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This Document Prepared By and  
After Recording Mail to:

John J. O'Leary  
Law Offices of John J. O'Leary  
20 North Clark Street  
Suite 1725  
Chicago, IL 60602  
Phone 312-782-8807  
Fax 321-372-6067

Property of Cook County Clerk's Office

7 SOUTH ABERDEEN STREET AND  
1063-1065 WEST MADISON STREET, CHICAGO, ILLINOIS 60607

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

7 SOUTH ABERDEEN CONDOMINIUMS  
AND  
COMMERCIAL PROPERTY AT  
7 SOUTH ABERDEEN STREET AND  
1063-1065 WEST MADISON STREET, CHICAGO, IL 60607

P.I.N.: 17-17-203-024-0000

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## Declaration of Covenants, Conditions, Restrictions and Easements

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## EXHIBITS

EXHIBIT A	PLAT
EXHIBIT B	LEGAL DESCRIPTION OF DEVELOPMENT AREA
EXHIBIT C	LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY
EXHIBIT D	LEGAL DESCRIPTION OF COMMERCIAL PROPERTY

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THIS DECLARATION is made and entered into as of the **December 21, 2002**, Family Bank and Trust Company as Trustee under Trust Number 6-612 Dated September 1, 2001, ("Declarant")

RECITALS:

- A. The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in Article 1 hereof.
- B. The Development Area is or will be improved with a multi-story building which contains or will contain six residential condominium units, a commercial space located on the First Floor and Basement defined herein as the Commercial Property.
- C. Neither the Condominium Property nor the Commercial Property will be functionally independent of the other and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to the efficient operation and intended use of the Condominium Property and the Commercial Property.
- D. The Declarant intends to submit the Condominium Property to the Act.
- E. The Declarant desires to by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Development Area to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Development Area, and to protect the respective values of each such portion estate and interest in the Development Area, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Condominium Property which will be binding upon each present and future Owner of the Condominium Property, or of any portion thereof or interest or estate therein, and 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, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the Commercial Property, which will be binding upon each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each of the present and future Owners of the Condominium Property, or of any portion thereof or interest or estate therein, including any Unit in the Condominium Property.

NOW, THEREFORE, the Declarant hereby declares that the Development Area 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 Development Area and each of the foregoing shall run with the land subject to this Declaration.

## ARTICLE 1 DEFINITIONS

### 1. DEFINITIONS

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

1.2 "Building" means that certain multi-story building commonly known as 7 South Aberdeen Condominiums, Chicago, Illinois 60618 and also known as, 1063-1065 West Madison Chicago, Illinois

1.3 "Commercial Improvements" means all improvements constructed within and upon the Commercial Property. In the event of any reconstruction of the Commercial Improvements pursuant to Article 11 or Article 15, the Commercial Improvements shall include any such improvements reconstruction on the First Floor and Basement in the areas designated as Commercial Property on Exhibit A and legally described in Exhibit D.

1.4 "Commercial Property" means that portion of the Development Area legally described on Exhibit "D" attached hereto and the commercial improvements located thereon.

1.5 Reserved.

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

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

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

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

1.10 "Condominium Improvements" means the portion of the Improvements located on the

Condominium parcel after their submission to the Act.

1.11 "Condominium Parcel" means that portion of the Development Area legally described on Exhibit "C" attached hereto.

1.12 "Condominium Property" means the Condominium Parcel and the Condominium Improvements.

1.13 "Declarant" Family Bank and Trust as Trustee under Trust Number 6-612 Dated September 1, 2001 its successors and assigns and any other person or entity designated by Declarant to be the Declarant.

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

1.15 "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.

1.16 "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.

1.17 "Development Area" means the Condominium Property and the Commercial Property and is legally described on Exhibit "B" attached hereto.

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

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

1.20 "Facilities" means all components of the sprinkler system, risers, life safety system, sanitary waste, storm water, electrical, gas, and all other utility systems forming a part of either the Commercial Property or the Condominium Property and designed or utilized to furnish utility and other services to any portion of the Development Area, including but not limited to the following components of such systems: boxes brackets, cabinets, cables, chutes, coils, conduits, controls, control center, couplers, dampers, devices, ducts, equipment, fixtures, generators, hangers, lines, machines, meters motors outlets, panels, pipes, pumps, risers, switches, systems, transformers, valves, wiring and the like.

1.21 "Improvements" means the Condominium Improvements and the Commercial Improvements.

1.22 "Maintenance" means and includes operation, maintenance, repair, reconditions, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of Facilities or of such other portions of the Improvements and includes the right of access to and the right to remove from the Improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration, machines, meters, motors, outlets, panels, pipes, pumps, risers, switches, systems, transformers, valves, wiring and the like.

1.23 "Mortgage" means a first mortgage or first trust deed in the nature of a mortgage on the Commercial Property or the Condominium Property, but shall not include a mortgage or trust deed on a Unit in the Condominium Property.

1.24 "Mortgagee" means the holder of a Mortgage.

1.25 "Owner" means either the Owner of the Condominium Property or the Owner of the Commercial Property, as the context requires. "Owners" means the Owner of the Commercial Property and the Condominium Property. If and so long as any portion of the Condominium Property is subject to the Act, the Owner of such Condominium Property shall mean collectively all of the Unit Owners in and to such Condominium Property and not individually, and the rights of such Owner shall be exercised by the Condominium Association administering such Condominium Property on behalf of its Unit Owners, except for such rights or benefits expressly granted to the Unit Owners, and except for Easements which by their nature are exercisable wholly by Unit Owners. In the event of any 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. All obligations under this Declaration of the Owner of the Condominium Property shall be obligations jointly and severally of both the Condominium Association and all Unit Owners in such Condominium Property and any lien arising against the Owner of the Condominium 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 Condominium Property.

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

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

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



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1.29 "Unavoidable Delay" means 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 an Owner (other than inability to make payment of money) which excuses the timely performance of any obligation created hereunder. The time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform shall notify the other Owner in writing of the existence and nature of the Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. Such non-performing Owner shall from time to time upon written request of the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

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

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

1.32 "Unit Ownership" means a part of any portion of the Condominium Property consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

## ARTICLE 2

### EASEMENTS IN FAVOR OF CONDOMINIUM PROPERTY

#### 2. EASEMENTS IN FAVOR OF CONDOMINIUM PROPERTY

2.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Commercial Property in favor of the Condominium 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 located in or constituting a part of the Commercial Property, for the support and Maintenance of (i) the Condominium Improvements and (ii) any Facilities located in the Commercial Property with respect to which the Owner of the Condominium Property is granted an Easement under this Declaration.

(b) A non-exclusive Easement for access to and the use for their intended purposes and Maintenance of all Facilities located in the Commercial Property and connected to Facilities located in the Condominium Property (and any replacements thereof which provide the Condominium Property with any utilities or other services.

(c) A non-exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Condominium Improvements or the subsequent settlement or shifting of any part of the Condominium Improvements, any part of the Condominium 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 Condominium Improvements continues to exist.

(d) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Condominium Property and (ii) for the use of such Common Walls, Floors and Ceilings.

(e) A non-exclusive easement for the use of storm sewer lines located on the Commercial Property

2.2 Each Easement created under this Article 2 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property shall be subject (except in an Emergency Situation) to such reasonable limitations, including, without limitation, rules and regulations, as the Owner of the Commercial Property may, from time to time, impose with respect to the use of such Easements, including, without limitation, the establishment of limited 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 the Commercial Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement.

2.3 Easements provided for, declared or created under this Article 2 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 Condominium Property and each portion thereof.

### ARTICLE 3

#### EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY AND USE RESTRICTIONS

##### 3. EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY AND USE RESTRICTIONS

3.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Condominium 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 located in or constituting a part of the Condominium Property for the support and Maintenance of (i) the Commercial Improvements and (ii) any facilities located in the Condominium Property with respect to which the Owner of the Commercial Property is granted an Easement under this Declaration.
- (b) A non-exclusive Easement (i) for access to and the use for their intended purposes and Maintenance of all Facilities located in the Condominium Property and connected to or intended to be connected to Facilities located in the Commercial Property (and any replacements thereof) which provide the Commercial Property with any utilities or other services.
- (c) A non-exclusive Easement permitting encroachments in the event and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Declaration of the Commercial Improvements or the subsequent settlement or shifting of any part of the Commercial Improvements, any part of the Commercial Improvements encroaches or shall hereafter encroach upon any part of the Condominium Property. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Commercial Improvements continues to exist.
- (d) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Commercial Property Parcel and (ii) for the use of such Common Walls, Floors and Ceilings. Said easements shall not affect the structural integrity of the Condominium Property.
- (e) A non-exclusive easement for access, ingress and egress to, from and through the exterior common elements including but not limited to, parking area, and concrete walk to the rear entranceway doors.
- (f) A non-exclusive easement to place and maintain on the rear of the Condominium Property air conditioning equipment and garbage, and to provide access for the maintenance, repair and replacement of such equipment, and for access, ingress and egress to the garbage.
- (g) A non-exclusive easement for the use of storm sewer lines located on the Condominium Parcel.

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 Condominium Property shall be subject (except in an Emergency Situation) to such reasonable limitations, including, without limitation, rules

and regulations, as the Owner of the Condominium Property may, from time to time, impose with respect to the use of such Easements. including, without limitation, 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 Condominium Property and in order to assure the reasonable security of the Condominium Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

3.3 Easements provided for, declared or created under this Article 3 shall be binding upon the Condominium Property and the Owner of the Condominium Property and shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property. Notwithstanding, the foregoing shall not restrict nor limit the ability of the Condominium to enforce section 3.4 below and the following restriction shall inure to the benefit of the Condominium.

3.4 The Commercial Property shall not be used for any of the following purposes, notwithstanding that such uses from time to time shall be permitted or special uses under the zoning classification of the zoning district in which the Building is located:

- (a) Restaurant with full service kitchen shall not be permitted. But food catering, food preparation or food carry-out businesses of any kind whatsoever which requires that foods be prepared on the premises; or off-premises in advance of sale shall be permitted.
- (b) Pet kennels or pet grooming facilities, nail and or hair salons, except that nail and or hair salons shall be permitted if such are properly ventilated so that fumes from said uses do not cause a nuisance to the Condominium Property.

## **ARTICLE 4** **SERVICES TO OWNER OF CONDOMINIUM PROPERTY**

### **4. SERVICES TO OWNER OF CONDOMINIUM PROPERTY**

4.1 The Owner of the Commercial Property shall furnish, or cause to be furnished by independent contractors, the following services to the Owner of the Condominium Property to the extent required and on the same basis as such services are provided to residents of the Commercial Property:

- (a) Windows and Doors: Repair or replacement of windows and window systems all components doors and door frames and related fixtures, concrete steps located in, or on the Commercial Property.
- (b) Maintain heat and other utilities in the Commercial Property in sufficient amounts to prevent damage to the structure or building or utility systems of the Condominium

Property.

4.2 Following receipt of payment from the Owner of the Commercial Property, for its submetered portion of the water bill, the Owner of the Condominium Property or the Association shall pay to the municipality, promptly when due, the water bill representing the Condominium's portion and the Commercial Property submetered portion. The Owner of the Commercial Property shall pay to the Owner of the Condominium Property or Association their submetered portion of the water bill within a reasonable time after its receipt. If the water usage of the Commercial Property is not submetered, the Owner of the Commercial Property shall pay the owner of the Condominium Property or Association 19% of the water bill and the Condominium Property or Association's portion of the water bill shall be 81% of the metered usage.

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

4.4 Statements for services rendered pursuant to Article 4 hereof, provisions for payment thereof and provisions for additional payments incurred in connection with such services and the operation, maintenance, repair and replacement of shared Facilities shall be made in accordance with the terms and provisions herein.

4.5 If the Owner of the Commercial Property shall fail to render the services described in Section 4.1 above to the Owner of the Condominium Property (except when such failure is caused by the Owner of the Condominium Property or Unavoidable Delay) and such failure shall continue for a period of three (3) days after written notice thereof to the Owner of the Commercial Property, the sole remedy therefore available to the Owner of the Condominium Property shall be the right to undertake the performance of such services on its own for its own benefit and at the cost and expense of the Owner of the Commercial Property. Such notice shall not be required in an Emergency Situation resulting from such failure.

4.6 If at any time, the Owner of the Condominium Property shall fail to pay to the Owner of the Commercial Property any sum of money payable to it pursuant to the terms of this Declaration for ten (10) days after written notice from the Owner of the Commercial Property demanding payment of said sum of money, then, subject to Section 12.4, the Owner of the Commercial Property may discontinue furnishing of the services for which payment has not been received until said sum of money is paid, or in the case of the water bill, may pay on behalf of the Condominium Property and file a lien against the property for the unpaid amount.

## ARTICLE 5

### SERVICES TO OWNER OF COMMERCIAL PROPERTY

#### 5. SERVICES TO OWNER OF COMMERCIAL PROPERTY

5.1 The Owner of the Condominium Property shall furnish, or cause to be furnished by

independent contractors, the following services to the Owner of the Commercial Property to the extent required and on the same basis as such services are provided to residents of the Condominium Property:

- (a) Roof, Maintenance, repair and replacement of the roof. Parapets and downspouts of the Building;
- (b) Exterior Building. Maintenance and repair of the facade of the Improvements including tuckpointing and caulking (but not including repair or replacement of windows and window systems and components, doors and door frames and related fixtures, concrete steps located in, or on the Commercial Property, maintenance, repair and replacement of which shall be the responsibility of the Owner of the Commercial Property); and
- (c) Exterior Common Elements. Removal of snow and ice from, and cleaning, maintenance and repair of the exterior common elements.
- (d) Maintenance of Elevators, Stairways and all common elements of the building required for ingress, egress and access to utilities and other services for Commercial Property that are located in common elements of the condominium property.

5.2 The Owner of the Commercial Property shall pay to the Owner of the Condominium Property 19% of the expenses incurred in the provision of the services provided to the Owner of the Commercial Property in accordance with the terms of this Article.

5.3 Following receipt of payment from the Owner of the Commercial Property, for its submetered portion of the water bill, or 19% of the water bill if not submetered, the Owner of the Condominium Property or the Association shall pay to the municipality, promptly when due, the water bill representing the Condominium's portion and the Commercial Property's submetered portion. The Owner of the Commercial Property shall pay to the Owner of the Condominium Property or Association their submetered portion of the water bill, or 19% of the water bill if not submetered, within a reasonable time after its receipt.

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

5.5 Statements for services rendered pursuant to Article 5 hereof, provisions for payment thereof and provisions for additional payments incurred in connection with such services and the operation, maintenance, repair and replacement of shared Facilities shall be made in accordance with the terms and provisions herein.

5.6 If the Owner of the Condominium Property shall fail to render the services described in Section 5.1 above to the Owner of the Commercial Property (except when such failure is

caused by the Owner of the Commercial Property or Unavoidable Delay) and such failure shall continue for a period of three (3) days after written notice thereof to the Owner of the Condominium Property the Owner of the Commercial Property shall have the right to undertake the performance of such services on its own for its own benefit and at its own Cost and expense. Such notice shall not be required in an Emergency Situation resulting from such failure.

5.7 The Owner of the Commercial Property Parcel may terminate the use of anyone or more of the services to be rendered by the Owner of the Condominium Property to the Owner of the Commercial Property at any time upon forty-five days prior written notice; provided that any such termination shall be effective only at such time as the Owner of the Condominium Property shall cease to be financially responsible for the rendering of such services to the Commercial Property.

5.8 If, at any time, the Owner of the Commercial Property shall fail to pay to the Owner of the Condominium Property any sum of money payable to it pursuant to the terms of this Declaration for ten (10) days after written notice from the Owner of the Condominium Property demanding payment of said sum or money, then, subject to Section 12.4, the Owner of the Condominium Property may discontinue furnishing of the services for which payment has not been received until said sum of money is paid, or may pay on behalf of Commercial Property and file a lien against the property for the unpaid amount.

## ARTICLE 6 STRUCTURAL SUPPORT

### 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 portion of the Development Area.

6.2 Except in the case in which Article 10 is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the Improvements is endangered, then the Owner on whose Property the structural support is located shall be responsible for construction in accordance with plans and specifications approved by the Owner of the portion of the Development Area benefited thereby and, subject to the provisions of Article 11 hereof the Owner or Owners responsible for such reduction or endangerment shall pay all costs and expenses, including architect's and other fees, in connection with construction of substitute or additional support. However (a) if the responsible Owner cannot be determined, the Owner benefited by such structural support shall pay such costs and expenses and (b) if the reduction in structural support giving use to the need for such construction results from ordinary wear and tear, the Owner responsible pursuant to Article 10 for maintaining the Improvements requiring such repair shall pay such costs and expenses.

6.3 The Owner or Owners responsible for construction shall commence, within a reasonable time under the circumstances, the construction of such substitute or additional support 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 the Owner of the portion of the Development Area benefited thereby shall, upon not less than thirty (30) days, advance written notice to the other Owner (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever may be required, or the Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of any Owner's provisions of any required substitute or additional support.

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

## ARTICLE 7

### COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

#### 7. COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

7.1 The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Development Area or any portion thereof, if noncompliance by it with respect to its portion of the Development Area or any part thereof would subject other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for the Improvements themselves or would jeopardize the other Owner's right to occupy or utilize beneficially its portion of the Development Area or any part thereof, or would result in the imposition of a lien against any of the property of other Owner or would impose any threat or danger to any person or property. Neither Owner shall take any action or omit to take any action which could adversely affect (including, without limitation, increase the cost of) any of the insurance maintained by the other Owner.



7.2 No Owner shall permit the filing of any mechanics, materialmans or any other like lien on any other Owner's portion of the Development Area, or on its portion of the Development Area if the existence or foreclosure of such lien on its portion of the Development Area would adversely affect any Easement hereunder or services to be furnished pursuant to Articles 4 or 5 hereof arising by reason of its act or any work or materials which it has ordered. In the event an Owner fails to remove any such lien within such thirty (30) day period, the other Owner may (but is not required to) take such action as the other Owner may deem necessary to remove such lien. Such Owner shall be entitled to reimbursement from the Owner who has failed to remove such lien for all costs and expenses incurred by such Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date of payment of such costs and expenses by such Owner to the date of reimbursement to the other Owner. However, the Owner who has not paid such lien shall not be required to remove such lien within thirty (30) days after the filing thereof (and the other Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Mortgagee under the Mortgage; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed; and (iii) the Owner responsible for the filing of such lien (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the other Owner, and to the Mortgagee if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the other Owner or, if loan documents so provide, to the Mortgagee, either: (i) cash or a surety bond from a responsible surety company acceptable to the other Owner and the Mortgagee, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security reasonably acceptable to the other Owner and the Mortgagee of the Mortgage, if applicable. The rights of an Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the Mortgage. and in such event the Owner responsible for the filing of such lien shall cause such lien to be discharged or removed within ten (10) days after the occurrence of either of the events in clauses (i), (ii) or (iii) in this sentence and the other Owner shall have the right (but not the obligation) at any time 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 Owner (hereinafter in this Section 7.3, the "Indemnitee") from and against any and all claims against the Indemnitees 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 the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Development Area or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement and from

and against all costs, attorney's 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, neither Owner shall make any Alterations (as that term is herein below defined in Section 21.1 or allow any use of their respective portions of the Development Area or take or fail to take any action which would violate the provisions of the City of 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 Development Area or any portions thereof. The Commercial Property and Condominium Property shall continue to be combined and treated as one zoning lot for the purposes of complying with the City of Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the City of Chicago Zoning Ordinance as applicable to any portions of the Development Area without the consent of the other Owner.

## ARTICLE 8 REAL ESTATE TAXES

### 8. REAL ESTATE TAXES

8.1 The Owners shall make good faith efforts and cooperate with each other so that the Commercial Property and Condominium 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 ("Assessor") of Cook County, Illinois. From and after submission of the Condominium Property to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each Unit of the Condominium Property.

8.2 At such time as the Commercial Property and Condominium Property are separately assessed and taxed, each Owner shall pay the real estate taxes and special assessments for the portion of the Development Area owned by such Owner. Until the Commercial Property and Condominium Property are separately taxed, the Owner of the Commercial Property shall pay the tax bills for the Development Area prior to their due date. Until a tax division has been completed 19 % of all taxes shall be allocated to the Commercial Property and 81 % of such taxes shall be allocated to the Condominium Property.

8.3 The Owner of the Commercial Property and Owners of the Condominium Property shall

be jointly responsible for the payment of any undivided tax bill for the Development Area on or prior to the date when due. Each Owner shall be responsible for its pro rata share of such taxes as set forth above in Paragraph 8.2.

8.4 If, at any time prior to the Commercial Property and the Condominium Property being separately assessed and taxed, any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such defaulting Owner is obligated to pay pursuant to this Article 8, then the other 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 such Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, and such Owner shall also have a lien against the portion of the Development Area owned by the defaulting Owner in accordance with Article 10 hereof.

8.5 If an Owner endeavors to obtain a lowering of the assessed valuation upon the Development Area for the purpose of reducing taxes thereon prior to the time that the Commercial Property and Condominium Property are separately assessed and taxed, the protesting Owner shall be required to serve written notice to the other Owner at least ten (10) days prior to the filing of the objection. The other 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 the other Owner fails 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 the Protesting Owner may institute for that purpose and any such tax refund shall be the property of the protesting Owner. Notwithstanding the above, if the 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, if any, in such taxes, the Owners shall apportion the tax refund in accordance with their respective portions of such real estate taxes.

## ARTICLE 9 INSURANCE

### 9. INSURANCE

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

- (a) Each Owner shall each keep its respective portion of the Building and Improvements insured for no less than "all risk" or "special form" coverage on real property and broad form on personal property for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

(b) The Owners shall each maintain Commercial General Liability Insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective portions of the Development Area, or as a result of operations thereon, in such amounts as maybe required by law and as from time to time shall be carried by prudent owners, of first-class, residential buildings in the City of Chicago and adjacent communities, 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. Each Owner shall cause the other Owner to be named an "additional insured" on such policies and shall deliver certificates of insurance to the other Owner confirming that such policies are in effect.

9.2 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.

9.3 Limits of liability or types of insurance specified in this Article 9 shall be reasonable and prudent for an Owner of a first-class residential facility and shall be jointly reviewed by the Owners at least annually. Policy 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.

9.4 Certificates delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner 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.

9.5 In the event one policy is obtained insuring both the Commercial Property and Condominium Property, 19% of the cost of the insurance shall be allocated to the Commercial Property and 81% of such taxes shall be allocated to the Condominium Property and said sums due and owing shall be tendered according to Article 10 and Article 11 below.

**ARTICLE 10**

**MAINTENANCE REPAIR & DAMAGE TO THE CONDOMINIUM IMPROVEMENTS AND COMMERCIAL IMPROVEMENTS**

**10. MAINTENANCE, REPAIR & DAMAGE TO THE CONDOMINIUM IMPROVEMENTS AND COMMERCIAL IMPROVEMENTS**

10.1 The Owner of the Condominium Property, at its sole cost and expense, shall keep the Condominium Property and all Facilities located therein or for which it 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 safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty, or otherwise. The plans and specifications for such repair and reconstruction shall provide for the Condominium Improvements to be rebuilt as nearly as commercially practicable to the Condominium Improvements as constructed prior to the damage unless prohibited by law or unless the Owner of the Commercial Property otherwise agrees. The Owner of the Commercial Property shall at its sole cost and expense, keep the Commercial Property and all Facilities located on the Commercial Property in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property whether such said repairs or replacements are to the interior or exterior thereof or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements necessary to keep the same in safe first-class working order and condition, howsoever the necessary or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty or otherwise. Each Owner shall be responsible for reimbursing the other Owner for any costs and expenses incurred in respect to Maintenance for which such Owner is responsible pursuant to this provision to the extent that such Maintenance results from damage caused by the other Owner.

10.2 The maintenance and repair of the common sewer lines located anywhere on the property from the point of connection to the sewer main in the public street shall be the joint responsibility of the owners of the Condominium Association and Owner of the Commercial Property, as approved by the City of Chicago, and shall not be the responsibility of the City of Chicago. This covenant is made to induce the City of Chicago to furnish sewer and water service to the above described premises.

10.3 If at any time any Owner shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of the other Owner or services to be furnished the other Owner under Article 4 or Article 5 hereof, then (i) the Owner benefitting therefrom may give written notice to the other Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then such Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation such Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The other Owner in so performing such repair and restoration shall be entitled to reimbursement upon demand from the defaulting Owner for all costs and expenses incurred by the such Owner and such other rights as provided under Article 10 herein.

10.4 If the Improvements are damaged by fire or other casualty and (a) to the extent such

damage occurs in, on, under, within, upon or about the Condominium Improvements only, or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements only, then, except for damage to any portions of the Commercial Property that form part of the exterior facade of the Development Area (excluding windows, doors and associated fixtures which shall be repaired or restored by the Owner of the Commercial Property), which shall be repaired and restored by the Owner of the Condominium Property, 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 Articles 16 and 17 hereof, be entitled to withdraw any insurance proceeds held by the Depository by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished any other Owner under Article 7 hereof, 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 Articles 16 and 17 hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the 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.

10.5 If the Improvements are damaged by fire or other casualty and if the provisions of Section 10.4 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clauses (a) or (b) of Section 10.4, then the repair and restoration of such damage shall be the responsibility of the Owner or Owners whose portions of the Development Area 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. 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.

10.6 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.

10.7 In any instance of repair or restoration pursuant to Sections 10.4 or 10.5 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 Depositary 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 on restoration, any Owner may deliver to the Depositary security for payment of its share reasonably acceptable to the other Owners and the Depositary. 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 Depositary 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 Depositary 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 therefore, 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.

10.8 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Development Area, shall be refunded to the respective Owner or, if applicable, to

the Mortgagee holding a Mortgage encumbering the Owner's respective portion of the Development Area in accordance with the terms of such encumbrance, to the extent that such sum exceeds the actual repair or restoration costs incurred for all repair and restoration of such Owner's Improvements. Such funds which are paid to each respective Owner or, if applicable, to the aforescribed mortgage holder, shall be payable only from each Owner's respective insurance proceeds.

10.9 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 Mortgagee, 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, subject to the rights of the Mortgagees. 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 Development Area 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 Development Area, 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.

10.10 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.

## ARTICLE 11 LIENS, RIGHTS AND REMEDIES

### 11. LIENS, RIGHTS AND REMEDIES

11.1 If, at any time, either Owner (a "Debtor Owner") fails within ten (10) days after notice or demand to pay any sum of money due the other Owner (a "Creditor Owner") under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) in the event of a default under Articles 10 or 14, a lien against any condemnation award or insurance proceeds payable to the Debtor Owner for loss or damage to the portion of the Development Area owned by the Debtor Owner or otherwise under insurance policies carried pursuant to Article 9 hereof, or (ii) in the event of a default under any other Section of this Declaration, a lien against the portion of the Development Area owned by the Debtor Owner, to secure the repayment of such sum of money and all interest



on such sum accruing pursuant to the provisions of this Article 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 subordinate to any first mortgage, first trust deed or other encumbrance constituting a first lien on the portion of the Development Area owned by the Debtor Owner or other interest of the Debtor Owner including mortgages of Units. Each Owner waives any and all rights to trial by jury in any suit, action or proceeding brought by the other Owner to enforce collection of any monies owed under this Declaration to such other Owner.

11.2 To the fullest extent permitted by law, the provisions of this Article 11 of this Declaration 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 Development Area that constitutes the Condominium Property or (ii) the use of insurance proceeds to repair or restore any portion of the Development Area that constitutes the Condominium Property. In the event of fire or other casualty or act of God or force majeure causing damage to any portions of the Development Area 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 Development Area under insurance policies carried pursuant to Article 9 hereof and on any condemnation award pursuant to Article 14, 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 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 Development Area or any part thereof, and
- (d) the architectural unity and aesthetic appearance of the restored improvements as a first-class, mixed use property.

Except in the case that an Owner is using the proceeds of insurance or condemnation to repair or restore damage to such Owner's portion of the Development Area, the lien as to proceeds of insurance or condemnation created by this Section shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on any portion of the Development Area except for the lien of a first mortgage or first trust deed. Such lien shall arise immediately upon the recording of a notice by the Owner with the Recorder following the occurrence of a fire or

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 the Owner of the Commercial Property. 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 Development Area 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 Development Area 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 divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

11.5 Interest shall accrue on any sums owed by an Owner to the other Owner pursuant to this Declaration, and shall be payable from the date which is ten (10) days after demand for any such payment is made until paid in full, at a rate of interest equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by LaSalle National Bank in Chicago, Illinois, as its "prime rate" of interest or a reasonably equivalent substitute thereof in the event a prime base rate is no longer announced, or (b) the then-maximum lawful rate of interest in Illinois applicable to the defaulting Owner and the nature of the debt. In the event a "prime rate" or reasonable equivalent thereof is not announced by LaSalle National Bank, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

11.6 Subject to the limitations set forth in Article 22 of this Declaration, except as expressly provided in this Declaration, the rights and remedies of each Owner provided for in this Article 11 or elsewhere in this Declaration are cumulative and are not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. Except as expressly provided in this Declaration, the Owner of the Commercial Property may enforce, by

a proceeding in equity for mandatory injunction, the Owner of the Condominium Property's obligation to execute or record any document which the other Owner is required to execute under or pursuant to this Declaration. The exercise by an Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

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

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 occurred, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, the Mortgagee of the Mortgage is diligently proceeding to foreclose the Mortgage, then such period in which an action by the Owner of the Commercial Property or Owner of the Condominium Property must be commenced shall be further extended for such additional time as may reasonably be necessary in order for the Mortgagee of the Mortgage to obtain possession of the applicable Property.

11.9 A defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by the other Owner in successfully enforcing its rights against the defaulting Owner under this Declaration, and such fees and costs, including reasonable attorneys fees and court 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 the Creditor Owner in any proceeding arising out of this Article 11, together with full power and authority to compromise any claims out of the terms of this Article 11 and to grant releases.

## **ARTICLE 12** **ARBITRATION**

### **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 have 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 therefore by giving Written notice thereof to the other Owner 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 Mortgagee of a Mortgage shall be a party to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagee of a Mortgage 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 first-class residential buildings similar to the subject building located on Development Property. The AAA Commercial Arbitration Rules then in effect shall apply to the arbitration of any Matter, unless the parties mutually agree in writing otherwise.

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 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 the Matter upon evidence produced by the appearing Owners. The arbitration costs shall be borne equally by each Owner, 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. Any award of the arbitrators shall be final and binding upon the Owners and the Mortgagee of the Mortgage 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 December 1, 2002, and the denominator of which is the Consumer Price Index for December 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 1967 = 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. 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

## ARTICLE 14 CONDEMNATION

### 14. UNAVOIDABLE DELAYS

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 Development Area 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 In the event of a taking (whether or not a temporary taking) of a part of the Development Area, then, subject to the provisions of Section 14.6 hereof, the Owner of the portion of the Development Area taken shall repair and restore the remainder of such Owner's Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner whose portion of the Development Area is taken. The Owner of the portion of the Development Area taken shall be entitled to receive directly from the taking authority any Award resulting from such taking within such Owner's portion of the Development Area for application to the cost of said repair and restoration and to retain any excess not required for such repair and restoration.

14.3 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 14.3 hereof), a Owner reasonably determines that such Owner's portion of the Development Area no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the such Owner's Improvements as may otherwise be required by this Declaration. However, in such case, such Owner shall demolish, repair or restore such Owner's improvements to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Development Area, but only if the Owner of the other portion of the Development Area affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of such Owner's portion of the Development Area and shall restore such Owner's portion of the Development Area to a slightly and safe condition and in such a manner as to safeguard the other Owner's portion of the Development Area, and to preserve the use or the Easements granted hereunder,

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

## ARTICLE 15 ARCHITECT

### 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 Development Area. 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. The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA Document B 141 (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 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 Owner 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.

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 reimbursed 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 Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the other Owner for any such payment, plus interest at the Default Rate from the date of payment by the Owner to the date of reimbursement to such Owner.

**ARTICLE 16**  
**DEPOSITARY**

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) 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 any of the Condominium Property or 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 Condominium 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.

16.3 In the event of any casualty loss which affects more than one portion of the Development Area 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 Depositary with regard to such funds.

16.4 In the event of any casualty loss which affects more than one portion of the Development Area 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 Depositary with regard to such funds.



16.5 If none of the provisions of Sections 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 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 purchasers 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 purchasers and their mortgagees shall be bound thereby.

16.7 Each Owner whose portion of the Development Area is the subject of any such casualty loss or condemnation shall be obligated to pay the reasonable fees and expenses of the Depository in proportion to the proceeds from their respective insurance policies or respective condemnation awards, as the case may be. Any Depository appointed to act hereunder shall execute an agreement with the Owners whose portion of the Development Area 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 Condominium Property or 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 Development Area has been the subject of any casualty loss or condemnation. The Depository, within thirty (30) days after receipt of funds, shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depository on monies or securities held in trust, and any gain and the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the

Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Declaration shall not be mingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes herein provided.

16.10 The Depository may resign by serving written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall jointly, with the consent of the Mortgagees of the Mortgages, appoint a substitute who qualifies under Section 16.1 hereof, and the Depository shall transfer all funds, together with copies of all records held by it as Depository, to such substitute. At which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, then the Mortgagees of the Mortgages shall appoint a substitute who qualifies under Section 16.1 hereof within thirty (30) days thereafter, and the Depository shall transfer all funds, together with copies of all records held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Mortgagees of the Mortgages shall fail to appoint a substitute within said additional thirty (30) day period, then the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, who qualifies under Section 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) hereof or condemnation awards of less than \$50,000 shall be paid directly to the party so entitled rather than to the Depository.

**ARTICLE 17**  
**DISBURSEMENTS OF FUNDS BY DEPOSITARY**

**17. DISBURSEMENTS OF FUNDS BY DEPOSITARY**

17.1 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) 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:

- (a) That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, material men, 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 60/0.0 1 et seq. (the "Mechanics Lien Act") and any title insurer affording coverage against mechanics liens;

(b) 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);

(c) 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

(d) That the cost to complete the unfinished Work will not exceed the funds or security therefore held by the Depository after payment of the then-current request.

(e) Upon compliance with the provisions of Section 17.1 (but not more frequently than once in each calendar month (thirty (30) day, period); and

(f) upon receipt of contractors', and sub-contractors' 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

(g) approval by the title insurer, the Owners, the Mortgagees of the Mortgages on portions of the Development Area 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 of the Mortgages or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner to the

Depository in accordance with the provisions of Section 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 Commercial Property and the Owner of Condominium 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 of the Mortgages, 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 anytime the Owner, with the written consent of the Mortgagees of the Mortgages. 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. **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 therefor pursuant to this Section 18.1, 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") in such form as may be reasonably requested. The Owner of any portion of the Development Area which is not subject to the Act, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may limit the statements made in the Estoppel Certificate to (i) the existence of any defaults hereunder and (ii) the amount of any liens capable of being asserted hereunder.

18.2 So long as the Condominium Property remains subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of the Condominium Property shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by the Owner of the Condominium Property while it is subject to the Act from the Owner of the Commercial Property may only be requested by the Condominium Association on behalf of the Owner of the Condominium Property.

**ARTICLE 19**

## CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

### 19. CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

So long as any portion of the Development Area 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 Development Area 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 Development Area on behalf of the Unit Owners of the Units in such portion of the Development Area, except for such rights or benefits expressly granted to Unit Owners, and except for Easements which by their nature are exercisable only by Unit Owners 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 b) 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 Development Area or any part thereof. All obligations under this Declaration of the Owner of a portion of the Development Area 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 Development Area and any lien arising against the Owner of any such portion of the Development Area 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 Development Area, which each Unit Owner may discharge in accordance with the provisions of Article 11 hereof.

## ARTICLE 20 ALTERATIONS

### 20. ALTERATIONS

20.1 Any Owner (hereinafter in this Article 20, "Altering Owner") may, at anytime, at such Altering Owner's sole cost and expense, make additional improvements or alterations (hereinafter in this Article 20, "Alterations") to the part of the Improvements within such Altering Owner's portion of the Development Area, provided that such Alterations comply with the balance of this Section 20.1 and all of the other provisions of this Article 20. 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 20. Prohibitions and restrictions on Alterations by the Owner of the Condominium Property shall also apply to individual Unit Owners.

(a) Unless otherwise provided in Section 20.1 and this Section Alterations shall not be made without the prior written consent of the other Owners if such Alterations will:

(i) unreasonably diminish the benefits afforded to such other Owners by any Easement or unreasonably interrupt such other Owners' 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 or the west facade of the Condominium Property for the identification of the Building and occupants of tenants of the Commercial Property;

(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 Development Area;

(iv) affect Facilities benefitting the other Owners other than minimally or incidentally; or

(v) materially change the expected pedestrian and vehicular traffic patterns or patterns of ingress and egress.

20.2 Notwithstanding anything contained herein to the contrary, the Owner of the Commercial Property shall have the right and is hereby granted the necessary Easements to:

(a) reconfigure any portion of the Commercial Property; and (b) undertake such changes in the Commercial Property, in its sole discretion, as it desires to make

(b) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of the other Owners or the Mortgagees of the Mortgages, if applicable, then before-commencing or proceeding with such Alterations, the Altering Owner shall deliver to the other Owners and the applicable Mortgagees, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 20.1. If such other 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 Owners consent to the proposed alterations, and if, in the good faith opinion of the other Owners or the applicable Mortgagees, the Altering Owner has violated or will violate the provisions of Section 20.1(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 20.1(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 20.1(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 20.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(c) If any matter arises between the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 20.1(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 20.1(a) or (b) hereof.

(d) 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 Development Area in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturbing occupant or occupants of the other portion of the Development Area, but such Owner shall not be liable in any event for damages as a result of any such disturbance.

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

20.4 An Altering Owner performing any Work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (i)

recognizes the separate ownership of the various Parcels which comprise the Development Area 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 Development Area 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 Development Area 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..

ARTICLE 21  
NOTICES

21. NOTICES

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

For Notices to the Owner of the Condominium Property:

7 South Aberdeen  
Residential Units 2-A, 2-B, 2-C, PH-1, PH-2, and PH-3  
Chicago, Illinois 60607

For Notices to the Owner of the Commercial Property:

1063-1065 West Madison Avenue  
Commercial Property  
Chicago, Illinois 60607

The foregoing notwithstanding, at such time as the Condominium Property is submitted to the Act, Notices to the Owner of the Condominium Property shall be delivered or mailed, as aforesaid, to any officer, director or managing agent of the Condominium Association to such address as may appear in any public record instead of the addresses set forth above. Such change of address shall be effective, however, only upon the giving of notice thereof to the other Owners in accordance with the provision of Section 21.2 hereof.

21.2 Any Notice delivered as aforesaid shall be, deemed received when delivered and receipted for or any Notice mailed as aforesaid shall be deemed received five (5) business days after deposit in the United States Mail, or upon actual receipt, whichever is earlier. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least ten (10) days prior to the effective date of any such change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.



**ARTICLE 22**  
**LIMITATION OF LIABILITY**

22. **LIMITATION OF LIABILITY**

22.1 Each Owner of a portion of the Development Area shall cooperate in the securing and performing of the services as set forth in Article 4 of this Declaration but shall not be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. Each Owner obligated hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs or in case of an Emergency Situation.

22.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Development Area: (1) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself freed and relieved therefrom as hereinabove provided in this Section, and then any such grantee's or successor's grantee or successor shall thereafter be so bound. to the Act, Notices to the Owner of the Condominium Property shall be delivered or mailed, as aforesaid, to any officer, director or managing agent of the Condominium Association to such address as may appear in any public record instead of the addresses set forth above. Such change of address shall be effective, however, only upon the giving of notice thereof to the other Owners in accordance with the provision of Section 21.2 hereof.

Executed and sealed the day and date set forth herein

DECLARANT:

**FAMILY BANK AND TRUST COMPANY AS TRUSTEE UNDER TRUST  
NUMBER 6-612 DATED SEPTEMBER 1, 2001**

**FAMILY BANK and TRUST CO.  
AS TRUSTEE AND NOT PERSONALLY**

BY: FAMILY BANK AND TRUST CO.

ITS: 

MARVIN A. SIENSA-CHAIRMAN OF THE BOARD/CEO AND TRUST OFFICER  
SEE ATTACHED EXCULPATORY CLAUSE

## EXCULPATORY CLAUSE

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings, and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own rights, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the *Family Bank and Trust Company* or any other beneficiaries under said Trust Agreement, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.



CONSENT OF MORTGAGEE

Family Bank and Trust Company, holder of a mortgage on the property dated September 1, 2001, and recorded November 13, 2001, as Document No. 0011062690 hereby consents to the execution and recording of the within Declaration of Covenants, Conditions, Restrictions and Easements 7 South Aberdeen Condominiums and Commercial Property at 7 South Aberdeen Street and 1063-1065 West Madison Street, Chicago, IL 60607., and agrees that said mortgage is subject to the provisions of said Declaration.

IT WITNESS WHEREOF, the said Family Bank and Trust Company has caused this instrument to be signed by its duly authorized officers on its behalf, all done at Chicago, Illinois on this 21ST day of DECEMBER 2002

FAMILY BANK AND TRUST COMPANY **FAMILY BANK and TRUST CO.**  
**AS TRUSTEE AND NOT PERSONALLY.**

By: FAMILY BANK AND TRUST CO.  
Its: [Signature]

MARVIN A. SIENSA-CHAIRMAN OF THE BOARD/CEO AND TRUST OFFICER

attest: SEE ATTACHED EXCULPATORY CLAUSE

FAMILY BANK AND TRUST CO.  
Its: [Signature]

LOUIS R. ACEVEDO-VICE PRESIDENT/CASHIER/COMPLIANCE OFFICER/ASSISTANT TRUST OFFICER

STATE OF ILLINOIS )

COUNTY OF COOK )

I, DEBRA A. LUDWIG, a Notary Public in and for said County and State do hereby certify that MARVIN SIENSA and LOUIS ACEVEDO, the PRES & CEO and V.P & CASHIER respectively, of Family Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such MARVIN SIENSA and LOUIS ACEVEDO appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21st day of Dec, 2002

[Signature]  
Notary Public **DEBRA A. LUDWIG**  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES JULY 29, 2005

CONSENT OF MORTGAGEE

PURITAN FINANCE CORPORATION, holder of a mortgage on the property dated November 29, 2001, and recorded December 4, 2001, as Document No. 0011136469 hereby consents to the execution and recording of the within Declaration of Covenants, Conditions, Restrictions and Easements 7 South Aberdeen Condominiums and Commercial Property at 7 South Aberdeen Street and 1063-1065 West Madison Street, Chicago, Il 60607, and agrees that said mortgage is subject to the provisions of said Declaration.

IT WITNESS WHEREOF, the said Puritan Financial has caused this instrument to be signed by its duly authorized officers on its behalf, all done at Chicago, Illinois on this 20<sup>th</sup> day of DECEMBER, 2002

PURITAN FINANCE CORPORATION

By: *Park T. Livingston*  
Its: *Vice President*

attest:  
*Lawrence A. Sherman*  
Its: *CHAIRMAN*

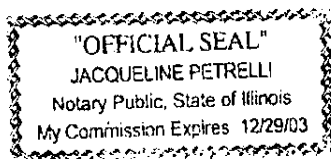
STATE OF ILLINOIS )

COUNTY OF COOK )

I, *Jacqueline Petrelli*, a Notary Public in and for said County, and State do hereby certify that *PARK T. LIVINGSTON* and *LAWRENCE A. SHERMAN*, the *VICE PRESIDENT* and *CHAIRMAN* respectively, of PURITAN FINANCE CORPORATION, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_ appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this *20<sup>th</sup>* day of *Dec*, 2002

*Jacqueline Petrelli*  
Notary Public



**EXHIBIT B**

**LEGAL DESCRIPTION OF DEVELOPMENT AREA**

LOTS 26 AND 27 IN ROGERS' SUBDIVISION OF BLOCK 1 OF CANAL TRUSTEES' SUBDIVISION OF THE WEST 1/2 AND THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OF BLOCK 5 OF DUNCAN'S ADDITION TO CHICAGO IN COOK COUNTY, ILLINOIS.

1063-1065 West Madison Street and  
7 South Aberdeen  
Chicago, Illinois

PIN: 17-17-203-024-0000

PROPERTY of Cook County Clerk's Office

EXHIBIT C

LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY

Parcel 1:

That Part of Lots 26 and 27 in Rogers' Subdivision of Block 1 of Canal Trustees' Subdivision of the West 1/2 and the West 1/2 of the Northeast 1/4 of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian, and of Block 5 of Duncan's Addition to Chicago, East of the Third Principal Meridian, Which Survey Is Attached as Exhibit 'A' to the Declaration, Recorded as Document \_\_\_\_\_; Together with its Undivided Percentage Interest in the Common Element, in Cook County, Illinois

Easement for the Benefit of Parcel 1 as Created by Declaration of Covenants, Conditions, Restrictions and Easements, Recorded as Document \_\_\_\_\_.

1063-1065 West Madison Street and  
7 South Aberdeen  
Chicago, Illinois

PIN: 17-17-203-024-0000

Property of Cook County Clerk's Office

## EXHIBIT D

### LEGAL DESCRIPTION OF COMMERCIAL PROPERTY

The Following Described 4 Parcels of Real Estate Delineated as Commercial Property on a Plat of Survey of Said 4 Parcels of Real Estate :

4 Parcels of Lots 26 and 27 in Rogers' Subdivision of Block 1 of Canal Trustees Subdivision of the West 1/2 and the West 1/2 of the Northeast 1/4 of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, and of Block 5 of Duncan's Addition to Chicago, Being a Subdivision of the East 1/2 of the Northeast 1/4 of Section 17, Aforesaid, in Cook County, Illinois, Which Parcels Are Described as Follows:

Parcel 1:

The Following Parcel of Land Lying at and below a Horizontal Plane at Elevation + 20.74 Feet (Assumed Datum) Described as Follows:

Beginning at the Northeast Corner of Said Lot 26;  
Thence South , a Distance of 52.00 Feet;  
Thence West, a Distance of 34.40 Feet;  
Thence South, a Distance of 19.00 Feet;  
Thence West, a Distance of 15.60 Feet;  
Thence North, a Distance of 71.00 Feet;  
Thence East, a Distance of 50.00 Feet to the Point of Beginning.

Parcel 2:

The Following Parcel of Land Lying at and below a Horizontal Plane at Elevation + 20.74 Feet (Assumed Datum) Described as Follows:

Commencing at the Northeast Corner of Said Lot 26;  
Thence South, a Distance of 76.58 Feet to the Point of Beginning;

Thence Continuing South, a Distance of 27.18 Feet;  
Thence West, a Distance of 25.00 Feet;  
Thence South, a Distance of 20.10 Feet;  
Thence West, a Distance of 10.93 Feet;  
Thence North, a Distance of 6.35 Feet;  
Thence West, a Distance of 8.95 Feet;  
Thence North, a Distance of 36.03 Feet;



# UNOFFICIAL COPY

Thence East, a Distance of 4.20 Feet;  
Thence North, a Distance of 4.90 Feet;  
Thence East, a Distance of 40.68 Feet to the Point of Beginning.

Parcel 3:

The Following Parcel of Land Lying above a Horizontal Plane at Elevation + 20.74 Feet (Assumed Datum) and Lying at and below a Horizontal Plane at Elevation + 35.07 Feet (Assumed Datum) Described as Follows:

Beginning at the Northeast Corner of Said Lot 26;  
Thence South, a Distance of 48.00 Feet;  
Thence West, a Distance of 25.00 Feet;  
Thence North, a Distance of 48.00 Feet;  
Thence East, a Distance of 25.00 Feet to the Point of Beginning.

Parcel 4:

The Following Parcel of Land Lying above a Horizontal Plane at Elevation + 20.74 Feet (Assumed Datum) and Lying at and below a Horizontal Plane at Elevation + 36.40 Feet (Assumed Datum) Described as Follows.

Beginning at the Northwest Corner of Said Lot 26;  
Thence South, a Distance of 48.00 Feet;  
Thence West, a Distance of 9.40 Feet;  
Thence South, a Distance of 19.00 Feet;  
Thence West, a Distance of 15.60 Feet;  
Thence North, a Distance of 67.00 Feet;  
Thence East, a Distance of 25.00 Feet to the Point of Beginning, All in Cook County, Illinois.

Which Plat of Survey Is Attached as Exhibit A to this Declaration of Covenants, Conditions, Restrictions and Easements 7 South Aberdeen Condominiums and Commercial Property at 7 South Aberdeen Street and 1063-1065 West Madison Street, Chicago, IL 60607.

COMMONLY KNOWN AS: 7 S. ABERDEEN STREET  
1063 - 65 W. MADISON STREET  
CHICAGO, ILLINOIS

PERMANENT INDEX NUMBER: 17 - 17 - 203 - 024



0021436919

# EXHIBIT

ATTACHED TO

0021436919

DOCUMENT NUMBER

SEE PLAT BOOK