other than a temporary taking or a taking described in **Section 12.2** hereof), any Owner reasonably determines that its portion of the Building no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore its portion of the Building as may be required by **Sections 12.3** and **12.4** hereof. However, in such case, such Owner not repairing or restoring shall demolish, repair or restore its portion of the Building to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Building and appropriate provisions shall be made to provide for easements of access, ingress, egress and use of the Other Parcels, Easements and Facilities for the benefit of Other Owners and for furnishing of services comparable, to the extent commercially practicable to the Easements created under **Article II** hereof and for the furnishing of services under **Article IV** hereof. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of **Section 12.4** hereof are applicable.

12.6 Allocation of Award. In the event of a taking of all or substantially all of the Building or 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; provided, however, that the right of the Owners to receive any award and payment shall be subject to the provisions of **Section 16.3**.

12.7 Costs. An Affected Owner who performs a repair or restoration permitted or required pursuant to this **Article VIII** shall, in accordance with the provisions of **Article XVI** hereof, be entitled to withdraw any Awards held by the Depository by reason of a taking, for application to the cost and expense of the repair and restoration of any such taking. For purposes of this **Article VIII**, architects' fees, engineers' fees, attorneys' fees, title insurance premiums and other

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similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

## ARTICLE XIII

### ALTERATIONS

#### 13.1 Permitted Alterations.

(a) An Owner (hereinafter in this **Article XIII**, "Altering Owner") may, at any time, and at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this **Article XIII** "Alterations") to that part of the Building within such Altering Owner's portion of the Property, provided that such Alterations comply with all of the provisions of this **Article XIII**. Alterations shall include relocation or replacement of Facilities or Easements, which shall be permitted, subject to compliance with the conditions set forth in this **Article XIII**. The provisions of this **Article XIII** governing Alterations do not negate or diminish other provisions of this Declaration having to do with additions, improvements or alterations expressly required or permitted in **Articles III, IV, V, VIII and XII** hereof, which are governed by such provisions unless also designated in such **Articles** as "Alterations" to be governed by this **Article XIII**.

(b) Alterations shall not be made without the prior written consent of the Affected Owners if such Alterations will:

(i) during their performance or upon their completion, unreasonably diminish the benefits afforded to such Affected Owners by an Easement or Facility or unreasonably interrupt such Affected Owners' use or enjoyment of any Easement or Facility;

(ii) during their performance or upon their completion, degrade or diminish services to the Affected Owners under **Article IV**;

(iii) increase the costs or expenses for which any Affected Owner is or would be responsible pursuant to **Article IV** hereof;

(iv) alter the facade of the Building;

(v) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports.

(vi) affect Facilities or Easements for the benefit of any other Affected Owner or other than minimally or incidentally;

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(vii) necessitate the erection of additional columns, support walls or other structures upon or within any Other Parcel for the support of the Altering Owner's Parcel or any Other Parcel; or

(viii) constitute improvements and structures (other than fireplace flues) above, or increase the height of the Building above, any roof levels of the Building shown in the Plans or hereafter agreed to by the Owners subject to the limitations herein.

(ix) are likely to result in noise and vibration reasonably unacceptable to the affected Other Owners.

(c) If, at any time, the Altering Owner proposes to make any Alterations which require (in the Altering Owner's reasonable opinion or the reasonable opinion of any Other Owner) the consent of any Other Owners then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost shall deliver to such Other Owners (and if the cost of such alterations is reasonably expected to cost in excess of \$500,000, such delivery shall also be made to any Mortgagee with a lien encumbering such Other Owner's Parcel or any portion thereof) a copy of the plans and specifications showing the proposed Alterations, the schedule therefor, a statement of the times during the day such Alterations are to be performed and a reference to this **Section 13.1**. If such Other Owners consent to such Alterations, or do not respond within a reasonable time period after receipt of plans and specifications, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. Each Other Owner whose consent is requested will not unreasonably delay its response, keeping in mind the scope and complexity of the proposed Alterations, and in any event shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If, in the good faith opinion of any of the Other Owner, the Altering Owner has violated or will violate the provisions of **Section 13.1(a)** or **(b)**, then any such Other Owner (the "Objecting Party"), believing a violation exists or will exist, shall notify the Altering Owner of its opinion that the Alterations or proposed alterations violate or will violate the provisions of **Section 13.1(a)** or **(b)** hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of **Section 13.1(a)** or **(b)**, then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this **Section 13.1**, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation. An Altering Owner may also at any time, by Notice, request confirmation from the Other Owners, and their respective First Mortgagees, that their consent is not required with respect to proposed Alterations. Such Notice shall refer to this **Section 13.1(c)** of the Declaration and shall state that the recipient has ten (10) business days to respond by Notice and that if neither Owner nor such First Mortgagee respond by Notice to such Notice, the subject confirmation shall be deemed given. Based on such Notice, each recipient Owner, and its First

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Mortgagee shall respond by Notice to same within ten (10) business days after the date of the request. In the event that neither such Owner or its First Mortgagee respond by Notice prior to the expiration of such ten (10) business day period, then confirmation that no consent is required shall be deemed given.

(d) if any matter arises among the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of **Section 13.1(a)** or **(b)**, then any Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of **Section 13.1(a)** or **(b)** hereof.

(e) The Altering Owner, in making Alterations, shall (i) perform all work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all Laws, including, without limitation, the City of Chicago Building Code and (iii) comply with all of the applicable provisions of this Declaration. Each Altering Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Building, in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance which would disturb an occupant or occupants of the other portions of the Building, but such Altering Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to property) normally incidental to construction. The foregoing restriction on damages shall not restrict an Other Owner's right to seek and obtain injunctive relief from unreasonable disturbances, which shall not include normal construction activities in a mixed-use building. An Altering Owner may perform work during any hours permitted by Applicable Law. However, if requested by an Owner who would otherwise suffer unreasonable disturbance and who pays all costs associated with work at times other than normal business hours, including overtime and delay costs, the Altering Owner shall not unreasonably refuse to perform work outside normal business hours.

13.2 Building Permits. Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of the Other Owners in such application, unless the government agency having jurisdiction thereof requires joinder of the Other Owners. An Altering Owner shall send copies of any building permits to any Other Owner at such Other Owner's request. If joinder by the Other Owners not making Alterations is so required, said Other Owners shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the Other Owners 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. If any Other Owner fails to execute said application or instruments when required hereunder to do so, the Altering Owner is hereby irrevocably appointed attorney-in-fact of the Other Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such Other Owner.

13.3 No Liens. An Owner performing any work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the Parcels and agrees that any lien rights which the

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contractor or subcontractors have under the Mechanic's Lien Act set forth in 770 ILCS 60/0.01 et. seq. (said Act and any successors thereto, the "Mechanic's Lien Act") shall only be enforceable against that portion of the Building, the Parcel or Property owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 23 of the Mechanic's Lien Act in connection with giving Notice of such "no Lien" provision.

## ARTICLE XIV

### ESTOPPEL CERTIFICATES

14.1 Estoppel Certificates. Each Owner shall, from time to time, within ten (10) business days after written request from any Other Owner, any prospective transferee of such requesting Owner or any Mortgagee or prospective Mortgagee which has complied with the Notice provisions of **Section 21.12(b)** hereof, execute, acknowledge and deliver to the requesting party a certificate ("Estoppel Certificate") stating:

(a) That the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying such modifications:

(b) Whether, to the knowledge of the Owner executing the Estoppel Certificate, there is any existing default under this Declaration (or grounds therefor after giving the requisite Notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;

(c) Whether there are any sums (other than those arising out of the normal course of operation of the Building within the previous ninety (90) days) which the Owner executing such Estoppel Certificate is entitled under the provisions of this Declaration to receive or demand from the requesting Owner and if there is any such sum, specifying the nature and amounts thereof;

(d) Whether the Owner executing the Estoppel Certificate has performed or is performing work other than services pursuant to **Article IV** hereof, the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions of this Declaration, but has not yet charged to such requesting Owner, and if there be any such work, specifying the nature and extent thereof and the projected amount to be paid by the requesting Owner;

(e) The nature and extent of any setoffs, claims, counterclaims or defenses then being asserted or capable of being asserted (after giving the requisite Notice, if any, required thereunder), or otherwise known by the Owner, against the enforcement of the requesting Owner's rights hereunder;

(f) The total amount of all liens being asserted or capable of being asserted (after giving the requisite Notice, if any, required hereunder) by the Owner executing the Estoppel

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Certificate under the provisions of this Declaration describing the applicable provision or provisions and the details of any such lien claim;

(g) Whether the Owner executing the Estoppel Certificate has requested that a matter be submitted to arbitration, which matter has not been discharged, released or otherwise resolved, and if so, a copy of any such Notice or Notices shall be delivered with the Estoppel Certificate;

(h) Whether there has been any request for or recommendation of reallocation of costs pursuant to **Section 4.7** or a change in ratios under **Section 4.11** hereof which has not been included in any modification referred to in subsection (a) above, and if so, setting forth any such request or recommendation;

(i) The nature of any arbitration proceeding or finding under **Article X** made within the ninety (90) days preceding the date of such Estoppel Certificate;

(j) The current address or addresses to which Notices given to the Owner executing such Estoppel Certificate are required to be mailed under **Article XVIII** hereof; and

(k) Such other facts or conclusions as may be reasonably requested.

At any time a portion of the Condominium Parcel has been submitted to and remains subject to the Condominium Act, Estoppel Certificates may only be requested by the Association and not a Unit Owner (except that in connection with a sale or financing of a Condominium Unit or other transaction involving a Condominium Unit in the Condominium Parcel, the Association may request an Estoppel Certificate on behalf of a Unit Owner and such Estoppel Certificate need only include the items under subsections (b) and (f) (and in the case of subsection (f), as to the Condominium Unit only); and Estoppel Certificates requested of the Condominium Owner as to that portion of the Condominium Parcel submitted to the Condominium Act shall be given by the Association and shall bind all Unit Owners. If the requesting party is a Mortgagee or prospective Mortgagee, the Owner on whose property it holds or intends to hold a Mortgage will be deemed the "Requesting Owner." If the requesting party is a prospective transferee of an Owner, such Owner will be deemed the "Requesting Owner."

## ARTICLE XV

### DEPOSITARY

15.1 Appointment of Depositary. A depositary ("Depositary") shall be appointed in the manner hereinafter provided to receive insurance proceeds and condemnation Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. The Depositary shall be appointed by the Affected Owners jointly (in the event of insurance proceeds or condemnation awards expected to exceed \$500,000, subject to the consent of First

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Mortgagees of such Affected Owners) within a reasonable time after the insured loss or damage or the commencement of an eminent domain proceeding, and shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois. The Depository shall be entitled to receive from each of the Affected Owners for whose benefit the monies are being held, said Affected Owner's equitable share of the Depository's reasonable fees and expenses for acting as Depository, and may retain said fees and expenses, free of trust, from monies held by it. Any Depository appointed to act hereunder shall execute an Agreement with the Affected Owners accepting said appointment and agreeing to perform the duties of the Depository hereunder and containing provisions for the orderly performance of its duties hereunder. In the case of any insurance awards or condemnation proceeds expected to exceed \$500,000, the agreement shall be in form and content reasonably acceptable to the First Mortgagees of the Affected Owners. In addition, any such First Mortgagee may request that the funds deposited with the Depository be held in an account subject to a collateral security agreement in favor of all such First Mortgagees, in form and substance reasonably acceptable to such First Mortgagees and otherwise consistent with the terms of this Declaration. Such collateral security agreement shall provide, in the case of funds to be used for repair or restoration, that funds may be withdrawn from the account only in accordance with the disbursement procedures set forth in **Article XVI**. Such collateral security agreement shall also contain such other terms as may be required in order for such First Mortgagees to have a perfected security interest in such account and the funds deposited therein.

15.2 Liability of Depository. The Depository shall not be liable or accountable for any action taken or disbursement made in good faith by the Depository, except that arising from its own negligence. The Depository's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. 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 Affected Owners; provided that if less than all of the Affected Owners are entitled to said insurance proceeds or condemnation Award or Awards, then such Owners may authorize the Depository to so proceed. In addition, the Depository may rely conclusively on any certificate furnished by the Architect to the Depository in accordance with the Provisions of **Section 16.1** hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

15.3 Interest on Deposited Funds. The Depository shall have no obligation to pay interest on any monies held by it unless the Depository shall have given an express written undertaking to do so; or, unless all of the Affected Owners for whose benefit monies are being held have requested, and the First Mortgagees of said Affected Owners have concurred, in connection with a specified deposit of funds with the Depository, that the Depository undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depository and such Affected Owners and the First Mortgagees of such Affected Owners, then the Depository, within thirty (30) days after request from any of Affected Owner given to the Depository

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and to the other such Owners and First Mortgagees, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would be, in the good faith judgment of the Depository, 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 funds and shall be held by the Depository in trust for the uses and purposes herein provided. If requested by any First Mortgagee with respect to any investment which is not a demand deposit, suitable arrangements shall be made to insure that each First Mortgagee of an Affected Owner has a perfected security interest in the investment.

15.4 Indemnification of Depository. In consideration of the services rendered by Depository, the Affected Owners, jointly and severally hereby agree to indemnify and hold harmless the Depository from any and all damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Depository's duties hereunder or in the defense of any claim or claims made against Depository by reason of its appointment hereunder, except where due to the negligence of the Depository or actions not taken in good faith by the Depository.

15.5 Resignation of Depository. The Depository may resign by serving not less than sixty (60) days prior written Notice on all of the Affected Owners and their respective First Mortgagees. Within thirty (30) days after receipt of such Notice, the Affected Owners jointly, with the consent of their First Mortgagees, shall appoint a substitute who qualifies under **Section 15.1** hereof, 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 Affected Owners shall fail to appoint a substitute within said thirty (30) days, 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 15.1** hereof.

## ARTICLE XVI

### DISBURSEMENTS OF FUNDS BY DEPOSITARY

#### 16.1 Disbursement Requests.

(a) Each request by the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds or any Award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the Architect or such Affected Owner or another Person having knowledge of the facts reasonably



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acceptable to the other Affected Owners and their First Mortgagees, dated not more than ten (10) days prior to the date of the request for any such disbursement, stating the following in its professional judgment based on periodic observations of the Work:

(i) That the sum requested has either (A) been or will be paid by or on behalf of an Affected Owner (in which event the certificate shall name such Affected Owner) or by or on behalf of more than one or all of the Affected Owners (in which event the certificate shall specify the amount paid by each respective Affected 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 Mechanics' Liens Act and any title insurer affording coverage against mechanics' 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;

(iii) That no part of 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) Other information which may from time to time be required by the First Mortgagees which is customarily required by mortgagees of comparable first class residential or commercial buildings, as may be agreed to by Affected Owners.

(b) Upon:

(i) compliance with the provisions of **Section 16.1(a)**, and

(ii) 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 mechanics' liens from the persons named in the sworn statement, and

(iii) approval by the title insurer, the Affected Owners and the First Mortgagees of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to the Affected Owners and the First Mortgagees) insuring over possible mechanics' lien, claims relating to work in place and the continued priority of the liens in favor of the First Mortgagees,

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the Depository shall, out of the monies so held by the Depository, pay or cause to be paid to the Affected Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect'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 Affected Owners or the First Mortgagees or the Depository may require that disbursements be made through the usual form of construction escrow then in use by the major title insurers 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 Architect to the Depository in accordance with the provisions of this **Section 16.1** and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

16.2 No Lien or Consent by Contractor. No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the Affected Owners and the First Mortgagees, shall have any interest in or right to any funds held by the Depository. The Affected Owners, with the consent of the First Mortgagees, may jointly at any time provide for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time the Affected Owners, with the consent of the First Mortgagees, shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with said instructions and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

If the work has been completed and the conditions of **Section 16.1(b)** have been satisfied, the Depository shall disburse the balance of the Funds as provided in **Section 8.4**.

16.3 Excess Funds. Subject to **Section 12.6** as to Awards, the Depository shall release any portion of any Award or insurance proceeds not required to pay for or complete any repair and restoration with respect to any casualty or taking. In the event that there is more than one Affected Owner, each Affected Owner shall be entitled to receive that portion of the excess Award or insurance proceeds to which it would have been entitled had it not been required to deposit such Award or insurance proceeds with Depository, less amounts paid by Depository to or for the benefit of such Affected Owner for repair and restoration of the Building and/or Facilities for which it is responsible under the terms of the Declaration. Any such excess funds to be released by the Depository to any Affected Owner shall be released by the Depository to the First Mortgagee whose first mortgage encumbers the Parcel of such Affected Owner for application in accordance with the terms of its mortgage and related loan or security documents.

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## ARTICLE XVII

### ARCHITECT

17.1 Appointment of Architect. If Declarant is the Owner of any Parcel or portion thereof, the Declarant shall select the Architect, which selection shall be subject to the approval of the Owners of not less than three (3) of the Parcels, which may include Parcels owned by the Declarant. Such approval shall not be unreasonably withheld. If Declarant is not the Owner of any Parcel or portion thereof, the Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of high-rise structures similar to the Building to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). The Architect shall, upon its appointment, execute an Agreement with the Owners substantially in the form of The American Institute of Architects ("AIA") then-standard form Agreement Between Owners and Architects for Designated Services, which Agreement shall incorporate those services necessary to implement the provisions of this Declaration and shall provide that the Owners may cause the then serving Architect to be replaced with or without cause upon thirty (30) days' prior written Notice. The Declarant may replace any Architect selected by Declarant for any reason. Such replacement shall be subject to the same approval by the Owners as required for the previously selected Architect. The Owners jointly may replace an Architect not selected by Declarant for any reason, any Owner also may cause any Architect to be replaced, and the Other Owners shall be deemed to have consented to such replacement, if it demonstrates to the Other Owners that such then-serving Architect has failed to perform its duties hereunder diligently or competently. The First Mortgagees shall have the right to approve the appointment of the Architect in the first instance or any replacement of the Architect. If all Owners do not jointly desire to replace the Architect, then the Owner desiring replacement of the Architect shall serve Notice upon the Other Owners and the First Mortgagees requesting the removal of the then-serving Architect, which Notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform diligently or competently. If, in the opinion of the Owners or First Mortgagees receiving such Notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this **Section 17.1**, an Owner or First Mortgagee receiving such Notice and objecting to the appointment of a new Architect shall notify the Other Owners and First Mortgagees of its objection in writing within fifteen (15) days after receipt of such Notice from the requesting Owner. If, within ten (10) days after receipt of such objection by the Owner desiring to replace the Architect, the Owners do not resolve their differences (subject to the approval of their First Mortgagees), then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not serve any purpose other than the purpose of determining whether an Owner is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days, prior written Notice to the Owners and the First Mortgagees. If, after receipt of the advice of the Architect, a party to the dispute shall reject the advice of the Architect and the remainder of the parties shall not have reached a agreement to resolve the dispute, the dispute shall be deemed an Arbitrable Dispute

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17.2 Notice of Submission of Dispute to Architect. In any instance when the Architect serving pursuant to **Section 17.1** hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Affected Owner involved in such dispute or matter may submit the same to the Architect. The Affected Owner submitting such dispute or matter shall simultaneously give written Notice of the submission of such dispute or matter to the other Affected Owner involved in such dispute and to their First Mortgagees. The Architect shall, except in an Emergency Situation, afford each Affected Owner involved in any dispute or matter, and any attorney or other representative designated by such Affected Owner or its First Mortgagee, an opportunity to furnish information or data or to present such party's views. The Architect shall not be liable for any advice given by it hereunder, or for any other action taken by it hereunder, in good faith and in the absence of negligence. No advice given by the Architect under this Declaration shall be binding on the Owners, and an Owner may accept or reject such advice.

17.3 Replacement of Architect. If any new Architect is appointed hereunder, and if the Architect being replaced is then engaged in the resolution of any dispute or matter theretofore submitted hereunder, or if the Architect being replaced is then engaged in the preparation of any plans and specifications or in the supervision of any work required hereunder or pursuant hereto, then, if the Owners so choose, subject to the consent of the First Mortgagees, the Architect being replaced shall continue to act as Architect with respect, and only with respect, to such pending dispute or matter or the completion of the preparation of such plans and specifications or the supervision of any such work.

17.4 Architect's Fees. The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and each Owner involved in the work shall pay its equitable share of such fees. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Building or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of such repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its equitable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any Other Owner may pay the same and the Defaulting Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the Other Owner for any such payment.

## ARTICLE XVIII

### NOTICES AND APPROVALS

18.1 Notice to Parties. Each Notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "Notice") that

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an Owner is required, permitted or desired to give or make or communicate to the Other Owner shall be in writing and shall be given or made or communicated by personal delivery or by overnight courier service or by regular mail addressed as follows:

Declarant (the current owner of all Parcels):

Center at River East, L.L.C.  
c/o MCL Companies  
455 East Illinois Street, Suite 565  
Chicago, Illinois 60611  
Attn: Mr. Daniel E. McLean

Until The Royal Bank of Scotland has released its liens on every Parcel, a copy of Notices to Declarant shall be sent to:

The Royal Bank of Scotland, plc  
Waterhouse Square 135 Bishopsgate  
London EC2M 3UR  
United Kingdom  
Attn: Mr. Grant Denny

As title to the various Parcels is transferred by the Declarant, the transferee shall give Notice to Declarant and the Other Owners designating a different address which shall become effective ten (10) days after such Notice. Any Owner may designate a different address or additional addresses from time to time, provided however it has given at least ten (10) days advance Notice of such change of address. If any of the aforesaid Owners shall cease to be the "Owner" of its respective portion of the Building, and the succeeding Owner of that portion of the Building shall fail to give a Notice of change of address, then Notices may be sent to any one of the following: (a) to the last Owner of record for which Notice was given to the Owner giving Notice, (b) to "Owner of Record" at the street address for that Owner's portion of the Building as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service) or by the City of Chicago department or agency having jurisdiction over City of Chicago addresses, or (c) to the grantee at the address shown in that last recorded conveyance of the portion of the Building in question. Unless specifically stated to the contrary elsewhere in this Declaration, any Notice shall be deemed to have been given, made or communicated, as the case may be, (x) upon delivery in the case of personal delivery, (y) on the date three (3) days after the same was deposited in the United States mail, properly addressed, with postage thereon fully prepaid, or (z) upon receipt after being sent properly addressed, fees prepaid, by a recognized overnight delivery service.

18.2 Multiple Owners. If at any time the interest or estate of the Owner of any Parcel shall be owned by more than one Person (hereinafter collectively referred to as "Multiple Owners"), the Multiple Owners shall give to the Other Owners a written Notice, executed and acknowledged by all of the Multiple Owners, in form proper for recording, which shall (a) designate one Person, having

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an address in the State of Illinois to whom shall be given, as agent for all of the Multiple Owners, all Notices thereafter given to the Multiple Owners, and (b) designate such Person as agent for the service of process in any action or proceeding, whether before a court or by arbitration, involving the determination or enforcement of any rights or obligations hereunder. Thereafter, until such designation is revoked by written Notice given to all of the Multiple Owners or their successors in interest, any Notice, and any summons, complaint or other legal process or any Notice given in connection with an arbitration proceeding (which such summonses, complaints, legal processes and Notices given in connection with arbitration proceedings are hereafter in this **Article XVIII** collectively referred to as "legal process"), given to, or served upon, such agent shall be deemed to have been given to, or served upon, each and every one of the multiple owners at the same time that such Notice or legal process is given to, or served upon, such agent. If the Multiple Owners shall fail so to designate in writing one such agent to whom all Notices are to be given and upon whom all legal process is to be served, or if such designation shall be revoked as aforesaid and a new agent is not designated, then any Notice or legal process may be given to, or served upon, any one of the Multiple Owners as agent for all of the Multiple Owners and such Notice or legal process shall be deemed to have been given to, or served upon, each and every one of the Multiple Owners at the same time that such Notice or legal process is given to, or served upon, any one of them, and each of the Multiple Owners shall be deemed to have appointed each of the other Multiple Owners as agent for the receipt of Notices and the service of legal process as stated above. Notices to or from Unit Owners shall be given in the manner required by Section 21.13. **AT ANY TIME THE CONDOMINIUM PARCEL OR ANY PORTION THEREOF HAS BEEN SUBMITTED TO AND REMAINS SUBJECT TO THE CONDOMINIUM ACT, THE CONDOMINIUM ASSOCIATION FORMED FOR PURPOSES OF ADMINISTERING THE CONDOMINIUM PARCEL AS A CONDOMINIUM PURSUANT TO THE CONDOMINIUM ACT (THE "ASSOCIATION") IS HEREBY IRREVOCABLY DESIGNATED AS AGENT FOR ALL OF THE MULTIPLE OWNERS OF THE CONDOMINIUM PARCEL.**

## ARTICLE XIX

### OWNERS' ASSOCIATION

19.1 Formation/Membership. The Owners' Association, an unincorporated association governed by the laws of the State of Illinois, is hereby established. The Owners' Association shall have five (5) members and shall consist of one representative appointed by each of the Owners of the Parcels. Each such member representative may be replaced by his or her appointing Owner at any time.

19.2 Purpose. The purposes of the Owners' Association shall be to provide a forum for the Owners to: (a) harmoniously and efficiently operate the Building as a first-class mixed-use development, (b) attempt to settle Arbitrable Disputes between or among Owners prior to the submission of such disputes for resolution by arbitration or otherwise in accordance with the requirements of this Declaration, and (c) to otherwise carry out, implement or effect the intent and purposes of this Declaration.

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19.3 Meetings. The Owners' Association shall meet not less frequently than once per year but shall be required to meet within ten (10) business days after receiving written Notice of (a) a demand for a meeting of the Owners' Association signed by the member representatives of two (2) or more Owners, or (b) a request for initial consideration of an Arbitrable Dispute from the member representative of any Owner. Meetings of the Owners' Association shall take place in the management office of the Retail Parcel, or at such other acceptable location within the Building as may be selected by a majority of the member representatives.

19.4 Governance. The Owners, through their member representatives, may create and adopt such rules, regulations, bylaws or other forms or methods of governance for the Owners' Association as may be desirable for the orderly administration of the affairs of the Owners' Association provided that (a) the Owners unanimously consent to the adoption of such forms or methods of governance, and (b) such forms or methods of governance are not inconsistent with the provisions of this Declaration nor purport to confer upon the Owners' Association any rights, powers or privileges not expressly conferred by this Declaration.

19.5 Duties. The Owner's Association shall fulfill the purposes for which it is established as described in **Section 19.2**. In attempting to settle Arbitrable Disputes as required by **Section 19.2(c)**, the Owners' Association shall expend all commercially reasonable efforts to settle such disputes in accordances with the intent and purposes of this Declaration. All efforts by the Owners' Association to settle an Arbitrable Dispute presented to it for consideration shall be concluded within thirty (30) days after the Owners' Association's receipt of the written Notice requesting such consideration. In the event that the Owners' Association is unable to forge a settlement of the subject Arbitrable Dispute within such thirty (30) day period, the Owners involved in such Arbitrable Dispute shall be entitled to submit the matter to arbitration or pursue their other available remedies with respect to such dispute as are provided to them in this Declaration.

19.6 Notices. Notices given to the members of the Owner's Association shall be addressed to the member representatives of the Owners and shall be delivered in the manner required for other Notices given hereunder as described in **Section 18.1**.

## ARTICLE XX

### VACATION OF STREETS

20.1 Ownership of Vacated Streets. If any portion of any street adjacent to the Property is vacated, title to such vacated portion of the street shall transfer to the then-current Garage Owner without further act of any of the Other Owners, provided, however, if requested by the Garage Owner, the Other Owners shall appropriately quitclaim any interests they may have in such vacated portion of the street. In giving such quitclaim, the Retail Owner may act on behalf of all of the Unit Owners. Such ownership by the Garage Owner, notwithstanding any such quitclaim or vacation shall be subject to reasonable easements for ingress and egress over the vacated street to all respective lobbies and ramps for the Other Owners, their guests and invitees, and to all other easements created hereby.

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The Garage Owner shall not place any improvements on the vacated portions of the streets without the consent of the Other Owners.

## ARTICLE XXI

### GENERAL

21.1 Cooperation of Owners. In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the Other Owners to promote the efficient operation of each Parcel and each respective portion of the Building and the harmonious relationship among the Owners and to protect the value of each Owner's respective portion, estate or interest in the Building. 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 or 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) such other instruments, documents, materials, and information as another Owner 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 any Other Owner hereunder.

21.2 Severability. 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.

21.3 Headings. The headings of **Articles** and **Sections** 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** or **Sections**.

21.4 Amendments to Declaration. Except as otherwise provided in this Declaration, this Declaration may be amended or terminated only by an instrument signed by the Retail Owner, the Garage Owner, the Hotel Owner, the Residential Owner and the Condominium Owner, and consented to by all First Mortgagees. Consent to or execution by the Mortgagees of any Condominium Unit shall not be required (other than the Mortgagee under the RBOS Mortgage), and any such Condominium Unit mortgages (other than the RBOS Mortgage) shall nevertheless be subordinate to such amendments. Any amendment to or termination of this Declaration shall be recorded with the Recorder. Any amendment to **Article IV** involving solely a reallocation of costs among less than all Owners shall only require execution by the Affected Owners (and their First Mortgagees, to the extent required under **Section 4.7**). There shall be no amendment of **Subsection 5.4(f)** or **Section 21.4** without the prior written consent of all Owners and their First Mortgagees. Amendments regarding reallocations between the Condominium Parcel and the Residential Parcel, as provided in **Note 1** to **Recital D**, shall require execution only by the Residential Owner and the Association on behalf of the Condominium Owner.



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21.5 Term. The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for the term of this Declaration, which shall be perpetual (or if the law provides for a time limit on any covenant, condition or restriction, then such covenant, condition or restriction shall be enforceable for such shorter period), subject to amendment as set forth in **Section 21.4**. If the law provides for such shorter period, then upon expiration of such shorter period, said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law, for successive periods of twenty (20) years, subject to amendment as set forth in **Section 21.4**. If any provision herein is deemed to be in violation of any rule against perpetuities, such provision shall expire on the death of the last to die of Richard M. Daley, Mayor of the City of Chicago, Illinois, and his descendants living on the date hereof.

21.6 Construction of Declaration. The provisions of this Declaration shall be construed to the end that the Building shall remain a first-class residential and commercial property.

21.7 Abandonment of Easements. Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building subject to an Easement unless the Owner benefitted by such Easement (and any First Mortgagee thereof) states in writing its intention to abandon the Easement.

21.8 Applicable Laws. 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 the State of Illinois, including without limitation, matters affecting title to all real property described herein.

21.9 Name of Building. The Building is presently named "River East Center."

21.10 No Third-Party Beneficiary. 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 the Mortgagees) under any Laws or otherwise.

21.11 Incorporation. 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.

21.12 Notice to Mortgagees; Rights of Mortgagee.

(a) The term "Mortgage" as used herein shall mean any mortgage (or any trust deed) given primarily to secure the repayment of money owed by the mortgagor; provided, however, no mortgage or trust deed on an individual Condominium Unit (other than the RBOS Mortgage) shall be included within the definition of "Mortgage" unless specifically stated to the contrary. The term "Mortgagee" as used herein shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed). The term "First Mortgage" shall mean a Mortgage that

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is superior to all other consensual liens and encumbrances.

(b) If a First Mortgagee shall have served on the Owners, by personal delivery or by registered or certified mail return receipt requested, a written Notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every Notice required to be given to the Owner of the Parcel encumbered by such First Mortgage at the same time as and whenever such Notice shall thereafter be given to such Owner of such Parcel, at the address last furnished by such Mortgagee. Any First Mortgagee as of the date of this Declaration shall be deemed to have properly delivered to the Owners a written Notice specifying its name and address. After receipt of such Notice from a Mortgagee, no Notice thereafter given by any Owner shall be deemed to have been given unless and until a copy thereof shall have been so given such First Mortgagee entitled to receive such Notice as set forth above. If a First Mortgagee so provides or otherwise requires, and Notice thereof is given by the First Mortgagee as provided above:

(i) the proceeds of any claim under an insurance policy or condemnation Award required to be delivered to an Owner shall, upon Notice from, a First Mortgagee, be delivered to such Owner's Mortgagee to be disbursed by the Mortgagee to the Depository in accordance with the provisions of this Declaration.

(ii) If an Owner shall fail to appoint an arbitrator or otherwise take any action as may be required or permitted under this Declaration with respect to arbitration, such appointment or action as otherwise would have been permitted by that Owner may be taken by its First Mortgagee in lieu of such Owner and such appointment and action shall be recognized in all respects by the Other Owner.

(c) Notwithstanding anything to contrary specified in this Declaration (including this **Section 21.12**), no Owner need give Notice to more than two Mortgagees for any Parcel or to any mortgagee or trustee under a mortgage or trust deed other than a "First Mortgage" as defined in paragraph (a) above.

**21.13 Association and Unit Owner Liability.** So long as a portion of the Condominium Parcel is submitted to the Condominium Act, all rights, Easements, Facilities, burdens and benefits under this Declaration appurtenant to or enjoyed by the Condominium Parcel shall be exercised by the Association on behalf of the Unit Owners owning Condominium Units within such portion of the Condominium Parcel except for Facilities or Easements which by their nature are used only by Unit Owners individually. Any action to enforce rights, obligations, Easements, Facilities, burdens and benefits under this Declaration and the right to settle and compromise any claims on behalf of the Unit Owners or the Association shall be taken on behalf of all Unit Owners and the Association solely by the Association by its duly authorized officers acting pursuant to authority granted by law, the Condominium Declaration or resolution of the board of managers of the condominium. All obligations of the Condominium Owner under this Declaration shall be the obligations jointly and severally of both the Association and the Unit Owners collectively so long as such portion of the Condominium Parcel is subject to the Condominium Act; provided, however, that no individual Unit

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Owner shall be liable for any obligation of the Condominium Owner in excess of a percentage of such liability equal to the percentage interest in the common elements in the Condominium attributable to such Condominium Unit as shown in the Condominium Declaration. In any case, such liability of a Unit Owner shall be subject to the provisions of **Section 22.1**. Upon payment of such amount for which a Unit Owner may be liable, (i) any lien arising against such Unit Owner's Condominium Unit on account of such claim shall be deemed released against such Unit Owner's Condominium Unit without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner and at the expense of such Unit Owner, the Creditor Owner who has recorded Notice of such lien shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Condominium Unit. When a Condominium Unit is owned by more than one "person" (as defined in the Condominium Act) the liability of each such person for any claim against the Condominium Unit shall be joint and several. Notices under **Section 18.1** to a Unit Owner or Unit Owners shall be effective if given to the Association, and Notices from a Unit Owner or Unit Owners shall be given by the Association. Except as otherwise noted herein, any requirement for any Unit Owner to furnish a Notice or deliver a document applicable to the Condominium Unit shall be performed by the Association. In the event of any such action taken by such Association, the Unit Owners shall be bound as if such Unit Owners had expressly consented and agreed to such actions by such Association. No Unit Owner or group of Unit Owners shall have the right to take any action under this Declaration or to enforce any of the rights, Easements or privileges granted by this Declaration.

21.14 Coordination with Retail Parcel Tenants. Unless the Owners otherwise agree in writing in each case, and except in an Emergency Situation, the Retail Owner shall coordinate all requests and contacts between the Other Owners and tenants of the Retail Parcel relating to the enjoyment of or Facilities, Easements or the exercise of any rights or benefits granted under this Declaration, the operation or administration of the Owners' Association, or with respect to any other matters arising under or pursuant to this Declaration.

21.15 Waiver of Mechanic's Liens by Owners. The Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claim of or right to, liens which such Owners may have under the Illinois Mechanic's Lien Act against, or with respect to, the Property or improvements owned by any Other Owner or any part thereof, or with respect to the estate or interest of any person whatsoever in the Property or Improvements owned by any Other Owner, or any part thereof, or with respect to any material, fixtures, apparatus, or machinery furnished or to be furnished thereto pursuant to this Declaration by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or subsubcontractors, of any labor, services, material, fixtures, apparatus, machinery, improvements, repairs or alterations in connection with the Property or the improvements thereon. The parties agree that the legal effect of this Declaration is that no mechanic's lien or claim may be filed or maintained by any Owner under the Illinois Mechanic's Lien Act with respect to that portion of the Property or improvements owned by any Other Owner. The provisions of this **Section 21.15** are not intended to waive any lien created under **Article IX**, but such lien shall not be a "mechanic's lien" for purposes of the Illinois Mechanics' Lien Act.

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21.16 Copies of Plans. Upon payment of the cost of reproduction thereof and upon the written request of the requesting Owner, the Declarant, or any other Owner having copies thereof, shall provide to such requesting Owner a set of copies of the Plans.

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

## ARTICLE XXII

### LIMITATION OF LIABILITY

22.1 Limitation of Liability. The liability under this Declaration of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property or Facilities (including insurance and condemnation proceeds attributable to the Property and Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust) and no other assets of such Owner, except as hereinafter provided in this **Section 22.1** and as provided in **Sections 9.1** and **9.2**. Assets of an Owner which is a partnership do not include the assets of the partners of such partnership Owner, and negative capital account of a partner in a partnership which is an Owner and an obligation of a partner to contribute capital to the partnership which is an Owner shall not be deemed to be assets of the partnership which is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under said trust agreement by reason of any of the covenants or conditions contained herein. The limitations on liability of an Owner shall apply to the same extent to the Unit Owner.

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

[SIGNATURE PAGE FOLLOWS]

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

CENTER AT RIVER EAST, L.L.C.

By: River East, L.L.C., its sole member

By: River East, Inc., its Manager

By: Marilyn Walsh  
Title: Secretary

STATE OF ILLINOIS     )  
                                          ) ss  
COUNTY OF COOK     )

I, SUSAN BOTTERILL, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT MARILYN WALSH a SECRETARY of River East, Inc. which is the Manager of River East, L.L.C. which is the sole member of Center at River East, LLC 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 the said instrument as his/her own free and voluntary act and as the act of such entities for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 14<sup>th</sup> day of November, 2001.

Notary Public

Susan Botterill

My Commission Expires: 10-27-03



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## CONSENT OF MORTGAGEE

Royal Bank of Scotland plc, a Company incorporated in Scotland registered Number 90312 as Lender and as Security Agent, holder of the Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (the "Mortgage") dated September 1, 1999 and recorded in the office of the Recorder of Deeds of Cook County, Illinois on September 29, 1999 as Document Number 99924675, as amended, hereby consents to the execution and recording of the Attached Declaration of Easements and Operating Requirements and agrees that said Mortgage is subject and subordinate thereto.

[SIGNATURE PAGE TO FOLLOW]

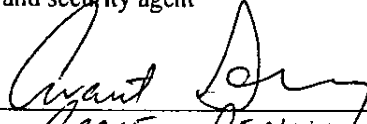
Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, The Royal Bank of Scotland plc, as lender and security agent, has caused this instrument to be signed by its duly authorized officer on its behalf this 14<sup>th</sup> day of November, 2001.

**THE ROYAL BANK OF SCOTLAND PLC,**  
as lender and security agent

By:   
Name: GRANT DENNY  
Its: Corporate Director

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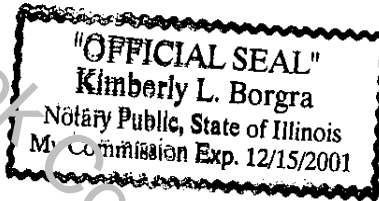
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State of Illinois )  
County of Cook )

I, Kimberly L. Borgna, a Notary Public in and for said County and State, do hereby certify that Grant Denny the Corporate Director of The Royal Bank of Scotland, plc, as lender and security agent, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Corporate Director appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and official seal this 14<sup>th</sup> day of November, 2001.

Kimberly L. Borgna  
Notary Public  
Print Name: Kimberly L. Borgna  
My Commission Expires: 12-15-2001



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## RIVER EAST CENTER EXHIBIT A LEGAL DESCRIPTION OF THE PROPERTY

### Legal Description per Plat of Survey

#### Parcel 1

Lot 1 in Block 2 (excepting the southerly 9.33 feet of said Lot 1 and excepting the Northerly 5 feet 2 inches of said Lot 1) in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, according to the plat thereof recorded February 24, 1987 as document 87106320, in Cook County, Illinois; ALSO,

#### Parcel 2

Lot 2 in Block 2 (excepting the southerly 9.33 feet of said Lot 2 and excepting the Northerly 5 feet 2 inches of said Lot 2) in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, according to the plat thereof recorded February 24, 1987 as document 87106320, in Cook County, Illinois; ALSO,

#### Parcel 3

The North 5 feet 2 inches of the South 9.33 feet of Lots 1 and 2 in Block 2 in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, according to the plat thereof recorded February 24, 1987 as document 87106320, in Cook County, Illinois.

### Legal Description per Plat of Subdivision

Lots 1A, 1B, 1C, 1D, 1E, 1F, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, 3P, 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J and 4K in River East Center Subdivision, being a resubdivision of Parts of Lot 1 and 2 in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

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**RIVER EAST CENTER  
EXHIBIT B  
LEGAL DESCRIPTION OF GARAGE PARCEL**

Lots 2A, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N and 3P in River East Center Subdivision Being a resubdivision of part of Lot 1 and Lot 2 in Block 2 in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

NOTE: Lot 2A is the perimeter Lot at +/- ground level which gives the Garage Owner the right to any future vacation of streets.

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**RIVER EAST CENTER  
EXHIBIT C  
LEGAL DESCRIPTION OF RETAIL PARCEL**

Lots 1A, 1B, 1C, 1D, 1E and 1F in River East Center Subdivision Being a resubdivision of part of Lot 1 and Lot 2 in Block 2 in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

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**RIVER EAST CENTER  
EXHIBIT D  
LEGAL DESCRIPTION OF HOTEL PARCEL**

Lots 2B, 2C, 2D, 2E, 2F, 2G, 2H and 2I in River East Center Subdivision Being a resubdivision of part of Lot 1 and Lot 2 in Block 2 in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

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**RIVER EAST CENTER  
EXHIBIT E  
LEGAL DESCRIPTION OF CONDOMINIUM PARCEL**

Lots 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J and that part of Lot 4K lying below a horizontal plane having an elevation of 357.50 feet Chicago City Datum, in River East Center Subdivision, being a resubdivision of Parts of Lot 1 and 2 in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

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**RIVER EAST CENTER  
EXHIBIT F  
LEGAL DESCRIPTION OF RESIDENTIAL PARCEL**

That part of Lot 4K lying above a horizontal plane having an elevation of 357.50 feet Chicago City Datum in River East Center Subdivision, being a resubdivision of Parts of Lot 1 and 2 in Cityfront Center, being a resubdivision in the North Fraction of Section 10, Township 39 North, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

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EXHIBIT 2.7.1

LOADING DOCK LOCATIONS

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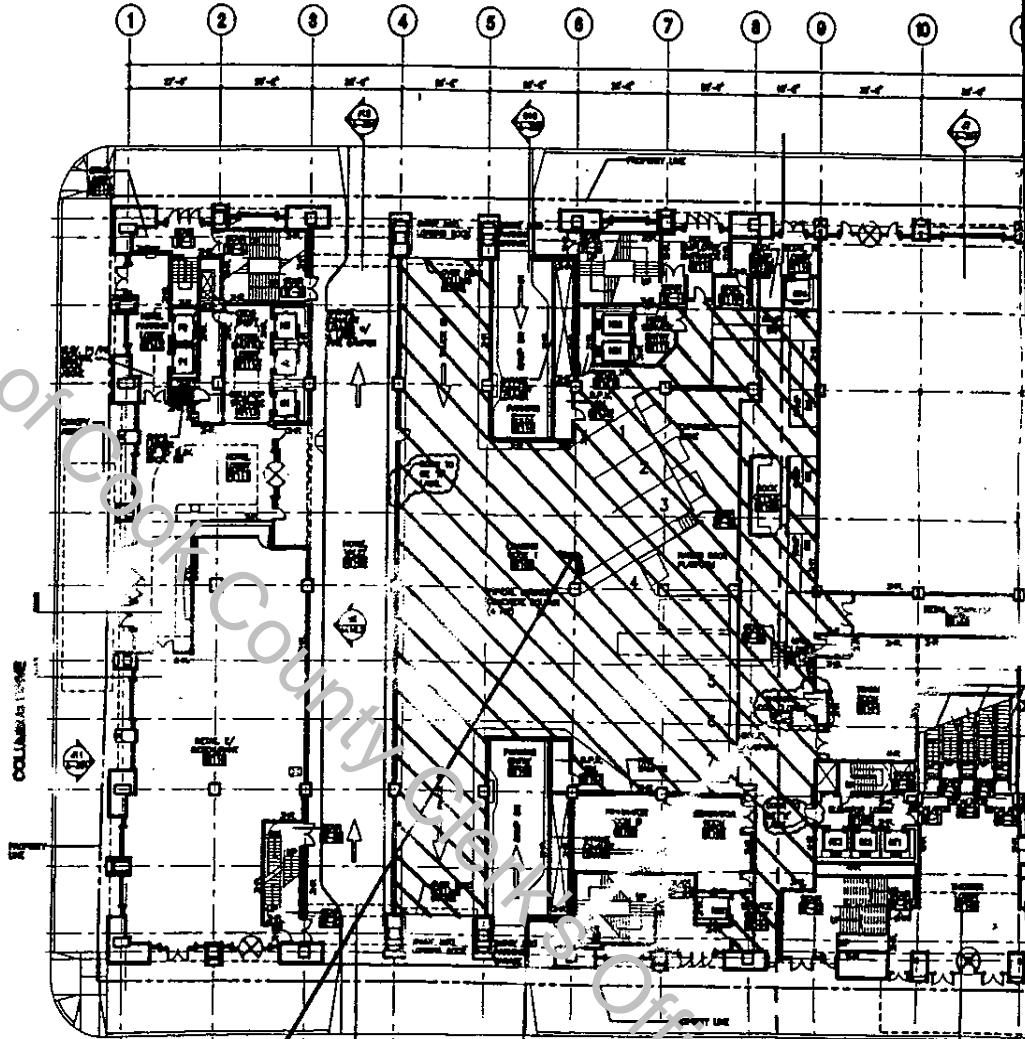
[SEE ATTACHED]

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Property of  
County  
Office



LOADING DOCKS

J12 GROUND FLOOR PLAN, EL. +0'



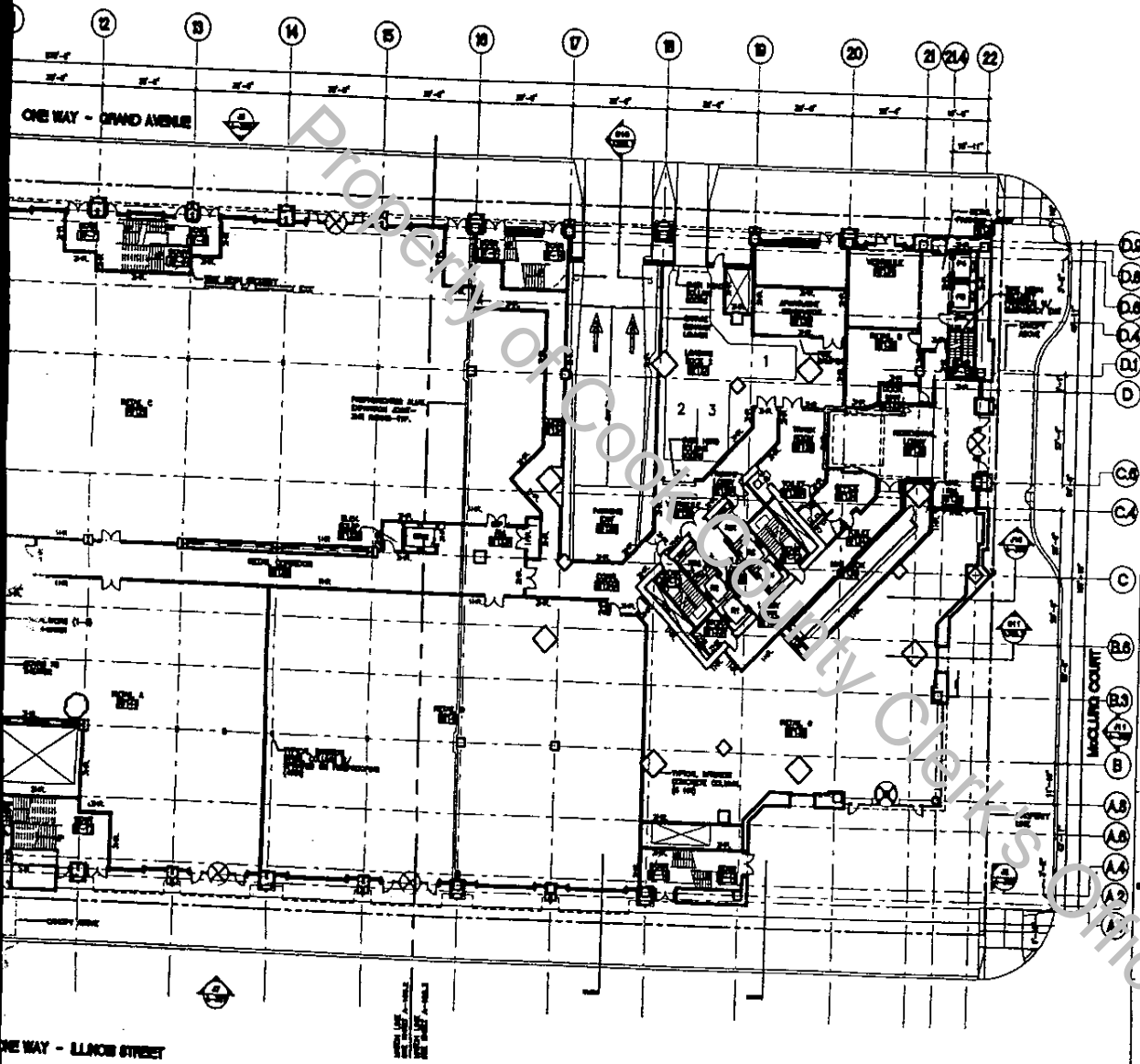
EXHIBIT 2.7.1



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1. REFER TO A-100 OTHER SHEETS FOR REPLACES AND SUPPLIES.
2. REFER TO SHEET A-101 FOR DIMENSIONS, FINISHES, MATERIALS, SCHEDULES AND NOTES.
3. REFER TO 1/4" SCALE ARCH. PLAN FOR FINISHES AND SCHEDULES.



1. LOAD LINE PRELIMINARY PLAN	10/11/90
2. BASIS FOR DIMENSIONS	01/10/91
3. 20'-0\"	01/10/91
4. 20'-0\"	01/10/91
5. 20'-0\"	01/10/91
6. 20'-0\"	01/10/91
7. 20'-0\"	01/10/91
8. 20'-0\"	01/10/91
9. 20'-0\"	01/10/91
10. 20'-0\"	01/10/91
11. 20'-0\"	01/10/91
12. 20'-0\"	01/10/91
13. 20'-0\"	01/10/91
14. 20'-0\"	01/10/91
15. 20'-0\"	01/10/91
16. 20'-0\"	01/10/91
17. 20'-0\"	01/10/91
18. 20'-0\"	01/10/91
19. 20'-0\"	01/10/91
20. 20'-0\"	01/10/91
21. 20'-0\"	01/10/91
22. 20'-0\"	01/10/91



RIVER EAST CENTER  
 MIXED USE DEVELOPMENT  
 300 EAST ILLINOIS STREET  
 CHICAGO, ILLINOIS  
 RIVER EAST, L.L.C.  
 OWNER

**DE STEFANO PARTNERS**

310 North Dearborn Street, Suite 200 Chicago, IL 60610  
 312.467.1000  
 www.destefanopartners.com

Chris P. Stefano + Associates  
 Architects  
 McClure Corporation  
 Civil Engineers  
 WMA Consulting Engineers, Ltd.  
 MEP Engineers

LINEAR FOOTAGE	
CONDO:	114'-9"
HOTEL:	203'-3"
RETAIL:	1173'-9"
PARKING:	104'-9"

GROUND FLOOR PLAN  
 EL. +0'-0" (+13.25' CCD)

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## EXHIBIT 2.7.2

### LOADING DOCK RULES

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#### 1. Deliveries

- a. All deliveries must be made during the posted hours for the operation of the Loading Docks unless previous arrangements have been made with the Retail Owner or the Retail Owner's Managing Agent.
- b. Delivery vehicles must turn off their vehicles while parked in the Loading Dock area to make a delivery, or while waiting for an open bay in order to load or unload.
- c. Deliveries will be accepted on a first-come first-served basis.
- d. The Loading Dock manager will not be responsible to sign for any deliveries. The receiving company must sign for its own deliveries.
- e. No deliveries can be left on the Loading Docks. All deliveries must be removed the day of delivery.
- f. Delivery drivers should check in with the Loading Dock manager to confirm the location of their delivery and to be given an estimated time that the Loading Docks will be available for such delivery.
- g. Deliveries must be completed in one (1) hour unless prior arrangements have been made through the Retail Owner or the Retail Owner's Managing Agent.

#### 2. Equipment

- a. Pallet jack and dollies are for use for Loading Dock deliveries only.
- b. Delivery person shall sign out all Loading Dock equipment with the Loading Dock manager and shall return same before leaving the Loading Dock area.

#### 3. Parking

There will be no parking in the Loading Dock area by employees, tenants, or private vehicles. Only vehicles making deliveries may remain for any period of time in the Loading Dock area and then may be left unattended only for such period as is reasonably required to complete the delivery.

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## 4. Damages

Damage to a Loading Dock or any portion of the Building caused during the course of a delivery will be the responsibility of that Owner to whom, or on whose behalf, the subject delivery is being made.

5. The owners, agents, lessees and authorized Permittees of the Hotel Parcel, the Garage Parcel and the Retail Parcel are responsible for bringing all refuse and garbage to the Loading Dock area for removal from the Building and are further responsible for placing such refuse and garbage in the designated containers or processors within the Loading Dock area for processing and removal. Only those areas within the Loading Dock which are designated for waste processing and removal may be used for waste processing and removal.

## 6. Use of the Loading Docks by the Condominium Owner or the Residential Owner:

a. Any use of the Loading Docks by the Condominium Owner or the Residential Owner must be scheduled in advance with the Retail Owner or the Retail Owner's Managing Agent.

b. Deliveries must be completed and vehicles removed from the Loading Dock within one (1) hour of arrival, or shall be scheduled after-hours.

c. A minimum dock fee of \$100.00 must be paid in advance when scheduling the Loading Docks. \$50.00 for each additional hour will be charged. Such fees may be increased from time to time in proportion to increases in the cost of personnel working at the dock over the 2002 cost of personnel working at the dock.

7. Any uses of the Loading Dock areas for special purposes or for extended periods of time, such as for kitchen waste receptacles, construction dumpsters, temporary storage containers, or similar items, shall require the prior consent of the Retail Owner or the Retail Owner's Managing Agent. Such consent shall be contingent upon the parties reaching agreement on the costs for using the Loading Dock area for such purposes and may be conditioned upon the requesting party agreeing to share or consolidate its permitted receptacle or container with other Permittees having similar needs or uses.

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## EXHIBIT 2.8

### MAINTENANCE AND REPAIR OF TRASH COMPACTOR AND REFUSE REMOVAL

---

#### DESCRIPTION/EQUIPMENT:

- 1 Compactor
- 1 Cardboard bailer
- 2 Two dumpsters

#### LOCATION:

Loading Dock area as depicted on Exhibit 2.7.1

#### MAINTENANCE SCHEDULE/AGENDA:

1. Maintain compactor and cardboard bailer in operating condition.
2. Remove waste on a scheduled basis or on call basis, at the discretion of the Retail Owner.
3. Keep the area around the equipment as clean as possible.
4. Power wash equipment as needed to insure proper operation and pest control.

#### MAINTENANCE RESPONSIBILITY:

The Retail Owner will be responsible for contracting with a waste disposal company to remove all refuse from the Loading Dock area on a regular basis.

#### ALLOCATION OF COSTS:

The costs associated with the waste removal equipment, labor, hauling and disposal will be split between the Hotel Owner, the Garage Owner and the Retail Owner as follows:

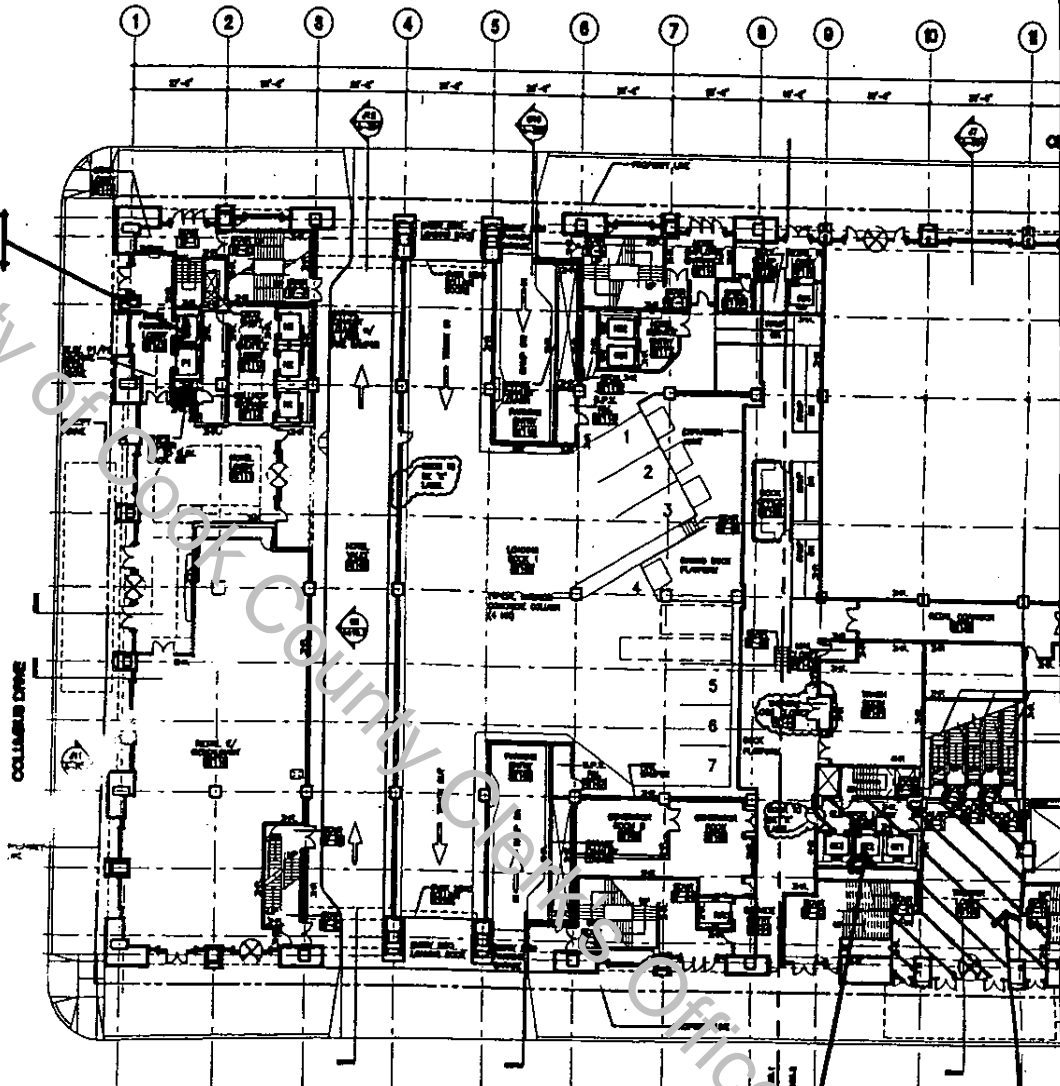
The Garage Owner will be allocated the cost of hauling and removing the equivalent of one (1) compactor each month. The remaining costs will be allocated to the Hotel Owner and the Retail Owner by square footage.

The Condominium Owner and the Residential Owner will not be permitted to use the trash compactor and refuse removal services located in the Loading Dock areas. The Condominium Owner, Unit Owners, the Residential Owner and the tenants of any portion of the Residential Parcel shall use only trash compactors and refuse removal equipment and services located within the loading dock area within the Condominium Parcel.

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PARKING SHUTTLES P1 & P2



PARKING SHUTTLES RT1, RT2, & RT3

J12 GROUND FLOOR PLAN EL. +0'

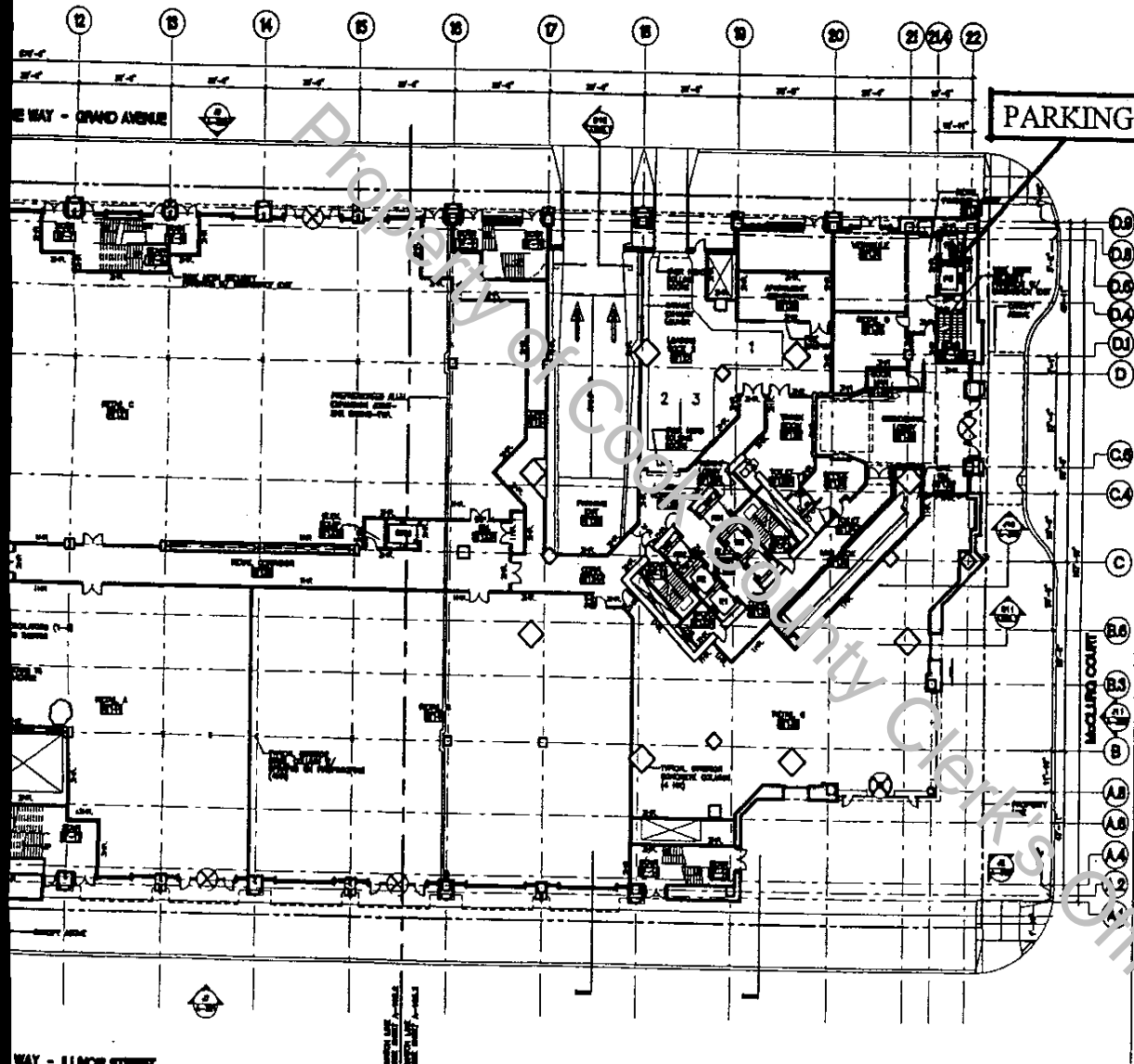
EXHIBIT 2.14

THEATRE I

# UNOFFICIAL COPY

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1. SCALE TO L-100 (SEE SHEET FOR REFERENCE)
2. SCALE TO L-100 (SEE SHEET FOR REFERENCE)
3. SCALE TO L-100 (SEE SHEET FOR REFERENCE)
4. SCALE TO L-100 (SEE SHEET FOR REFERENCE)
5. SCALE TO L-100 (SEE SHEET FOR REFERENCE)



PARKING SHUTTLES P3 & P4

1. AREA FOR MEASUREMENT ONLY	00/00/00
2. AREA FOR MEASUREMENT ONLY	00/00/00
3. AREA FOR MEASUREMENT ONLY	00/00/00
4. AREA FOR MEASUREMENT ONLY	00/00/00
5. AREA FOR MEASUREMENT ONLY	00/00/00
6. AREA FOR MEASUREMENT ONLY	00/00/00
7. AREA FOR MEASUREMENT ONLY	00/00/00
8. AREA FOR MEASUREMENT ONLY	00/00/00
9. AREA FOR MEASUREMENT ONLY	00/00/00
10. AREA FOR MEASUREMENT ONLY	00/00/00
11. AREA FOR MEASUREMENT ONLY	00/00/00
12. AREA FOR MEASUREMENT ONLY	00/00/00
13. AREA FOR MEASUREMENT ONLY	00/00/00
14. AREA FOR MEASUREMENT ONLY	00/00/00
15. AREA FOR MEASUREMENT ONLY	00/00/00
16. AREA FOR MEASUREMENT ONLY	00/00/00
17. AREA FOR MEASUREMENT ONLY	00/00/00
18. AREA FOR MEASUREMENT ONLY	00/00/00
19. AREA FOR MEASUREMENT ONLY	00/00/00
20. AREA FOR MEASUREMENT ONLY	00/00/00
21. AREA FOR MEASUREMENT ONLY	00/00/00
22. AREA FOR MEASUREMENT ONLY	00/00/00



RIVER EAST CENTER  
 MIXED USE DEVELOPMENT  
 100 EAST ILLINOIS STREET  
 CHICAGO, ILLINOIS  
 RIVER EAST, L.L.C.  
 DEVELOPER

DE STEFANO PARTNERS  
 200 Madison Street, Suite 1000  
 Chicago, IL 60601

Chris P. Stefano & Associates  
 Structural Engineers  
 McCler Corporation  
 Mechanical Engineers  
 W&M Consulting Engineers, Ltd.  
 Civil Engineers

LINEAR FOOTAGE	
CONDO:	114'-9"
HOTEL:	203'-3"
RETAIL:	1173'-9"
PARKING:	104'-9"

GROUND FLOOR PLAN  
 EL. +0'-0" (+13.25' CCD)

DATE: \_\_\_\_\_  
 PROJECT NO.: \_\_\_\_\_  
 SHEET NO.: \_\_\_\_\_  
**A-105**

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## EXHIBIT 2.15

### EXTERIOR MAINTENANCE

---

**DESCRIPTION:**

Maintenance of the exterior facade of the Podium.

**LOCATION:**

Exterior of the Podium. Excludes those portions of the Parcels located above the Podium which are to be maintained respectively by (a) the Condominium Owner and the Residential Owner, and (b) the Hotel Owner.

**MAINTENANCE SCHEDULE/AGENDA:**

Exterior maintenance will include annual façade inspection if required by the City of Chicago and window cleaning services as stipulated in a contract with a professional window-cleaning contractor who services similar buildings in accordance with Class A mixed-use building standards.

**MAINTENANCE RESPONSIBILITY:**

The Retail Owner will be responsible for coordinating the maintenance of the exterior façade as described in this Exhibit. Access will be from the roof of the Podium and in some areas, davits from the Hotel Parcel or Condominium Parcel/Residential Parcel, which may be used in order to perform this work.

**ALLOCATION OF COSTS:**

The costs for the above services will be allocated to the Hotel Owner, the Retail Owner, the Garage Owner and the Condominium Owner/Residential Owner according to outside linear feet as detailed in Exhibit 4.11.

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## EXHIBIT 2.16

### ANTENNAE AND SATELLITE LOCATIONS

---

#### DESCRIPTION/EQUIPMENT:

Satellite dishes and other communications antennae may be located on the roof of the Retail Parcel's mechanical penthouse, subject to the approval of the Retail Owner.

#### LOCATION:

Permitted locations for the satellite dishes and other communications antennae permitted by this Exhibit are identified on Exhibit 2.16(a).

#### MAINTENANCE SCHEDULE/AGENDA:

N/A

#### MAINTENANCE RESPONSIBILITY:

Any maintenance involving an antenna or other communications equipment on the roof shall be the responsibility of the Owner for whom such equipment was installed or the Owner for whose tenants, Unit Owners or other Permittees such equipment was installed.

#### ALLOCATION OF COSTS:

Any cost associated with equipment permitted by this Exhibit shall be the responsibility of the Owner having responsibility for the maintenance of such equipment.

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EXHIBIT 2.16(A)

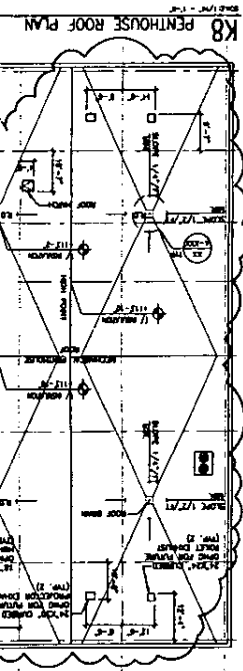
## PERMITTED LOCATIONS FOR SATELLITE DISHES AND OTHER COMMUNICATIONS ANTENNAE

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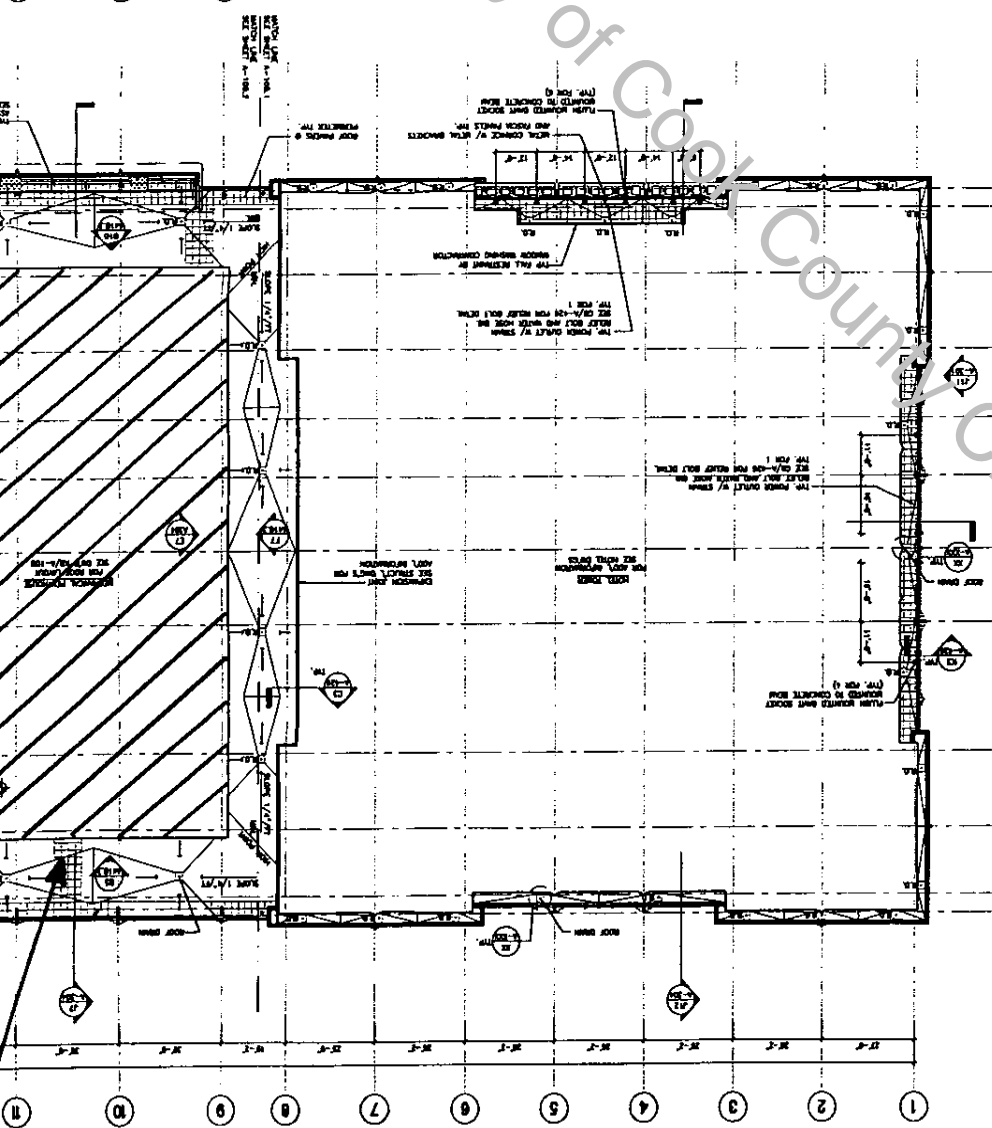
[See Attached]

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F12 ROOF PLAN EL. +88'



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A-108

ROOF PLAN  
EL. +88'-0"

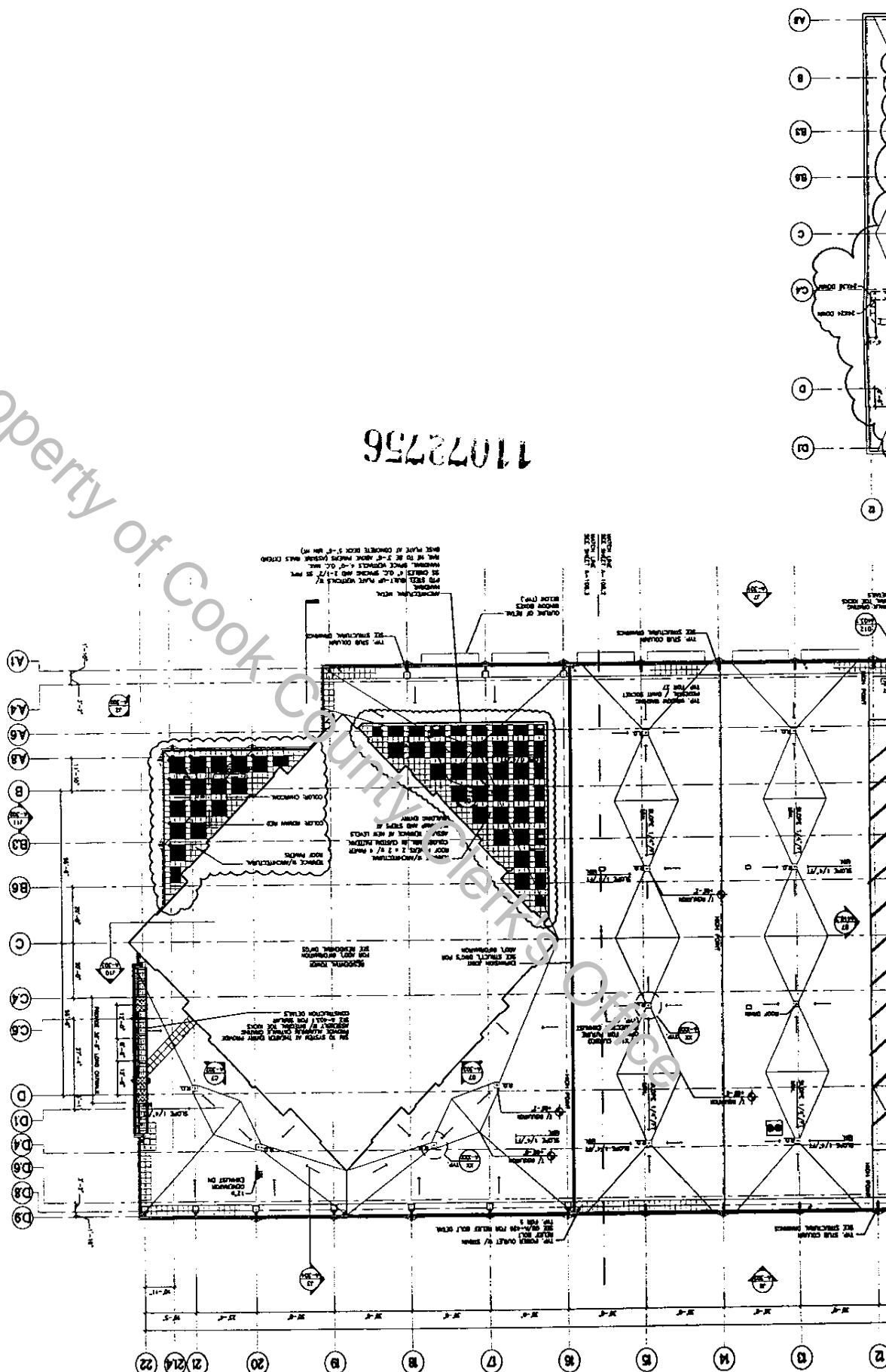
DEVELOPER  
RIVER EAST LLC  
300 EAST LINCOLN STREET  
CHICAGO, ILLINOIS  
MIXED USE DEVELOPMENT  
RIVER EAST CENTER

DESIGNER  
DE STEFANO PARTNERS  
100 N. LAUREL STREET, SUITE 1000  
CHICAGO, ILLINOIS 60602  
TEL: 312.467.1000  
WWW.DESTEFANOPARTNERS.COM



NO.	DESCRIPTION	DATE
11	REVISION FOR CONSTRUCTION	11/14/18
10	REVISION FOR MATERIALS	11/14/18
9	REVISION FOR PANELS	11/14/18
8	REVISION FOR PANELS	11/14/18
7	REVISION FOR PANELS	11/14/18
6	REVISION FOR PANELS	11/14/18
5	REVISION FOR PANELS	11/14/18
4	REVISION FOR PANELS	11/14/18
3	REVISION FOR PANELS	11/14/18
2	REVISION FOR PANELS	11/14/18
1	ISSUE FOR CONSTRUCTION	11/14/18

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1. ALL DIMENSIONS IN FEET UNLESS OTHERWISE NOTED.  
2. REFER TO SHEET A-101 FOR ARCHITECTURAL SYMBOLS, FINISHES AND NOTES.  
3. REFER TO SHEET A-102 FOR PARTITION WALLS, PARTITIONS AND FINISHES.  
4. ALL ROOF ARE SHALL HAVE CLASS A FIRE RESISTANCE.  
5. THE ROOF SHALL BE SLOPED TO EXISTING GRADE.  
6. EXISTING GRADE SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.  
7. EXISTING GRADE SHALL BE MAINTAINED UNLESS OTHERWISE NOTED.

EXHIBIT 2.10 (A)

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## EXHIBIT 2.17

### STORAGE ROOMS AND SHARED UTILITY AREAS

---

Pursuant to Section 2.17:

1. the Retail Owner is granted an easement to utilize the following storage rooms located within the Garage Parcel for its benefit as well as for the benefit of certain Other Owners (to the extent such rooms house Facilities serving Owners other than the Retail Owner):

LL4 - P411, P409, P417

LL3 - P311, P309, P317

LL2 - P211, P209, P217

LL1 - P119, P116, P112

2. Certain Other Owners are granted easements to utilize particular telephone rooms located within the Garage Parcel as follows: (i) Room P124 shall be used by the Residential Owner and the Retail Owner for the benefit of their respective Parcels, and (ii) Room P108 shall be used by the Hotel Owner and the Retail Owner (as well as by the Garage Owner) for the benefit of their respective Parcels.

3. The Hotel Owner and the Retail Owner are granted easements to utilize the Electrical Room P108 and Pump Room P107 located within the Garage Parcel for the benefit of their respective Parcels (as well as for the benefit of the Garage Parcel).

Costs associated with the maintenance of the rooms indicated above shall be the responsibility of the Owners for whose benefit the rooms are used. Owners sharing rooms for a common purpose shall allocate the maintenance expenses thereof amongst themselves.

Any other common rooms not mentioned above, which have meters, piping, Facilities, services, or other equipment that benefits more than one (1) Owner shall have the maintenance costs associated therewith allocated amongst the benefiting Owners.

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EXHIBIT 4.1 (a)

## KITCHEN WASTE

---

### DESCRIPTION/EQUIPMENT:

Grease basins and ejector pits located under sidewalks surrounding the Building.

### LOCATION:

As indicated on Exhibit 4.1(a-2).

The Grease Basin along Columbus Drive shall service the Hotel Parcel. Location coordinates are N4884.01, E1992.28.

The Grease Basin located along Illinois Street shall service the Retail Parcel. Location coordinates are N4775.30, E2177.78.

The Grease Basin located along Illinois Street shall service the Retail Parcel, Residential Parcel and Condominium Parcel. Location coordinates are N4775.30, E2467.95.

### MAINTENANCE SCHEDULE/AGENDA:

Basins and ejector pits will be cleaned out on an "as needed" basis depending on use.

### MAINTENANCE RESPONSIBILITY:

The Retail Owner will be responsible for contracting with a sewer and catch basin cleaning service provider.

### ALLOCATION OF COSTS:

The costs associated with the cleaning of the catch basins will be split between the Hotel Owner, the Retail Owner and the Condominium Owner/Residential Owner as follows:

N4884.01, E1992.28	Hotel Owner	100%
N4775.30, E2177.78	Retail Owner	100%
N4775.30, E2467.95	Retail Owner	30%
	Condominium Owner/ Residential Owner	70%

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EXHIBIT 4.1(A-2)

## KITCHEN WASTE EQUIPMENT LOCATIONS

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[See Attached]

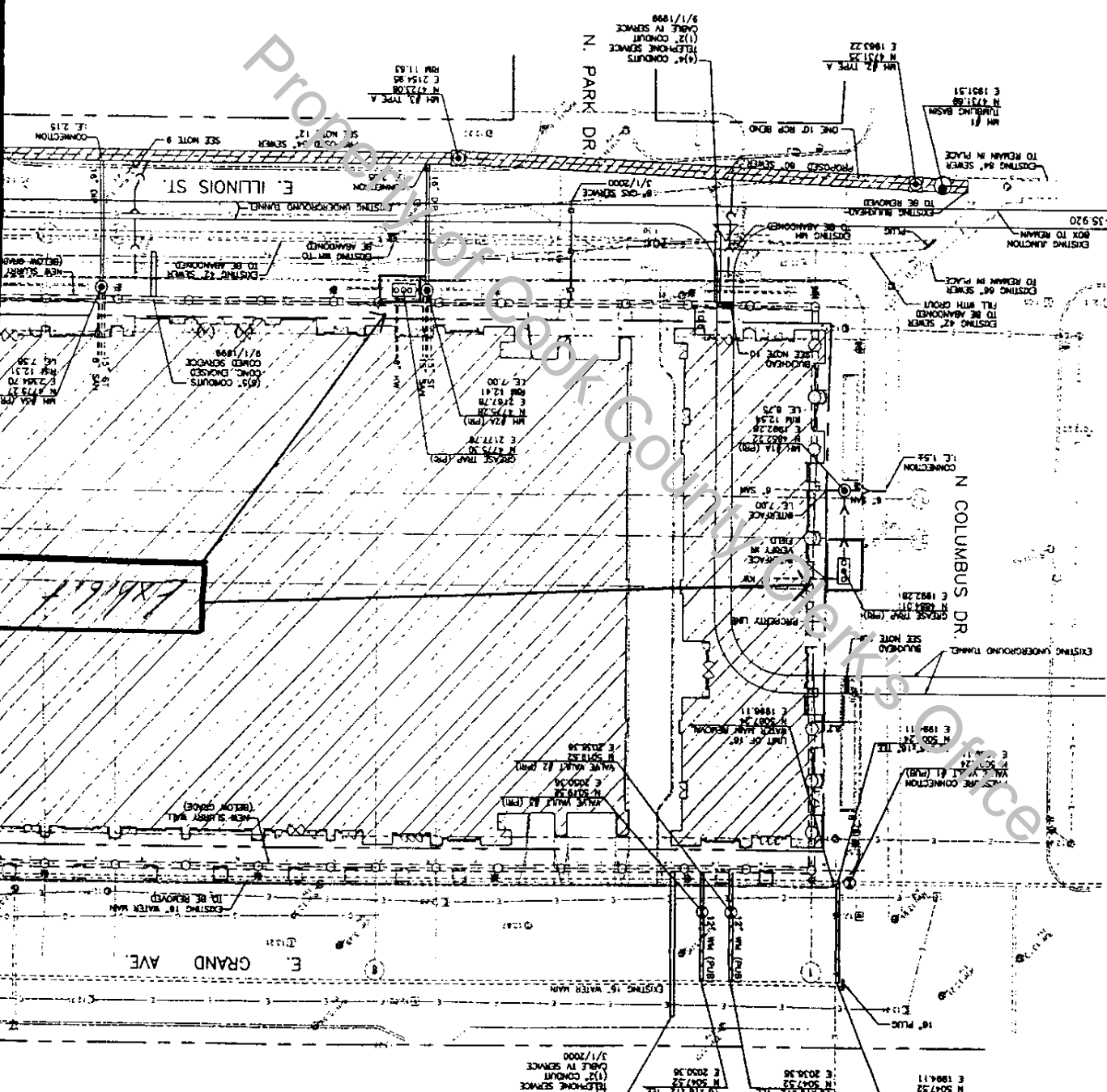
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- NOTES:
1. PRIOR TO NEW WORK CONTRACTOR SHALL VERIFY THE LOCATION AND ELEVATION OF EXISTING UTILITY LINES AND STRUCTURES TO BE CONNECTED TO NEW WORK. UNDESIRABLY REPORT ANY DISCREPANCIES TO THE ENGINEER.
  2. ALL SEWERAGE SHALL BE PREVENTED FROM ENTERING EXISTING STORM DRAINAGE SYSTEM BY THE USE OF SAND BAGS, INTERCEPTION DICES, OR OTHER APPROVED FINANCIAL METHODS.
  3. ALL UTILITY CONNECTIONS TO EXISTING UTILITY LINES SHALL BE DONE IN ACCORDANCE WITH REGULATIONS AND TO THE SATISFACTION OF THE CITY OF CHICAGO.
  4. ALL UTILITY COORDINATES ARE TO THE CENTER OF STRUCTURE OR PIPE.
  5. ALL MANHOLE DIAMETERS ARE 3' UNLESS OTHERWISE NOTED.
  6. INTERFACE 5' OUTSIDE BUILDING FOR PAVING WITH BUILDING SEE PLUMBING DRAWINGS.
  7. FOR EXACT DOWNSPOUT LOCATIONS SEE ARCHITECTURAL DRAWINGS.
  8. CONNECT ALL NEW DRAINS TO NEW SEWER.
  9. REPLACE ALL EXISTING BRICK CATCH BASINS THAT DRAIN TO NEW PRECAST CONCRETE CATCH BASINS.
  10. BLOCKS TO BE IN PLACE BEFORE START OF FOUNDATION WALL CONSTRUCTION.
  11. ALL SEWER LATERALS FROM BUILDING ARE TO BE 3" DIA. LINES WHICH CAN BE FORWARDED UPON REQUEST.
  12. COMPLETE SEWER REMOVAL FROM A PROPERTY OR NEIGHBORHOOD IN A SEPARATE SET OF CONSTRUCTION DOCUMENTS.

EXISTING LEGEND		PROPOSED LEGEND	
STORM MH	⊙	NEW CATCH BASIN	⊙
STORM CB	⊙	NEW MANHOLE	⊙
STORM W/LET	⊙	NEW WATER VALVE W/LET	⊙
SAN MH	⊙	COMPOSITION COOK	⊙
SAN CLEAN OUT	⊙	METER VAULT	⊗
WATER MH	⊙	EXISTING STRUCTURE TO BE ADJUSTED	⊙
WATER BUFFER BOX	⊙	NEW STORM OR COMBINED SEWER MAIN	▨
WATER W/TER	⊙	PRIVATE UTILITY	(PR)
WATER FINE HYDRANT	⊙	PUBLIC UTILITY	(PU)
TELEPHONE POLE	⊙	NEW ELECTRIC LINE	—
TELEPHONE W/LET	⊙		
TELEPHONE MH	⊙		
ELECTRIC W/LET	⊙		
ELECTRIC MH	⊙		
ELECTRIC VAULT	⊙		
ELECTRIC LIGHT POLE	⊙		
ELECTRIC LIGHT POLE WITH TRAFFIC SIGNAL	⊙		
ELECTRIC TRAFFIC CONTROL BOX	⊙		



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EXHIBIT 4.1(g-2)



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## EXHIBIT 4.1 (b)

### DETECTOR AND ALARM

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#### DESCRIPTION/EQUIPMENT:

- A. Two (2) Simplex fire alarm panels serving the Hotel Parcel, Garage Parcel and Retail Parcel (the two (2) fire panels have some overlap when it comes to flow alarms for the fire pump).
- B. Intercom assistance buttons – there are currently 52 assistance buttons wired with the ability to expand to 76.
- C. Cameras – the Plans call for 32 CCTV cameras.

#### LOCATION:

- A. Fire alarm panels located in the Hotel Parcel lobby and Retail Parcel lobby (street level).
- B. Assistance buttons are located primarily in the Garage Parcel, except for one at the Loading Dock door, and one in the Hotel Valet pass-through.
- C. Cameras are primarily located in the Garage Parcel or elevator lobbies in the Garage Parcel except for one (1) in the Loading Dock and two (2) at the Hotel Parcel's employee entrance.

#### MAINTENANCE SCHEDULE/AGENDA:

- A. Monitoring, maintenance and repair, and annual inspection of the fire alarm panels
- B. Contract service for general repairs, maintenance and inspections.
- C. Contract service for general repairs and maintenance.

#### MAINTENANCE RESPONSIBILITY:

- A. The Hotel Owner will be responsible for the repairs and maintenance of the Hotel Parcel panel. The Retail Owner will be responsible for the repairs and maintenance of the Retail Parcel panel. Each such Owner will be responsible for contracting with a certified off-site-monitoring contractor and each such Owner is responsible for annual inspections as required by the City of Chicago.
- B. The Retail Owner will be responsible for servicing the call assistance buttons.
- C. The Retail Owner will be responsible for keeping the cameras in full operation.

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Exhibit 4.1(b)  
Detector and Alarm  
Page 2

## ALLOCATION OF COSTS:

- A. Costs associated with the Hotel Parcel fire alarm panel will be paid by the Hotel Owner. Costs associated with the Retail Parcel panel will be split between the Retail Owner and the Garage Owner on the basis of square footage.
- B. The costs associated with the assistance buttons will be prorated among the Hotel Owner, the Retail Owner and the Garage Owner according to the number of buttons located within their respective Parcels.
- C. The costs associated with the CCTV cameras will be split between the Hotel Owner, the Garage Owner and the Retail Owner according to their *pro rata* shares based on the number of cameras placed in their respective Parcels (i.e., cameras in the Garage Parcel will be charged to the Garage Owner). *Pro-rata* shares will change as the number and locations of cameras change.

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EXHIBIT 4.1(c)

## HOT AND CHILLED WATER EQUIPMENT

---

### DESCRIPTION OF EQUIPMENT AND LOCATION:

Boiler – 18<sup>th</sup> floor of the Hotel Parcel – Room H1807  
Chiller – 18<sup>th</sup> floor of the Hotel Parcel – Room H1809

### MAINTENANCE SCHEDULE/AGENDA:

The Hotel Owner will designate the maintenance schedule for this equipment.

### MAINTENANCE RESPONSIBILITY:

The Hotel Owner will be responsible for maintaining the equipment for supplying hot and chilled water to the Hotel Parcel and Retail Parcel.

### ALLOCATION OF COSTS:

The costs associated with the hot and chilled water supplied to the Retail Parcel will be included in the BTU charges for the Retail Parcel's use thereof as monitored by meters.

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EXHIBIT 4.1(d)

## MAINTENANCE OF CONDENSER WATER RISERS AND COOLING TOWER CONTROL WIRING

---

### DESCRIPTION OF EQUIPMENT AND LOCATION:

Condenser Water Risers located in the Hotel Parcel and the Condominium Parcel.

### MAINTENANCE SCHEDULE/AGENDA:

The Hotel Owner will maintain the condenser water risers up to the isolation valves and make any necessary repairs in order to provide continued heating/cooling services.

### MAINTENANCE RESPONSIBILITY:

The Hotel Owner will maintain the condenser water risers up to the isolation valve into another Owner's Parcel. From the isolation valve to the individually owned heating and cooling units, the individual Owners will be responsible.

### ALLOCATION OF COSTS:

The costs associated with the condenser water risers will be included in the BTU charges for chilled water service from the Hotel Owner.

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