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THIS DOCUMENT PREPARED BY AND
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Cook County Recorder 188.50



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DECLARATION OF EASEMENTS AND OPERATING AGREEMENT

THIS DECLARATION OF EASEMENTS AND OPERATING AGREEMENT is made and entered into as of the 1st day of November, 2002 by Fullerton Development LLC, an Illinois limited liability company ("Declarant").

RECITALS:

A. The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in Article 2 hereof (Definitions).

B. Declarant is the owner of the Total Parcel situated in Chicago, Cook County, Illinois and legally described in Exhibit "A" attached hereto.

C. Declarant intends to develop a five (5) story building (the "Building"). All of floors two (2) through five (5) (both inclusive) of the Building, approximately 1500 square feet of space on floor one (1) of the Building (the "Residential Entrance"), a Parking Area and certain mechanical, utility and equipment rooms are to be used as a residential condominium development containing approximately six (6) residential condominium units (subject to unit combinations) (the "Residential Property").

D. By virtue of that certain Declaration of Condominium Ownership for the Fullerton/Greenview Condominium, a portion of the Total Parcel constituting the Residential Property will be submitted to the Act, and legally described on Exhibit "B" attached hereto.

E. A portion of floor one (1) of the Building is intended to be used for commercial or retail uses (the "Commercial Property"), as legally described on Exhibit "C" attached hereto.

F. The Residential and the Commercial Property will be functionally dependent on each other, and each will depend upon the other, to some extent, for structural support, enclosure, utility services and ingress and egress for access thereto and other facilities and components necessary to the efficient operation and intended use of the Residential Property and the Commercial Property.

G. Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owner of each such respective portion, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total Property, by providing for declaring and creating (i) certain

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easements, covenants, and restrictions against and affecting the Residential Property which will be binding upon each present and future Owner of the Residential Property, or of any portion thereof or interest or estate therein, and (ii) which will inure to the benefit of each of the present and future Owners of the Commercial Property, or of any portion thereof or interest or estate therein including any Unit therein, to the extent provided herein.

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

ARTICLE 1 INCORPORATION OF RECITALS

The foregoing Recitals are hereby incorporated by reference in the body of this Declaration as if fully set forth herein.

ARTICLE 2 DEFINITIONS

2.1 "Act" means the Condominium Property Act of the State of Illinois in effect on the day hereof as amended from time to time.

2.2 "Architect" shall have the meaning set forth in Article 15 (Architect) hereof.

2.3 "Building" shall have the meaning set forth in Paragraph C of the Recitals of this Declaration.

2.4 "Commercial Property" shall have the meaning set forth in Paragraph E of the Recitals of this Declaration.

2.5 "Common Elements" means all portions of the Total Property submitted from time to time to the Act pursuant to the Condominium Declaration except the Units.

2.6 "Common Walls, Floors and Ceilings" means all common structural and partition walls, floors and ceilings now or hereafter situated on or adjoining two Parcels, or located on one Parcel but forming the walls, floors or ceilings of an adjoining Parcel.

2.7 "Condominium Association" means an Illinois not-for-profit corporation to be formed for the purpose of administering the Condominium Property pursuant to the Act.

2.8 "Condominium Declaration" means any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits any portion of the Total Property to the provisions of the Act.

2.9 "Condominium Improvements" means any structures or improvements now or hereafter located on, within or forming a part of any Condominium Property.

2.10 "Condominium Property" means any portion of the Total Property from and after its submission to the Act and so long as it has not been withdrawn from the Act.

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2.11 "Creditor Owner", except where otherwise defined hereunder in a specific context, means an Owner to which a payment of money or other duty or obligation is owed under this Declaration by another Owner which has failed to make such payment or to perform such duty or obligation as and when required hereunder.

2.12 "Declarant" means Fullerton Development LLC, its successors and assigns (including, without limitation, any Mortgagee succeeding to the rights of Fullerton Development LLC under this Declaration pursuant to a collateral assignment of its rights hereunder) and any other person or entity designated by a Declarant to be the Declarant.

2.13 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, amendments and supplements hereto.

2.14 "Default Rate" means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Section 11.5 hereof.

2.15 "Defaulting Owner", except where otherwise defined hereunder in a specific context, means an Owner which has failed to make a payment of money owed under this Declaration to another Owner or to perform any of its duties or obligations as and when required hereunder.

2.16 "Depositary" means the person or entity from time to time acting pursuant to Article 16 (Depositary) of this Declaration

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

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

2.19 "Facilities" means all components of the chilled and heating hot water, condenser water, central air handling and fan, temperature control, domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, cable television system, master antenna, emergency power, telephone, elevator, trash removal and other utility systems now or hereafter forming a part of the Total Property and designed or utilized to furnish utility and other services to any portion of the Total Property, including but not limited to, air intake valves and ducts, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chutes, coils, compactors, compressors, computers, conduits, controls, control centers, cooling towers, couplings, dampers, devices, ducts, elevator cars, elevator rails, equipment, fans, fixtures, generators, grease traps, hangers, heat traces, heat exchangers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring and the like.

2.20 "Commercial Improvements" means all improvements now or hereafter constructed within and upon the Commercial Property.

2.21 "Improvements" means the Residential Improvements and Commercial Improvements.

2.22 "Limited Common Elements" means all portions of the Common Elements reserved for the use of an Owner or Owners of the Residential Property to the exclusion of other Owners.

2.23 "Maintenance" means and includes operating, maintaining, repairing, reconditioning, refurbishing, reconfiguring, inspecting, testing, cleaning, painting, installing and replacing when necessary or desirable Facilities or such other portions of the Improvements and includes the right of access to and the right

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to remove from the Improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

2.24 "Mortgage" means a first mortgage or first trust deed in the nature of a mortgage on the Commercial Property, but shall not include a mortgage or trust deed on a Unit in the Residential Property if the Residential Property is submitted to the Act and subsequently conveyed by the Declarant.

2.25 "Mortgagee" means the holder of a Mortgage.

2.26 "Owner" means either an Owner of the Commercial Property or an Owner of the Residential Property.

2.27 "Owner of the Commercial Property" means, following the recording of the Declaration, the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Commercial Property.

2.28 "Owner of the Residential Property" means, following the recording of the Declaration, the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Residential Property. If and so long as the Residential Property, or any portion thereof, has been submitted to and remains subject to the provisions of the Act, the Owner of the Residential Property, or such portion thereof, shall mean collectively all of the Unit Owners in and to the Residential Property (or such portion subject to the Act) and not individually.

2.29 "Parking Area" means the area designated for parking upon and within the Residential Property.

2.30 "Parking Space" means one (1) reserved parking space for the Owner of the Residential Property located in the Parking Area.

2.31 "Passenger Elevator" means the two (2) passenger elevators providing or to provide service to and at each level of the Building, which Passenger Elevators are or shall be a Common Element.

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

2.33 "Residential Improvements" means all improvements now or hereafter constructed within and upon the Residential Property.

2.34 "Residential Property" shall have the meaning set forth in Paragraph C of the Recitals of this Declaration.

2.35 "Service Fee" means the monthly fee payable by the Owner of the Commercial Property to the Owner of the Residential Property as further described in Section 5.3 hereof.

2.36 "Total Parcel" means the land, property and space legally described on Exhibit A attached hereto.

2.37 "Total Property" means the Residential Property and the Commercial Property.

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

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

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2.40 "Unit Ownership" means a part of any portion of the Total Property submitted to the Act consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

ARTICLE 3

EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY

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

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

(b) A non-exclusive Easement for the use for their intended purposes of all Facilities now or hereafter located in the Commercial Property and now or hereafter connected to Facilities now or hereafter located in the Residential Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Residential Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Residential Property.

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

(d) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Commercial Property to the extent necessary to permit the construction, equipping, fixturing and furnishing of the Building, and the Maintenance of the Residential Property and Facilities as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article 6 (Structural Support) hereof or to assist in providing the services required under Article 5 (Services To Owner Of Commercial Property; Service Fee) hereof.

(e) An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the Residential Property and (ii) for the use of such Common Walls, Floors and Ceilings.

3.2 Each Easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Commercial Property may, from time to time after consultation with the Owner of the Residential Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Commercial Property and in order to assure the reasonable security of the applicable portion of

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the Commercial Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement.

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

3.4 In the event of the submission of the Residential Property or any portion thereof (including, without limitation, the Residential Property) to the Act, then all of the Easements granted under Section 3.1 hereof shall, with respect to the portion of the Residential Property so subjected to the Act, inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.

ARTICLE 4

EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY AND GENERAL EASEMENT PROVISIONS

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

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

(b) A non-exclusive Easement for the use for their intended purposes of all Facilities now or hereafter located in the Residential Property and now or hereafter connected to Facilities now or hereafter located in the Commercial Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property.

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

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

(e) A non-exclusive Easement for ingress and egress (and where reasonably necessary, Maintenance) for persons, materials and equipment over, on, across and through the Residential Property to the extent reasonably necessary to permit the Maintenance of the Commercial Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article 6 hereof (Structural Support) or to assist in providing the services required under Article 5 hereof (Services To Owner Of Commercial Property; Service Fee).

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(f) A non-exclusive Easement for ingress, egress and access to, and the use of, any Facilities now or hereafter located therein located in the Building. In exercising the rights under the Easements granted in this Subsection (f), the Owner of the Commercial Property shall observe, comply with and be bound by, all written rules and regulations which may be promulgated by the Owner of the Residential Property from time to time.

(g) A non-exclusive Easement for ingress, egress and access to, and the use of, the trash compactor (if any), rubbish storage area, and rubbish room (if any), now or hereafter located in the Residential Property.

(h) A non-exclusive Easement for pedestrian and vehicular ingress and egress over, upon and across the Parking Area and any exterior sidewalks, walkways or driveways now or hereafter located on the Residential Property to the extent reasonably necessary for the use of an access to and from the Parking Area to public roadways adjacent to the Total Parcel.

(i) A non-exclusive Easement for pedestrian ingress and egress to, from, over, upon and across any exterior sidewalks and walkways now or hereafter located on the portion of the Residential Property adjacent to the Parking Area or to the entrance to the Commercial Property to the extent reasonably necessary for access to and from public roadways and sidewalks adjacent to the Residential Property.

(j) An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the Commercial Property and (ii) for the use of such Common Walls, Floors and Ceilings.

(k) An exclusive Easement on the south facade of the Building for a sign or signs advertising the name and/or tradename and telephone number of the occupant or tenant of the Commercial Property.

4.2 Easements provided for, declared or created under this Article 4 shall be binding upon the Residential Property and each Owner of the Residential Property and shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property and each portion thereof.

4.3 With regard to any portion of the Total Property over which Easements have been granted pursuant to Articles 3 (Easements In Favor Of Residential Property) and 4 hereof, the Owner of that portion of the Total Property burdened by such Easement shall have the right, after consultation with the Owner or Owners benefitted by such Easements, to relocate any such Easements in the event comparable alternative means can be substituted to insure the continuation of the benefit granted and such relocation will not result in any cost to or material adverse affect on the Owner or Owners benefitted by such easement.

4.4 With regard to any portion of the Total Property over which Easements have been granted pursuant to Articles 3 (Easements In Favor Of Residential Property) and 4 hereof for pedestrian ingress and egress in an Emergency Situation, such Easements shall not be deemed to include (a) any portion of a dwelling unit, or (b) the interior of any portions of the Total Property intended to be leased to tenants.

4.5 In the event of the submission of the Commercial Property to the Act, then all of the Easements granted under Section 4.1 hereof shall inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.

4.6 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation and/or Maintenance pursuant to such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of

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any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as existed immediately prior to such construction, installation and/or Maintenance. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, the Creditor Owner may, at its option, perform, or cause to be performed, the necessary restoration or replacement work, and shall be entitled to recover from the Defaulting Owner all costs and expenses incurred in connection therewith plus interest thereon as described in Section 11.5 hereof, and the Creditor Owner shall obtain a lien against that portion of the Total Property owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

4.7 The Easements granted, declared or created pursuant to Articles 3 (Easements In Favor Of Residential Property) and 4 shall benefit the applicable Owners and their respective tenants, guests and invitees."

ARTICLE 5

SERVICES TO OWNER OF COMMERCIAL PROPERTY; SERVICE FEE

5.1 The Owner of the Residential Property shall furnish the following services to the Owner of the Commercial Property, to the extent required:

(a) Street Level Pavement. Maintenance of the street level pavement adjacent to the Building, including removal of snow from sidewalks, stairways and driveways leading to all street level entrances to the Building and the Parking Area Entrance, and keeping such sidewalks, driveways and street level entrances to the Building free from debris and obstructions to pedestrian and vehicular traffic; and

(b) Landscaping. Maintenance of all planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials now or hereafter located or planted in front of the Building, as necessary to maintain such items in a neat, healthy and sightly condition consistent with a first-class, mixed-use building.

5.2 The Owner of the Residential Property shall make a good-faith effort to secure and furnish the services described in Section 5.1 hereof (a) at the lowest possible costs reasonably available without degrading the quality of any services furnished and (b) in a manner so as to provide the Owner of the Commercial Property with occupancy and enjoyment of the Commercial Property for its intended use.

5.3 The Owner of the Commercial Property shall pay a Service Fee for all of the services provided by the Owner of the Residential Property to Owner of the Commercial Property, which Service Fee shall be paid on a monthly basis and shall be computed as set forth on Exhibit 5.3 hereof.

5.4 Statements for services rendered pursuant to this Article 5, provisions for payment thereof and provisions for additional payments incurred in connection with such services shall be made in accordance with the terms and provisions of Exhibit 5.4 attached hereto and made a part hereof.

5.5 If any Owner fails to perform its obligations under this Article 5 (except when such failure is caused by an Unavoidable Delay [as defined in Article 13 hereof]), and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner, the Creditor Owner shall have the right to take possession and control of and to operate, maintain, repair and replace the Facilities (wherever located) required for the furnishing of such service until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure. For any period in which

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a Creditor Owner is performing pursuant to this Section 5.5, the Defaulting Owner shall pay the Creditor Owner the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance plus interest thereon as described in Section 11.5 hereof.

5.6 If, at any time, a Defaulting Owner shall fail to pay to any Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of this Article 5 for ten (10) days after written notice from the Creditor Owner demanding payment of said sum of money, then the Creditor Owner may discontinue furnishing the services for which payment has not been received 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 of money and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, the Defaulting Owner shall not be deprived of any such services unless and until it shall finally be determined by unreviewable court proceedings, arbitration or otherwise that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid.

ARTICLE 6

STRUCTURAL SUPPORT

6.1 No Owner shall do or permit any act which would adversely affect the structural safety or integrity of the Improvements on any other portions of the Total Parcel.

6.2 Except in the case in which Sections 10.3 or 10.4 hereof or Article 14 hereof (Condemnation) is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been required or the structural safety of any portion of the Improvements is endangered, then the following provisions shall apply:

(a) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, which determination shall be made by the Architect, then the Owner or Owners benefitted by the structural support shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 21 (Alterations) would not require such approval) the Owners of the portion of the Total Property affected thereby, the Architect and Mortgagees under any Mortgage encumbering the portions of the Total Property affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners benefitted thereby in proportion to the relative benefits to be derived by such Owner(s) from such substitute or additional support, as determined by the Architect and expressed as a percentage for each such Owner.

(b) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 21 (Alterations) would not require such approval) the Owners of the portions of the Total Property affected thereby, the Architect and the Mortgagees under any Mortgage encumbering the portions of the Total Property affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners responsible for the reduction or endangerment in proportion to the relative degree of culpability of such Owner(s) in causing the reduction or endangerment, as determined by the Architect and expressed as a percentage for each such Owner.

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

6.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners in accordance

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with Section 6.2 shall be determined as responsible for such construction, any Owner may, upon not less than thirty (30) 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 may be required, or any Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner or Owners shall be liable for and pay all costs and expenses incurred as a result of any Owner's providing of any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners for substitute or additional support, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of any portion of the Total Property during any period of reconstruction.

ARTICLE 7

COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

7.1 The Owner of the Residential Property and the Owner of the Commercial Property:

(a) shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Total Property or any portion thereof, if non-compliance by it with respect to its portion of the Total Property or any part thereof 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 Improvements themselves, or would jeopardize any other Owner's right to occupy or utilize beneficially its portion of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of any other Owner or would increase costs of insurance of any other Owner or would impose any threat or danger to any person or property; and

(b) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Total Property or any portion thereof or the requirements of any insurance policy affecting insurance coverage on any other Owner's portion of the Total Property if non-compliance by it with respect to its portion of the Total Property or any portion thereof 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, or (ii) render any other Owner's portion of the Total Property uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring the Total Property or any other Owner's portion of the Total Property; provided, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in any other Owner's portion of the Total Property, such other Owner shall be liable for the cost 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 any other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such non-compliance is not proceeding diligently and if upon expiration of ten (10) days after the receipt of such notice, any such cure of the non-compliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur, together with interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner.

7.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics, materialmen or any other like lien arising by reason of its act or any work or materials which it has ordered on any other Owner's portion of the Total Property, or on its portion of the Total Property if the existence or

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foreclosure of such lien on its portion of the Total Property would adversely affect any Easement hereunder or services to be furnished pursuant to Article 5 hereof (Services To Owner Of Commercial Property; Service Fee). Notice of the filing of any such lien shall be served upon the Mortgagees. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date of payment of such costs and expenses by the Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Mortgages; (ii) within said thirty (30) day period, foreclosure proceedings relating to such lien cannot be completed; and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner and to the Mortgagees, if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the Creditor Owner or, if applicable loan documents so provide, to the Mortgagees, either: (1) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner and the Mortgagees, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (2) other security reasonably acceptable to the Creditor Owner and the Mortgagees, if applicable. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under any Mortgage, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within ten (10) days after the occurrence of any of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time after the end of said 10-day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

7.3 Each Owner (hereinafter in this Section 7.3 the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners (hereinafter in this Section 7.3 the "Indemnitee") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from: (i) the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein, or (ii) the use, exercise or enjoyment of an easement by the Indemnifying Owner or its tenants, guests or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, the Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.

7.4 Without limiting the provisions of Section 7.1(a) neither the Owner of the Residential Property nor the Owner of the Commercial Property shall make any Alterations (as that term is hereinbelow defined in Section 21.1) or allow any use of their respective portions of the Total Property or take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Total Property or any portion thereof. The Residential Property and the Commercial Property shall continue to be combined and treated as one zoning lot for the purposes of complying with the Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning Ordinance as

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applicable to any portions of the Total Property without the consent of the other Owners, which consent shall not be unreasonably withheld, except that no Owner shall be required to consent to any change in the Chicago Zoning Ordinance as applicable to any portion of the Total Property which (i) increases density, (ii) increases maximum height in any portion of the Total Property, or (iii) changes the character or permitted use of any portion of the Total Property.

ARTICLE 8

REAL ESTATE TAXES

8.1 The Owners shall make good faith efforts and cooperate with each other so that the Residential Property and the Commercial Property shall, when and as soon as possible, be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor of Cook County, Illinois ("Assessor"). The Owner of the Residential Property shall also have the right to divide the Total Property into separate tax parcels attributable to the Commercial Property and the Residential Property, respectively. From and after submission of the Residential Property to the Assessor, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each Unit of the Condominium Property. At such time as the Residential Property and the Commercial Property have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, the Owner of the Residential Property shall pay the real estate tax bill or bills for the Residential Property and the Owner of the Commercial Property shall pay the real estate tax bill for the Commercial Property.

8.2 Until such time as the Residential Property and the Commercial Property have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, the Owner of the Residential Property shall be responsible for eighty-five percent (85%) of the real estate tax bill for the Total Property and the Owner of the Commercial Property shall be responsible for fifteen percent (15%) of the real estate tax bill for the Total Property. The Owner of the Residential Property shall pay the combined tax bill or bills for the Total Property prior to their due date. The Owner of the Commercial Property shall be responsible for and shall pay or reimburse the Owner of the Residential Property (within ten (10) days after the demand of the Owner of the Residential Property therefor, but in no event later than seven (7) days prior to the due date of the related tax bill) for ten percent (10%) of the total real estate taxes levied in the combined tax bill or bills for the Total Property.

8.3 If any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to Section 8.2, then any Creditor Owner may, after at least 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 Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, plus interest thereon as provided in Section 11.5 hereof, and shall also have a lien against the portion of the Total Property owned by the Defaulting Owner in accordance with Article 11 hereof (Liens, Rights and Remedies).

8.4 Any Owner may, if it shall so desire, endeavor at any time or times to obtain a lowering of the assessed valuation upon the Total Property for the purpose of reducing taxes thereon ("Protesting Owner"). In the event such protest shall be made by a Protesting Owner prior to the time that the Residential Property and the Commercial Property are separately assessed and taxed, the Protesting Owner shall be required to serve written notice to the other Owners at least ten (10) days prior to the filing of the objection. Any non-Protesting Owner may elect within ten (10) days after receipt of the notice described above to join the Protesting Owner in effecting such a reduction. In the event any other Owners fail to join the Protesting Owner in obtaining the reduction, the Protesting Owner shall be authorized to collect any tax refund payable as a result of any proceeding Protesting Owner may institute for that purpose, and any such tax refund shall be the property of the Protesting Owner. Notwithstanding the above, if any other Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes reflecting the reduction in or refund of such taxes, the Owners who have protested shall apportion

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the tax refund in accordance with their respective portions of such real estate taxes. If any Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and such Owner receives a reduction in taxes for future years, such Owner shall be and remain liable for its proportionate share of the legal fees incurred in connection therewith in accordance with the immediately preceding sentence.

ARTICLE 9

INSURANCE

9.1 The Owner of the Residential Property and the Owner of the Commercial Property shall procure and maintain the following insurance:

(a) The Owner of the Residential Property, for itself and the benefit of the Owner of the Commercial Property, shall keep the Improvements (including without limitation the foundation) insured under a single insurance policy under an "all risk" or "special form" property policy for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policy shall be endorsed with a replacement coverage endorsement and an agreed amount clause and a "joint loss" clause, and no co-insurance penalty shall be applicable.

(b) The Owner of the Residential Property and the Owner of the Commercial Property shall each maintain Commercial General Liability Insurance under a single insurance policy covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class, mixed-use buildings in the City of Chicago, but in all events for limits of not less than \$1,000,000 combined single limit per occurrence with a general policy aggregate of \$2,000,000.00 for personal and bodily injury or property damage with at least an additional \$3,000,000 umbrella coverage, and shall also include non-owned and hired automobile liability insurance for limits of not less than \$1,000,000.

(c) The Owner of the Residential Property, for itself and for the benefit of the Owner of the Commercial Property, shall insure under a single policy their boiler and machinery risks, on a comprehensive, blanket basis covering all Building and Parking Area, 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, and also providing coverage, at the option of the Owner of the Commercial Property, for loss of rental income caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts as may be carried by prudent owners of first-class commercial buildings in the City of Chicago, Illinois, or as may be required by the Mortgages under any Mortgages encumbering the Commercial Property or any portion thereof, and in any case, such policy shall include a "joint loss" clause.

9.2 The Owner of the Residential Property shall pay all premiums on the insurance described in Section 9.1 hereof, except for the Commercial General Liability Insurance to be separately maintained by the Owner of the Commercial Property. The Owner of the Commercial Property shall pay its share of the insurance premiums as part of the Service Fee described in Section 5.3 hereof. In the event the Owner of the Residential Property and the Owner of the Commercial Property cannot agree upon the insurance companies to provide the insurance required under Section 9.1 hereof, the question of selection of an insurance company shall be submitted to arbitration as provided in Article 12 hereof (Arbitration). Notwithstanding anything contained in this Article 9 to the contrary, as long as the Declarant owns the Commercial Property or any portion thereof, the Declarant shall: (i) select the insurance companies to provide the insurance required under this Article 9, (ii) select the insurance agent or consultant described in Section 9.4 hereof, and (iii) make the decisions and determinations described in Section 9.4 hereof; provided, however, that the insurance companies selected by the Declarant and the insurance policies issued by such companies shall at all times comply with the

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requirements of this Article 9. Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. So long as any portion of the Total Property remains subject to the provisions of the Act, insurance on additions, alterations, improvements and betterments to individual Units shall be the responsibility of those persons designated in the applicable Condominium Declaration as being responsible for such insurance, and any Unit Owner's policies shall be subject to and consistent with the provisions of this Article 9. Each of the Owners hereby agrees to cooperate to procure and maintain insurance policies described in Section 9.1 hereof which jointly cover the interests of all of the Owners.

9.3 Each policy described in Section 9.1 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall provide, except for liability insurance described in Section 9.1(b) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iii) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days' advance written notice shall be sufficient and (iv) shall, if available, provide, except for the liability insurance required under Section 9.1(b) and rent loss and business interruption insurance under Section 9.1(c) hereof, that all amounts payable thereunder shall be paid to the Depositary in accordance with Articles 16 (Depositary) and 21 hereof (Alterations). Nothing contained in this Section 9.3 shall prevent the naming of any person, as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of mortgage clause; provided, however, that a Mortgagee receiving any proceeds of any insurance policy described in Section 9.1(a) or Section 9.1(c) shall deposit the insurance proceeds with the Depositary in accordance with Articles 16 (Depositary) and 17 (Disbursements Of Funds By Depositary) to the extent that the Owner of the portion of the Total Property subject to such Mortgage receiving such proceeds would be required to do so, except that such obligation for such deposit by a Mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then-uncured default under the applicable Mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depositary a sufficient amount, which when added to the proceeds to be deposited by the Mortgagee, will be at least equal to the cost, as estimated by the Mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds.

9.4 Limits of liability or types of insurance specified in this Article 9 or carried by the Owners shall be reasonable and prudent for an Owner of a mixed-use development similar to the Total Property, and subject to the Declarant's rights under Section 9.2 hereof, shall be jointly reviewed by the Owners at least annually to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverage or endorsements should be deleted. Deductible amounts for insurance required under Section 9.1 shall be in such amounts as are customary or prevalent for an Owner of a mixed-use development similar to the Total Property. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance agent or consultant to perform such review periodically on their behalf and the cost of employing any such agent or consultant shall be shared by the Owners in the ratio their annual insurance

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premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

9.5 Certificates delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner (or, if appropriate, to the Condominium Association) and to the Mortgagees, at least thirty (30) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Copies of such policies shall be delivered upon request. Should an Owner fail to pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner may pay the Defaulting Owner's share of such premiums or costs and the Defaulting Owner shall reimburse the Creditor Owner for any such amounts paid by the Creditor Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner. Additionally, the Creditor Owner shall obtain a lien against the property of the Defaulting Owner pursuant to Section 11.1 hereinbelow.

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

9.7 In the event the Owner of a portion of the Total Property is subject to any loads, including, without limitation, any restaurant load, general liability load or umbrella liability load as a result of any use or operation of any other portion of the Total Property in connection with any insurance policy maintained pursuant to this Article 9, then the Owner whose use or operation results in such loads shall be liable for the reimbursement to the Owner or Owners subject to such loads for such increased amounts.

ARTICLE 10

MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

10.1 Subject to Article 6 hereof (Structural Support), the Owner of the Residential Property, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owner of the Commercial Property pursuant to this Declaration, shall keep all Facilities for which the Owner of the Commercial Property is not assigned Maintenance responsibility for in this Declaration or for which the Owner of the Residential Property is assigned Maintenance responsibility in this Declaration in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether 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 good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Residential Property further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property. Except as otherwise expressly provided in this Declaration (including in any exhibits hereto), any such costs incurred in accordance with this Section 10.1 shall be paid for by the Owner of the Residential Property.

10.2 Subject to Article 6 hereof (Structural Support), the Owner of the Commercial Property, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owner of the Residential Property pursuant to this Declaration, shall keep the Commercial Property and all Facilities which exclusively serve the Commercial Property for which the Owner of the Commercial Property is assigned Maintenance responsibility in this Declaration in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are

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to the interior and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Except as otherwise expressly provided in this Declaration (including in any exhibits hereto), any such costs incurred in accordance with this Section 10.2 shall be paid for by the Owner of the Commercial Property.

10.3 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Residential Improvements only, or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements only, then any such damage shall be repaired and restored by the owner of the portion of the Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances, and such owner shall, in accordance with the provisions of Article 17 hereof (Disbursements Of Funds By Depositary), be entitled to withdraw any insurance proceeds held by the Depositary by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished any other Owner under Article 5 hereof (Services To Owner Of Commercial Property; Service Fee), then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 17 hereof (Disbursements Of Funds By Depositary) be entitled to withdraw any insurance proceeds and any other monies held by the Depositary as a result of any such damage for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds, plus interest at the Default Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner.

10.4 If the Improvements are damaged by fire or other casualty and if the provisions of Section 10.3 are not applicable because the nature of the damage is such that it does not fall within either of the categories set forth in clauses (a) or (b) of Section 10.3, then the repair and restoration of such damage shall be the responsibility of the Owner or Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners who are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Mortgagees, if required. In the event such Owners, and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article 12 hereof (Arbitration). The plans and specifications for such repair and reconstruction shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Mortgagees, if required.

10.5 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in Section 10.4 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owners' Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.

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10.6 In any instance of repair or restoration pursuant to Sections 10.3 or 10.4 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable, independent, professional, construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing such repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article 10. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or a loan commitment, reasonably satisfactory to the other Owners and the Mortgagees, if required, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 10.6, or fails to deliver the security provided for within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment, plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

10.7 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Total Property, shall be refunded to the respective Owner or, if applicable, to the Mortgagee holding a Mortgage encumbering such Owner's portion of the Total Property in accordance with the terms of such encumbrance.

10.8 If any or all of the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Mortgagees, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner, or, if applicable, to the Mortgagee holding a Mortgage encumbering such Owner's respective portion of the Total Property in accordance with the terms of such encumbrance. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 10.3, 10.4, 10.5, 10.6, and 10.7 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any violations of the applicable ordinances of the City of Chicago caused by the other party's failure to rebuild.

10.9 For purposes of this Article 10, architects' and engineers' fees, attorneys' fees, consultants' fees, insurance fees, reasonable costs and expenses of institutional lenders incurred in connection with financing repairs or restoration of Improvements for a term of not more than one year, title insurance premiums and other similar construction expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

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10.10 Notwithstanding any provision to the contrary contained in this Declaration, if any or all of the Improvements are damaged by fire or other casualty, any and all insurance proceeds shall be distributed to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.

ARTICLE 11

LIENS, RIGHTS AND REMEDIES

11.1 If, at any time, any Owner fails within ten (10) days after notice or demand to pay any sum of money due another Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor owner may have, the Creditor Owner shall have (i) in the event of a default under Article 10 (Maintenance And Repair; Damage To The Improvements) or 14 (Condemnation), a lien against any condemnation award or insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Total Property or otherwise under insurance policies carried pursuant to Article 9 hereof (Insurance), or (ii) in the event of a default under any other Section of this Declaration, a lien against the portion of the Total Property owned by the Defaulting Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 11 or to secure performance of a covenant or obligation. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The liens provided for in this Section 11.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on a portion of the Total Property or other interest of the Defaulting Owner, other than a bona fide mortgage or trust deed which is a first mortgage or trust deed against such portion of the Total Property at the time of the recording of the notice of lien.

11.2 To the fullest extent permitted by law, the provisions of this Article 11 shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligations of the Unit Owners to repair or restore any portion of the Total Property that constitutes Condominium Property, or (ii) the use of insurance proceeds to repair or restore any portion of the Total Property that constitutes Condominium Property. In the event of fire or other casualty or act of God or force majeure causing damage to any portions of the Total Property subject to the Act which would entitle any Owner, under the Act, to withdraw all or any part of such Condominium Property from the Act and not to repair and restore such Condominium Property as required by this Declaration, then the other Owners shall have a lien on any insurance proceeds payable for loss or damage to such portion of the Total Property under insurance policies carried pursuant to Article 9 hereof (Insurance) and on any condemnation award pursuant to Article 14 (Condemnation), in an amount necessary so that the other Owners shall have sufficient proceeds to demolish or repair and restore the Improvements to a condition so as adequately to assure:

- (a) the structural integrity and safety of the Improvements;
- (b) the continuous and efficient operation of all Facilities, including all electrical, utility, mechanical, plumbing and other systems serving the Improvements;
- (c) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction of the Total Property or any part thereof; and
- (d) the architectural unity and aesthetic appearance of the restored Improvements as a first-class, mixed use property.

The lien created by this Section shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on any Condominium Property or any portion thereof. Such lien shall arise immediately upon the recording of a notice by an Owner with the Recorder following the occurrence of a fire or

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other casualty or act of God or force majeure stating that it is a lien created by this Section of the Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid to the Creditor Owner, or the Owner of the portion of the Total Property being withdrawn from the Act and requiring restoration shall have repaired and restored the Improvements on such Owner's portion of the Total Property as required by this Declaration. Such lien may be enforced by a 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.

11.3 Without limiting any equitable remedies to which the other Owners may be entitled, so long as any portion of the Total Property remains subject to the provisions of the Act, each Unit Owner shall be liable only for such portions of any claim against the Owner of such portions of the Total Property equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit as set forth in the applicable Condominium Declaration. Upon payment of such amount for which a Unit Owner is liable, (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the 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 Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several.

11.4 No conveyance or other divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall in any way affect or diminish any lien arising pursuant to this Article 11, and any lien which would have arisen against any property pursuant to this Article 11 had there been no conveyance or foreclosure of a lien which shall then be and remain superior) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

11.5 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall be payable from the date any such sum first is due hereunder until paid in full, at a rate of interest (the "Default Rate") equal to the lesser of (i) the floating rate which is equal to four percent (4%) per annum in excess of the annual rate of interest from time to time announced by Bank of America Illinois at Chicago, Illinois (or another major bank in the City of Chicago if Bank of America Illinois ceases to exist) as its "prime rate" or "reference rate" or "corporate base rate" of interest or a reasonable substitute therefor in the event a "prime rate" or "reference rate" or "corporate base rate" is no longer announced, or (b) the then maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt.

11.6 The rights and remedies of an Owner provided for in this Article 11 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. Any Owner may enforce, by a proceeding in equity for mandatory injunction, any other 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.

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

11.8 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.

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11.9 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, and such fees and costs shall be added to the amount of any applicable lien created under this Article 11.

11.10 In the event a Creditor Owner consists of one or more Unit Owners, then the Condominium Association of which the Creditor Owner is a member shall have the sole and exclusive right to act for, bind, sue for, defend and represent, in accordance with Article 19 hereof (Condominium Association Acting For Unit Owners), the Creditor Owner in any proceeding arising out of this Article 11, together with full power and authority to compromise any claims arising out of the terms of this Article 11 and to grant releases.

ARTICLE 12

ARBITRATION

12.1 The following matters shall be submitted for arbitration to the American Arbitration Association (the "AAA") pursuant and subject to the provisions of this Article 12:

- (a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$100,000, which \$100,000 shall mean \$100,000 in 2002 equivalent dollars, which shall not be resolved within sixty (60) days after same has arisen; and
- (b) All other matters which are required under this Declaration to be submitted for, or determined by, arbitration.

Any such dispute, claim, controversy or matter is referred to herein as a "Matter". Arbitration of any Matter shall be initiated by any Owner making a written demand therefor by giving written notice thereof to the other Owners involved in the Matter and by filing a copy of such demand with the AAA. The AAA shall have jurisdiction upon the giving of such notice and the filing of such demand. Any such arbitration shall be held in Chicago, Illinois, and shall be conducted and completed in an expeditious manner and without delay. The applicable Mortgagees shall be parties to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagees hereunder.

12.2 Unless otherwise agreed to in writing by the parties to the arbitration within twenty (20) business days after the notice demanding arbitration has been given, the parties shall jointly designate three (3) arbitrators to resolve the Matter. If the parties fail to designate the arbitrators within such time period, arbitrators shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in any event such arbitrators shall be experienced as to the design, construction and/or operation, as the Matter requires, of high-rise, multi-use structures similar to the Building. Except where contrary to the provisions set forth in this Declaration, the AAA Commercial Arbitration Rules shall apply to the arbitration of any Matter. During the twenty (20) business day time period referenced above, the parties may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

12.3 The arbitrators shall commence hearings within sixty (60) days of selection, unless the Owners and the arbitrators agree upon an expedited or delayed schedule of hearings. Prior to the hearings, any Owner may send out requests to compel document production from the Owners. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by such Owners or may be ordered by the arbitrators to the extent reasonable. The arbitrators may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrators in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Declaration. Subject to the other terms hereof, if any Owner fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitration panel may hear and determine

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the Matter upon evidence produced by the appearing Owners. The arbitration costs shall be borne equally by each Owner involved in the Matter being arbitrated, except that each Owner shall be responsible for its own expenses.

12.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Declaration in accordance with this Declaration during the course of any arbitration constituted or conducted under the provisions of this Article 12. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by any party to the Matter by application to any court of competent jurisdiction for an injunctive order requiring the immediate performance of such obligations as provided in the preceding sentence until such time as any Matter is resolved as provided in this Article 12.

12.5 With respect to any Matter subject to arbitration under this Article 12, it is agreed that the arbitration provisions of this Article 12 shall be the sole remedy of the Owners under this Declaration. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter not described in this Article 12 or with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article 12 may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrators shall be final and binding upon the Owners and the Mortgagees and judgment thereon shall be entered by any court having jurisdiction.

12.6 For purposes of this Article 12, "2002 equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 2002. The 2002 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the difference between (x) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination and (y) the Consumer Price Index for October 1, 2002, and the denominator of which is the Consumer Price Index for November 1, 2002. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and the Clerical Workers, City of Chicago, All Items (Base Year 1982-84 - 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.

ARTICLE 13

UNAVOIDABLE DELAYS

13.1 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 so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner (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. The Owner unable to perform (hereafter in this Article 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 the other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

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ARTICLE 14

CONDEMNATION

14.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 14, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Improvements shall be performed, in accordance with the requirements of this Article 14.

14.2 All Awards resulting from the taking of all or any part of the Total Property, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depositary and disbursed by the Depositary as hereinafter provided. In the event of a taking of a temporary use of any space not affecting services described in Article 5 hereof (Services To Owner Of Commercial Property; Service Fee), each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Total Property.

14.3 In the event of (a) a taking (other than a temporary taking) of a part of the Residential Property only (not affecting services described in Article 5 hereof (Services To Owner Of Commercial Property; Service Fee), except those having minimal or incidental effect), or (b) a taking (other than a temporary taking) of a part of the Commercial Property only then, subject to the provisions of Section 14.6 hereof, the Owner of the portion of the Total Property in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depositary by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 17 hereof (Disbursements Of Funds By Depositary) and to retain any excess not required for such repair and restoration.

14.4 In the event of a taking other than (a) a temporary taking described in Section 14.2 hereof, (b) a taking described in Section 14.3 hereof, or (c) a taking of all or substantially all of the Total Property, then, subject to the provisions of Section 14.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners affected by such taking and the Mortgagees, if required by the terms of the Mortgages. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the Improvements as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and the costs of such work shall be paid by those Owners whose portions of the Total Property were the subject of the taking in such shares as such Owners may agree among themselves and shall be performed on behalf of the Owners by a contractor jointly selected by the Owners. The selection of such contractors shall be subject to the approval of the Mortgagees, if required. In the event such Owners, and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration pursuant to Article 12 hereof (Arbitration). If such repair and restoration is to be performed solely in the portion of the Total Property owned by one of the Owners, then, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined in Article 21 (Alterations), the approval of the Owners of, and any Mortgagees with respect to, the other portions of the Total Property shall not be required with respect to the plans and specifications therefor, nor shall the consent of the Owners of, and any Mortgagees with respect to, the other portions of the Total Property be required with respect to selection of a contractor therefor. 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 Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 3 (Easements In Favor Of Residential Property) and 4 hereof

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(Easements In Favor Of Commercial Property) and for the furnishing of services under Article 5 hereof (Services To Owner Of Commercial Property; Service Fee).

14.5 The Award for any taking described in Section 14.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 14.6 hereof). Each portion of the Award attributable to a particular portion of the Total Property shall only be utilized to repair and restore that portion of the Total Property to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Property over the cost of repair and restoration to that portion of the Total Property shall then be allocated to the respective Owners of that portion of the Total Property, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.

14.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 14.7 hereof), any Owner reasonably determines that the portion of the Total Property owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the Improvements owned by it as may be required by Sections 14.3 and 14.4 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Property, but only if all the Owners of the other portions of the Total Property affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of the Total Property owned by it and shall restore its portion of the Total Property to a sightly and safe condition and in such a manner as to safeguard the other portions of the Total Property, and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 14.4 hereof are applicable.

14.7 In the event of a taking of all or substantially all of the Total Property, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners in accordance with said apportionment, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.

14.8 Notwithstanding any provision to the contrary contained in this Declaration, all Awards resulting from the taking of all or any part of the Total Property shall be distributed to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.

ARTICLE 15

ARCHITECT

15.1 The appointment of an architect in accordance with this Article 15 shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Total Property. 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 structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). In the event the Owners cannot agree upon the appointment of the Architect, the matter shall be submitted to arbitration in accordance with the provisions of Article 12 (Arbitration). The Architect shall, upon its appointment, execute an agreement (the "Owner-Architect Agreement") with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA Document B141 (the then current edition), entitled "Standard Form Agreement between Owner and Architect." Any Owner may cause any Architect to be replaced if it demonstrates to the other Owners that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently in accordance with the Owner-Architect Agreement. In such event, the Owner desiring replacement of the Architect shall serve notice upon the other Owners and

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the 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 in accordance with the Owner-Architect Agreement. If, in the opinion of an Owner 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 15.1, an Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owners of its objection in writing within fifteen (15) days after receipt of such notice from the other Owner. If, within ten (10) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall be settled by arbitration pursuant to Article 12 hereof (Arbitration).

15.2 In any instance when the Architect serving pursuant to Section 15.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and the Mortgagees. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner and the Mortgagees, an opportunity to furnish information or data or to present such party's views.

15.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursable for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their equitable share of such fees. 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 Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said 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 allocable 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 shall, within ten (10) days after written demand for reimbursement, reimburse the Creditor Owner for any such payment, plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

ARTICLE 16

DEPOSITARY

16.1 A depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Section 9.1(a) and 9.1(c) hereof and condemnation awards arising in connection with this Declaration shall be paid to the Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

16.2 As used hereinafter in this Article, the phrase "Damaged Parcel" shall refer to either the Residential Property or the Commercial Property or any combination thereof, if applicable, as to which a casualty loss shall have occurred. In the event of any casualty loss which affects only the Residential Property or the Commercial Property, then the Mortgagee of a Mortgage applicable to the Damaged Parcel shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, to elect either to act as Depositary or to appoint the Depositary with regard to such funds. If such right of election is not exercised within said thirty (30) day period, then the Owner of the Damaged Parcel shall have the right to appoint the Depositary with regard to such funds.

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16.3 In the event of any casualty loss which affects more than one portion of the Total Property and if each Damaged Parcel is subject to a Mortgage, then the Mortgagees of the Damaged Parcels shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, acting jointly, to appoint the Depository with regard to such funds.

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

16.5 If none of the provisions of Section 16.3 or 16.4 are applicable, or if none of the rights of election or appointment conferred by said Sections are exercised within thirty (30) days after the casualty loss has been finally adjusted, then the Owners of the Damaged Parcels shall mutually appoint the Depository. Upon the failure of such Owners to appoint the Depository within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration in accordance with Article 12 (Arbitration) hereof and the arbitrators shall appoint the Depository.

16.6 As to any Damaged Parcel with regard to such funds which shall have been submitted to a Condominium Declaration pursuant to the Act, notwithstanding that any individual Unit Owners may have granted mortgages or trust deeds encumbering all or any portion or portions of the Damaged Parcel, the right and power of the Owner of such Damaged Parcel to appoint the Depository under Sections 16.2 through 16.5 shall be exercised solely by the Condominium Association, and the Unit Owners and their mortgagees shall be bound thereby.

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

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

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

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16.10 The Depositary may resign by serving written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall jointly, with the consent of the Mortgagees, if required, appoint a substitute who qualifies under Section 16.1 hereof, and the Depositary shall transfer all funds, together with copies of all records held by it as Depositary, to such substitute, at which time its duties as Depositary shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, then the Mortgagees shall appoint a substitute who qualifies under Section 16.1 hereof within thirty (30) days thereafter, and the Depositary shall transfer all funds, together with copies of all records held by it as Depositary, to such substitute, at which time its duties as Depositary shall cease. If the Mortgagees shall fail to appoint a substitute within said additional thirty (30) day period, then the Depositary 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 16.1 hereof.

16.11 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policies required to be carried pursuant to Section 9.1(a) or 9.1(c) hereof or condemnation awards of less than \$50,000 shall be paid directly to the party so entitled rather than to the Depositary.

ARTICLE 17

DISBURSEMENTS OF FUNDS BY DEPOSITARY

17.1 (a) Each request by an Owner or the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any condemnation award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the applicable Owner or Architect, and with respect to the information described in Section 17.1(a)(ii) below, verified by the Architect, dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:

- (i) That the sum requested (a) has been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics Lien Act set forth in 770 ILCS 60/0.01 et seq. (the "Mechanics Lien 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 (which materials shall be adequately insured against fire, theft and other casualties);
- (iii) That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and
- (iv) That the cost to complete the unfinished Work will not exceed the funds or security therefor held by the Depositary after payment of the then-current request.

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(b) Upon compliance with the provisions of Section 17.1(a) (but not more frequently than once in any thirty (30) day period); and

- (i) upon receipt of contractors' and subcontractors' sworn statements required under the Mechanics Lien Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by any title insurer affording coverage against mechanics liens from the persons named in the sworn statement; and
- (ii) approval by the title insurer, the Owners, the Mortgagees of the Mortgages on portions of the Total Property on which or for the benefit of which Work will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics lien claims relating to Work in place and the continued priority of the lien of the Mortgages securing the Mortgagees whose approval is required above;

the Depository shall, out of the monies so held by the Depository and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the owner's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners or the Mortgagees or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner or the Architect to the Depository in accordance with the provisions of Section 17.1(a) hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

17.2 No contractor, subcontractor, materialmen, engineer, architect or any other person whatsoever, other than the Owner of the Residential Property, the Owner of the Commercial Property and the Mortgagees, shall have any interest in or right to any funds held by the Depository; provided, that such funds shall only be used for repair, restoration or demolition as required by this Declaration, except as hereinafter set forth. The Owners, with the written consent of the 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 Owners, with the written consent of the 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.

ARTICLE 18

ESTOPPEL CERTIFICATES

18.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner (subject to payment of the fees described below in this Section 18.1, if applicable), execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, 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 any such modifications;

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(b) whether there is any existing default hereunder (or, to the responding Owner's knowledge, 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 Improvements within the previous forty-five (45) days) which the responding Owner is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amount thereof;

(d) whether the responding Owner has performed or is performing Work other than services pursuant to Article 5 hereof (Services To The Owner Of The Commercial Property; Service Fee), 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 hereof, but has not yet charged to such other Owner, and if there is any such Work, specifying the nature and extent thereof;

(e) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder or otherwise known by the responding 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 responding Owner under the provisions of this Declaration, and describing the applicable provision or provisions and the details of any such lien claim;

(g) whether the responding Owner 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) the nature of any arbitration proceeding or finding under Article 12 (Arbitration) made within the ninety (90) days preceding the date of such Estoppel Certificate;

(i) the current address or addresses to which notices given to the responding Owner are required to be mailed under Article 23 hereof (Notices); and

(j) such other facts or conclusions as may be reasonably requested.

The Owner of any portion of the Total Property, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may charge the requesting Owner a fee for preparing, executing and delivering the Estoppel Certificate and may, in its sole discretion, limit to items (b) and (f) described above the statements made in the Estoppel Certificate.

18.2 So long as any portion of the Total Property remains subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of such portion of the Total Property subject to the Act shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association, which Estoppel Certificate shall not be unreasonably withheld or delayed, and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by the Owner of any portion of the Total Property subject to the Act may only be requested by the Condominium Association on behalf of the Owner of such portion of the Total Property subject to the Act, and the Condominium Association shall act in a reasonably prompt manner upon receipt of such request from an Owner. Any authorized agent of the Owner of the Commercial Property, including the property manager thereof, shall have the right to issue any such Estoppel Certificate on behalf of the Owner of the Commercial Property when requested by the Condominium Association.

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ARTICLE 19

CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

So long as any portion of the Total Property is subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Owner of the portion of the Total Property subject to the Act, and consents, waivers, approvals and appointments which may be granted by an Owner, shall be exercised by the Condominium Association administering such portion of the Total Property on behalf of the Unit Owners of the Units in such portion of the Total Property, and in the event of any such action taken by a Condominium Association, the Unit Owners shall be bound as if such Unit Owners had expressly consented and agreed to such actions by such Condominium Association. Any action to enforce or defend rights, obligations, Easements, burdens and benefits under this Declaration, or the right to settle and compromise any claims, on behalf of the Unit Owners who are members of a Condominium Association shall be taken on behalf of such Condominium Association and all such Unit Owners, solely by such Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the applicable Condominium Declaration or resolution of the board of managers of such Condominium Association. Except as otherwise noted herein, any requirement for any Unit Owner to furnish a notice or deliver a document may also be performed by the Condominium Association of which such Unit Owner is a member. 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 for the benefit of the Total Property or any part thereof. All obligations under this Declaration of the Owner of a portion of the Total Property subject to the Act shall be obligations jointly and severally of both the applicable Condominium Association and all Unit Owners in such portions of the Total Property and any lien arising against the Owner of any such portion of the Total Property may be imposed against the Units of all such Unit Owners based upon their percentages of interest in the Common Elements appurtenant to such portion of the Total Property, which each Unit Owner may discharge in accordance with the provisions of Article 11 hereof (Liens, Rights and Remedies).

ARTICLE 20

AMENDMENTS TO DECLARATION BY DECLARANT

20.1 Declarant reserves the right and power to record an amendment to and/or an amendment and restatement of this Declaration ("Amendment") at any time and from time to time. An Amendment may, among other things: (i) reallocate the liabilities and obligations of the Owner of the Residential Property and Commercial Property, or vice-versa, as applicable (ii) revise the legal descriptions for the Total Property or any portion thereof, including, without limitation, to reflect any amendments to the Condominium Declaration; (iii) revise and/or add to the exhibits attached to this Declaration to reflect "as-built" conditions; (iv) allocate the Easements granted under Section 3.1 hereof, as Easements appurtenant to the Commercial Property, the Residential Property, or both (as applicable); (v) allocate the Easements granted under Section 4 hereof to encumber the Commercial Property, the Residential Property, or both (as applicable); (vi) grant additional Easements (including, without limitation, on, over, under, in, across, through and about the Residential Property or Commercial Property) as may be necessary, in Declarant's sole judgment, in order to effectuate the Maintenance, operation and administration of the Total Property or any portion thereof; (vii) allocate the portion of the real estate tax bills for the Total Property to be paid by the Owner of the Residential Property under Article 8 hereof (Real Estate Taxes) between the Owner of the Commercial Property and the Owner of the Residential Property; (viii) provide separate addresses for Notices for the Owner of the Commercial Property and the Owner of the Residential Property; (ix) provide for additional services to be furnished by one Owner to one or more other Owners and for the payment for such services; and (x) make such other modifications of, or additions or deletions to, this Declaration as may be necessary, in Declarant's sole judgment, in order to effectuate the Maintenance, operation and administration of the Total Property or any portion thereof. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to an Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the

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Total Property, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Amendments. Each Amendment shall be recorded with the Recorder and shall be effective from and after the date of recording. The right of the Declarant to act pursuant to rights reserved or granted under this Section 20.1 shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Property.

20.2 In addition to, and not in limitation of, the rights reserved by and granted to Declarant under Section 20.1 hereof, Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. A Special Amendment may also contain such complementary, additional and supplemental grants and reservations of Easements (including, without limitation, on, over, under, in, across, through and about the Residential Property or Commercial Property) as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Property and may also make such other modifications of, or additions or deletions to, this Declaration as may be necessary, in Declarant's sole judgment, in order to effectuate the Maintenance, operation and administration of the Total Property or any portion thereof. Declarant also reserves the right to include, within a Special Amendment, revisions to the legal descriptions of the Residential Property and the Commercial Property. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Total Property, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. Each Special Amendment shall be recorded with the Recorder and shall be effective from and after the date of recording. The right of the Declarant to act pursuant to rights reserved or granted under this Section 20.2 shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Property.

ARTICLE 21

ALTERATIONS

21.1 (a) Any Owner (hereinafter in this Article 21, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additional improvements or alterations (hereinafter in this Article 21, "Alterations") to the part of the Improvements within such Altering Owner's portion of the Total Property, provided that such Alterations comply with the balance of this Section 21.1 and all of the other provisions of this Article 21. Any plans and specifications for any restoration of the Improvements which contain substantially the same architectural features as the Improvements which existed prior to the necessity of restoration shall not be deemed to be Alterations within the meaning of this Article 21. Prohibitions and restrictions on Alterations by the Owner of any Condominium Property shall also apply to individual Unit Owners.

(b) Unless otherwise provided in Section 21.1(a) and this Section 21.1(b) or in Section 21.4 below, Alterations shall not be made without the prior written consent of the other Owner or Owners affected by such Alterations if such Alterations will:

- (i) unreasonably diminish the benefits afforded to such other Owner(s) by any Easement or unreasonably interrupt such other Owner(s) use or enjoyment of any Easement;
- (ii) alter the facade of the Improvements (other than for signage installed by the Owner of the Commercial Property on the exterior of the Commercial Property for the identification of the occupants or tenants of the Commercial Property, which signage, and the design and appearance thereof, may be determined, installed, maintained and replaced from time to time by the Owner of the Commercial Property or any such

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occupant or tenant in accordance with Article 22 (Commercial Property Use Restrictions);

- (iii) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Property;
- (iv) affect Facilities benefiting such other Owner(s) other than minimally or incidentally; or
- (v) materially change the expected pedestrian and vehicular traffic patterns or patterns of ingress and egress.

(c) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of one or more of the other Owners or the Mortgagees, if applicable, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the affected Owners and the applicable Mortgagees, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 21.1. If such affected Owners and the applicable Mortgagees consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Mortgagees whose consents are requested 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 the Altering Owner has not requested the other Owner's consent to the proposed Alterations, and if, in the good faith opinion of any other Owner or Owners affected by such proposed Alterations or the applicable Mortgagees, the Altering Owner has violated or will violate the provisions of Section 21.1(a) or (b), such Owners or Mortgagees (an "Objecting Party") shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 21.1(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 21.1(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. 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 21.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(d) If any matter arises between the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 21.1(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 21.1(a) or (b) hereof.

(e) The Owners, 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 applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code, and (iii) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Total Property in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the other portions of the Total Property, but such Owner shall not be liable in any event for damages as a result of any such disturbance.

21.2 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 City of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owners. If joinder by the other Owners not making Alterations is so required, said 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 losses, liabilities, claims,

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judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.

21.3 An Altering Owner performing any Alterations or 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 various Parcels which comprise the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics Lien Act shall only be enforceable against the portion of the Total Property owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against any other portion of the Total Property and agrees to comply with the provisions of Section 21 of the Mechanics Lien Act in connection with giving notice of such "no lien" provision.

21.4 Notwithstanding anything contained in this Declaration to the contrary, the original construction, equipping, fixturing and furnishing of the Building or any portion thereof (including, without limitation, the construction of any and all tenant space to be constructed within and as part of the Commercial Property) and the Maintenance of any signage described in Section 21.1(b)(ii) hereof shall not be considered or construed as "Alterations" under this Article 21, and the Owner of the Commercial Property shall have no rights to approve or disapprove any aspect of or relating to the original construction, equipping, fixturing and furnishing of the Building or any portion thereof (including, without limitation, any plans and specifications relating thereto) and no Owner (other than the Owner of the Commercial Property) shall have any rights to approve or disapprove any aspect of or relating to the signage described in Section 21.1 (b)(ii) hereof or the Maintenance thereof except in accordance with Section 4.1(m), Section 22.2, and Section 22.3 hereof. Notwithstanding anything contained in this Declaration to the contrary, the Owner of the Commercial Property shall have the right to make Alterations to and within the Commercial Property, other than Maintenance of the Facilities located therein, without having to obtain the consent of any other Owner.

ARTICLE 22

COMMERCIAL PROPERTY USE RESTRICTIONS

22.1 The Commercial Property may be used for any lawful purpose, except the following shall be prohibited uses: full service restaurant.

ARTICLE 23

NOTICES

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

For Notices to the Owner
of the Residential Property: Fullerton Development LLC
1122 N. LaSalle Street
Chicago, Illinois 60610
Attn: Jon Goldman

For Notices to the Owner
of the Commercial Property: Fullerton Development LLC
1122 N. LaSalle Street
Chicago, Illinois 60610
Attn: Jon Goldman

The foregoing notwithstanding, at such time as any portion of the Total Property is submitted to the Act, Notices to the Owners of such portion of the Total Property shall be delivered or mailed, as aforesaid, to any officer,

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director or managing agent of the applicable Condominium Association to such address as may appear in any public record instead of the addresses set forth above. Concurrently with the giving of any notification required hereunder to be given, or which any other party hereto may desire to give to the Owner of the Residential Property or the Owner of the Commercial Property, a duplicate original of such notification shall be given to the Mortgagees affected thereby at the address for the giving of notice set forth in the Mortgage securing the indebtedness to such Mortgagee. Any Mortgagee shall have the right to cure any default by any Owner or Owners and such right to cure shall continue for thirty (30) days following the receipt by such Mortgagee of the notice of such default.

23.2 So long as any portion of the Total Property remains subject to the Act, (i) the Owner of the other portions of the Total Property may, but shall not be obligated to, give personal notice to any Unit Owner, notice to the Condominium Association hereby being deemed sufficient and effective notice to all Unit Owners of such portions of the Total Property subject to the Act, and (ii) the Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners with respect to the applicable portion of the Total Property under this Declaration, which notice shall be binding on such Unit Owners.

23.3 Any Notice mailed as aforesaid shall be deemed received three (3) business days after deposit in the United States mail, or upon actual receipt, whichever is earlier. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least thirty (30) days prior to the effective date of such address change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

ARTICLE 24

LIMITATION OF LIABILITY

24.1 Each Owner of a portion of the Total Property shall use reasonable diligence in performing the services required of such Owner, but shall not be liable for interruption or inadequacy of service, or for loss or damage to property or injury (including death) to any person as a result of interruption or inadequacy of service other than in the case of gross negligence or wilful misconduct. Each Owner obligated to furnish services hereunder is reserved the right to curtail or halt the performance of any services hereunder at any time in reasonable respects for a reasonable period to time to make necessary repairs or in the case of an Emergency Situation.

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

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

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ARTICLE 25

GENERAL

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

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

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

25.4 Except as otherwise provided herein (including, without limitation, Article 20 hereof [Amendments To Declaration By Declarant]), this Declaration may be amended or terminated only by an instrument signed by the Owners and the Mortgagees. So long as any portion of the Total Property is submitted to the Act, the Condominium Association administering such portion of the Total property may, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners in such portion of the Total Property, which amendments or termination shall be binding on all Unit Owners. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

25.5 The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law and as provided below, for successive periods of ten (10) years each, subject to amendment or termination as hereinabove set forth in Article 20 (Amendments To Declaration By Declarant) or Section 25.4; provided, however, that this Declaration, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the date of the last to survive of the class of persons consisting of all of the lawful descendants of Richard M. Daley, Mayor of the City of Chicago, living at the date of this Declaration.

25.6 The provisions of this Declaration shall be construed to the end that the Total Property shall remain a first-class, mixed-use property.

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25.7 All the Easements, covenants, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Total Property and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Total Property or any part thereof or interest therein.

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

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

25.10 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 statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

25.11 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.

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

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 1 day of November, 2002.

FULLERTON DEVELOPMENT LLC, an Illinois limited liability company

By: 
Art Collazo, its Member

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid. DO HEREBY CERTIFY, that Art Collazo, the Member of Fullerton Development LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

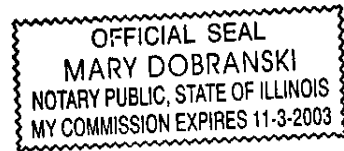
GIVEN under my hand and Notarial Seal this 10th day of November, 2002.

(NOTARY SEAL)



Notary Public

My Commission Expires: 11/3/03



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CONSENT OF MORTGAGEE

The undersigned, as holder of the following Mortgage (the "Mortgage"):

1. Mortgage dated as of April 1, 2002 and recorded April 3, 2002 in the Cook County, Illinois Recorder of Deeds Office as Document No. 20380611 and all other ancillary documents recorded in connection therewith;

hereby consents to the recording of the attached Declaration of Easements and Operating Agreement and agrees that the Mortgage is subject and subordinate to the provisions thereof.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its duly authorized officers, at Chicago, Illinois, on this 1st day of November, 2002.

BUILDERS BANK

By: 

Name: Charles B. Hall

Title: President

ATTEST:


Name: Matthew J. Wilk

Title: AVP

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Gina Diaz, a Notary Public in and for said County, in the State aforementioned, do hereby certify that Charles Holt, personally known to me to be the President of Builders Bank and Matthew Wilk, personally known to me to be the AVP of said banking association, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appear before me this day in person and acknowledged that they signed and delivered the said instrument as President and AVP of said banking association, pursuant to authority given by the Board of Directors of said banking association, as their free and voluntary act and as the free and voluntary act and deed of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 1st day of November, 2002.

(NOTARY SEAL)

Gina Diaz

Notary Public

My Commission Expires: 11/9/02



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EXHIBIT B

Legal Description of the Residential Parcel

LOTS 26 AND 27, TAKEN AS A TRACT, IN BLOCK 2 IN THE SUBDIVISION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART LYING BELOW AN ELEVATION OF 27.65 FEET, CITY OF CHICAGO DATUM, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTHERLY, ALONG THE WEST LINE OF SAID TRACT, 5.01 FEET; THENCE EASTERLY 0.65 FEET TO THE INTERIOR CORNER OF TWO WALLS; THENCE, FOLLOWING THE INTERIOR FACE OF THE WALLS THE FOLLOWING DIRECTIONS AND DISTANCES, NORTHERLY, 49.46 FEET; THENCE EASTERLY, 15.95 FEET; THENCE SOUTHERLY, 12.17 FEET; THENCE EASTERLY, 3.12 FEET; THENCE SOUTHERLY, 5.75 FEET; THENCE WESTERLY, 7.47 FEET; THENCE SOUTHERLY, 4.91 FEET; THENCE EASTERLY, 4.45 FEET; THENCE SOUTHERLY, 6.85 FEET; THENCE WESTERLY, 1.60 FEET; THENCE SOUTHERLY, 14.80 FEET; THENCE EASTERLY, 2.63 FEET; THENCE SOUTHERLY, 4.95 FEET; THENCE WESTERLY, 17.20 FEET TO THE POINT OF BEGINNING, ALSO EXCEPTING FROM SAID TRACT THAT PART LYING BELOW AN ELEVATION OF 27.65 FEET, CITY OF CHICAGO DATUM, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTHERLY, ALONG THE EAST LINE OF SAID TRACT, 5.10 FEET; THENCE WESTERLY 0.48 FEET TO THE INTERIOR CORNER OF TWO WALLS; THENCE, FOLLOWING THE INTERIOR FACE OF THE WALLS THE FOLLOWING DIRECTIONS AND DISTANCES, NORTHERLY, 45.75 FEET; THENCE WESTERLY, 16.09 FEET; THENCE SOUTHERLY, 8.39 FEET; THENCE WESTERLY, 1.44 FEET; THENCE SOUTHERLY, 5.79 FEET; THENCE EASTERLY, 1.46 FEET; THENCE SOUTHERLY, 11.98 FEET; THENCE EASTERLY, 2.31 FEET; THENCE SOUTHERLY, 14.46 FEET; THENCE WESTERLY, 3.63 FEET; THENCE SOUTHERLY, 5.16 FEET; THENCE EASTERLY, 17.47 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

Common Address: 1452 - 1454 West Fullerton Avenue, Chicago, Illinois

Permanent Index Nos.: 14-29-319-037; -038

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EXHIBIT C

Legal Description of the Commercial Property

THAT CERTAIN PORTION OF LOTS 26 AND 27, TAKEN AS A TRACT, IN BLOCK 2 IN THE SUBDIVISION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE THIRD PRINCIPAL MERIDIAN, SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THAT PART LYING BELOW AN ELEVATION OF 27.65 FEET, CITY OF CHICAGO DATUM, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTHERLY, ALONG THE WEST LINE OF SAID TRACT, 5.01 FEET; THENCE EASTERLY 0.65 FEET TO THE INTERIOR CORNER OF TWO WALLS; THENCE, FOLLOWING THE INTERIOR FACE OF THE WALLS THE FOLLOWING DIRECTIONS AND DISTANCES, NORTHERLY, 49.46 FEET; THENCE EASTERLY, 15.95 FEET; THENCE SOUTHERLY, 12.17 FEET; THENCE EASTERLY, 3.12 FEET; THENCE SOUTHERLY, 5.75 FEET; THENCE WESTERLY, 7.47 FEET; THENCE SOUTHERLY, 4.91 FEET; THENCE EASTERLY, 4.45 FEET; THENCE SOUTHERLY, 6.85 FEET; THENCE WESTERLY, 1.60 FEET; THENCE SOUTHERLY, 14.80 FEET; THENCE EASTERLY, 2.63 FEET; THENCE SOUTHERLY, 4.95 FEET; THENCE WESTERLY, 17.20 FEET TO THE POINT OF BEGINNING, AND ALSO THAT PART LYING BELOW AN ELEVATION OF 27.65 FEET, CITY OF CHICAGO DATUM, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTHERLY, ALONG THE EAST LINE OF SAID TRACT, 5.10 FEET; THENCE WESTERLY 0.48 FEET TO THE INTERIOR CORNER OF TWO WALLS; THENCE, FOLLOWING THE INTERIOR FACE OF THE WALLS THE FOLLOWING DIRECTIONS AND DISTANCES, NORTHERLY, 45.75 FEET; THENCE WESTERLY, 16.09 FEET; THENCE SOUTHERLY, 8.39 FEET; THENCE WESTERLY, 1.44 FEET; THENCE SOUTHERLY, 5.79 FEET; THENCE EASTERLY, 1.46 FEET; THENCE SOUTHERLY, 11.98 FEET; THENCE EASTERLY, 2.31 FEET; THENCE SOUTHERLY, 14.46 FEET; THENCE WESTERLY, 3.63 FEET; THENCE SOUTHERLY, 5.16 FEET; THENCE EASTERLY, 17.47 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT 5.3

SERVICE FEE

1. The Service Fee is payable to the Owner of the Residential Property in the amount of \$50.00 per month, which fee includes all services hereunder, including Maintenance of the Facilities and the portion of the Building's insurance premiums allocable to Owner of the Commercial Property.
2. The Service Fee may be annually increased by the Owner of the Residential Property not to exceed three percent (3%) per annum.

Property of Cook County Clerk's Office

21211409

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EXHIBIT 5.4

BILLING: PAYMENT AND REIMBURSEMENT

1. Cost of Replacements. Whenever any Owner ("Replacing Owner") replaces Facilities (except where such replacement is in connection with a fire or other casualty described in Section 10.9 or 10.4 of this Declaration and such replacement is insured pursuant to Article 9 of this Declaration) and another Owner ("Contributing Owner") is required by this Declaration to bear part or all of the cost of such replacement, the Replacing Owner shall submit a statement to the Contributing Owner showing each Contributing Owner's share of such cost within thirty (30) days after the installation or completion of such replacement or improvements, as such date is determined by the Replacing Owner, and requesting reimbursement in one of the following ways:
 - a. by payment in full within sixty (60) days after the date of such statement; or
 - b. by payment of the Contributing Owner's share of such replacement on the same basis as the Replacing Owner is paying for such replacement beginning with the first day of the first month after the date of such statement.
2. Interest. Interest shall accrue on any overdue amount, from the date due until the date paid, at the Default Rate.
3. Inspection of Books. The Contributing Owner and their authorized representatives shall have the right at all reasonable times, upon reasonable prior written notice, to review and examine the books and records of the Replacing Owner pertaining to services and the amount and allocation of charges for services under this Declaration. The Replacing Owner shall maintain reasonably detailed books and records with respect to such items, including, without limitation, time records of all employees of such Owner involved in providing such services. So long as any portion of the Total Property is submitted to the Act, such review or examination may only be performed by the Association on behalf of the Unit Owners and not by an individual Unit Owner or group of Unit Owners. The Owners shall treat such books and records as confidential and shall not divulge the contents thereof to third parties except where required in the event of litigation or arbitration or otherwise pursuant to an order of a court of competent jurisdiction. The costs of such review or examination shall be borne by the Owner requesting such review, unless such review discloses that charges for services by an Owner with respect to any annual period exceeded the proper charges by more than five percent (5%), in which event the Owner overcharging for services shall bear such cost.