



0322331042

Eugene "Gene" Moore Fee: \$230.00
Cook County Recorder of Deeds
Date: 08/11/2003 11:11 AM Pg: 1 of 48

This Document Prepared
by and after recording mail to:

Phillip I. Rosenthal
3700 W. Devon, Suite E
Lincolnwood, Illinois 60714

F		A
P	<i>230</i>	P
T	<i>8-11</i>	V
I	<i>8-11</i>	<i>m</i>

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
THE 3634-36 WEST WRIGHTWOOD DEVELOPMENT**

This Declaration of Covenants, Conditions, Restrictions and Easements for the 3634-36 West Wrightwood Development (hereinafter referred to as the "Declaration") is made as of the 8 day of August, 2003 by Albany Bank and Trust Company N.A., a National Banking Association, not personally but as trustee under Trust Agreement dated July 23, 2002, and known as Trust Number 11-5855 (hereinafter referred to as the "Declarant").

RECITALS:

- A. The terms used in these Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in Article 2 hereof.
- B. Declarant is the owner of the Total Parcel.
- C. The Total Parcel is improved with the Building, comprised of: (i) the Commercial Parcel (hereinafter referred to as the Commercial Parcel); encompassing the first floor and portions of the basement; and (ii) the Condominium Parcel encompassing the second floor and third floor of the Building, inclusive, containing four (4) residential units and associated common elements.
- D. Concurrently with the recording of this Declaration, the Declarant is recording that certain Declaration of Condominium Ownership for 3634-36 West Wrightview Condominiums dated _____, 2003 (hereinafter referred to as the "Condominium Declaration") which submits the Condominium Parcel to the provisions of the Act. The terms "Common Elements", and

CEA/325594.1

RECORDING FEE 230 -
DATE 8-11-03 COPIES 6
OK BY Bico

48p

UNOFFICIAL COPY

EXHIBIT

ATTACHED TO

DOCUMENT

SEE PLAT INDEX

UNOFFICIAL COPY

CBA/325594.1

- 2.2 "Architect" shall have the meaning set forth in Article 15 hereof.
- 2.1 "Act" means the Illinois Condominium Property Act 765 ILCS 605/1 et seq.

DEFINITIONS

ARTICLE II

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

INCORPORATION OF RECITALS

ARTICLE I

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

F. Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Parcel, to assure the harmonious relationship of the Owner of each such respective portion, estate or interest in the Total Parcel, and to protect the respective uses of each such portion, estate and interest in the Total Parcel, by providing for declaring and creating: (i) certain easements, covenants, and restrictions against and affecting portions of the Commercial Parcel which will be binding upon each present and future Owner of the Commercial Parcel, and which will inure to the benefit of each of the present and future Owners of the Commercial Parcel, with respect to such portions thereof or interests or estates therein, to the extent provided herein, and (ii) certain easements, covenants, and restrictions against and affecting portions of the Condominium Parcel, which will be binding upon each present and future Owner of such portions of the Condominium Parcel, or of any portion thereof or interest therein, and which will inure to the benefit of each of the present and future Owner of the Commercial Parcel with respect to such portions thereof or interests or estates therein, to the extent provided herein.

E. The Commercial Parcel and the Condominium Parcel will depend upon the other, to some extent, for structural support, utility services, ingress and egress and other components necessary to the efficient operation and intended use of the Commercial Parcel and the Condominium Parcel.

"Condominium Association" and all other capitalized terms therein defined not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

UNOFFICIAL COPY

CEA/325594 1

- 2.3 "**Building**" means the three (3) story multi-use building located on the Total Parcel.
- 2.4 "**Common Walls, Floors and Ceilings**" means all common structural and partition walls, floors and ceilings now or hereafter situated on or adjoining the Condominium Parcel and the Commercial Parcel, or located on one parcel but forming the walls, floors or ceilings of the other parcel.
- 2.5 "**Condominium Improvements**" means all improvements now or hereafter constructed within and upon the Condominium Parcel. In the event of any reconstruction of the Condominium Improvements pursuant to Article 10 or Article 14, the Condominium Improvements shall include any such improvements reconstructed on the Condominium Parcel.
- 2.6 "**Condominium Parcel**" means the parcel described in Exhibit B.
- 2.7 "**CPI**" and "**Consumer Price Index**" each means the Consumer Price Index - U.S. City Averages for Urban Wage Earners and Clerical Workers, All Items (1982-1984 = 100), of the United States Bureau of Labor Statistics. The Consumer Price Index for any Calendar Year shall be determined by averaging the monthly all items indices for that Calendar Year. If the Consumer Price Index shall be substantially revised (including but not limited to a change from using the 1982-84 averages as the Base Index of 100) or become unavailable to the public, Landlord will substitute therefor, a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar.
- 2.8 "**Creditor Owner**", except where otherwise defined herein in a specific context, means an Owner to which a payment of money or other duty or obligation is owed under this Declaration by another Owner which has failed to make such payment or to perform such duty or obligation as and when required hereunder.
- 2.9 "**Declarant**" means Albany Bank and Trust Company N.A., a national Banking Association, not personally, but as trustee under Trust Agreement dated July 23, 2002, and known as Trust Number 11-5855, its successors and assigns (including, without limitation, any Mortgagee succeeding to the rights of Albany Bank and Trust Company N.A., a national Banking Association, not personally, but as trustee under Trust Agreement dated July 23, 2003, and known as Trust Number 11-5855 under this Declaration pursuant to a collateral assignment of its rights hereunder) and any other person or entity designated by a Declarant to be the Declarant.
- 2.10 "**Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Easements for the 3634-36 West Wrightwood Development, including all exhibits, amendments and supplements hereto.
- 2.11 "**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 11.4 hereof.

UNOFFICIAL COPY

CEA/325594.1

- time in question holding fee simple title to any portion of the Total Parcel. "Owners" means the Owners of the Total Parcel or any portion thereof, as the context may require. Any action required or permitted hereunder with respect to an Owner of any portion of the Total Parcel that is
- 2.23 "Owner" means the person or entity (or persons or entities, if more than one) at any
- 2.22 "Mortgage" means the holder of a Mortgage.
- the Total Parcel or any portion thereof.
- 2.21 "Mortgage" means a first mortgage or first trust deed in the nature of a mortgage on
- 2.20 "Maintenance" means and includes operating, maintaining, repairing, reconditioning, refurbishing, reconfiguring, inspecting, testing, cleaning, painting, installing and replacing when necessary or desirable of the Facilities or 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.
- 2.19 "Improvements" means the Condominium Improvements and Commercial Improvements, collectively.
- 2.18 "Commercial Parcel" means the parcel described in Exhibit A.
- 2.17 "Commercial Improvements" means all improvements now or hereafter constructed within and upon the Commercial Parcel. In the event of any reconstruction of the Commercial Improvements pursuant to Article 10 or Article 14 the Commercial Improvements shall include any improvements reconstructed on the Commercial Parcel.
- 2.16 "Facilities" means any system, structure, support, cable, conduit, duct, line, riser, transformer, switch, wiring or other apparatus or device that is intended for the common use of the Owners.
- 2.15 "Emergency Situation" means a situation impairing or imminently likely to impair structural support of the Condominium Improvements or the Commercial Improvements or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Total Parcel or any part thereof or any property in, on, under, within, upon or about the Total Parcel. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.
- 2.14 "Easements" means all easements granted, reserved, provided for, declared or created pursuant to or in accordance with the terms and provisions of this Declaration.
- 2.13 "Depositary" means the person or entity from time to time acting pursuant to Article 16 of this Declaration.
- 2.12 "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.

UNOFFICIAL COPY

CEA/325594.1

3.1 The following perpetual Easements in, to, under, over, upon, through and about the Commercial Parcel in favor of the Condominium Parcel are hereby granted, reserved, declared and

EASEMENTS IN FAVOR OF CONDOMINIUM PARCEL

ARTICLE III

2.27 "Unavoidable Delay" shall have the meaning set forth in Article 13 hereof.

P.I.N.: 13-1-313-022-0000

ADDRESS: 3634-36 West Wrightwood, CHICAGO, ILLINOIS
CORNER THEREOF), IN COOK COUNTY, ILLINOIS
MERIDIAN (EXCEPT THE 25 ACRES IN THE NORTHEAST
NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL
SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 40
KIMBALL'S SUBDIVISION OF THE EAST HALF OF THE
SOUTH OF THE NORTH 233 FEET OF SAID BLOCK IN
BLOCK 5 (EXCEPT THE SOUTH 22 FEET THEREOF) LYING
LOT 10 CHRISTENSEN'S SUBDIVISION OF THAT PART OF

Cook County, Illinois legally described as follows:
West Wrightwood, Chicago, Illinois and all improvements thereon located in the City of Chicago,
2.26 "Total Parcel" means that certain parcel of real estate commonly known as 3634-36

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

2.24 "Parcel" means a parcel designated on Exhibit A or Exhibit B.

subject to the provisions of the Act, including but not limited to all enforcement, defenses, consents, waivers, approvals and appointments which may be taken, granted, approved, enforced or consented to by an Owner, shall be exercised solely and exclusively by the Condominium Association administering such portion of the Total Parcel on behalf of all of the Owners of such portion of the Total Parcel, and any such action taken by a Condominium Association shall bind all Owners governed thereby. In furtherance of the foregoing, any action to enforce or defend rights, obligations, Easements, burdens or benefits under this Declaration, or the right to settle and compromise any claims, on behalf of the Owners of any portion of the Total Parcel that is subject to the provisions of the Act shall be taken solely and exclusively on behalf of such Owners by the applicable Condominium Association and all such Owners shall be bound by the acts of such Condominium Association. All obligations under this Declaration of the Owner of a portion of the Total Parcel subject to the Act shall be obligations jointly and severally of both the applicable Condominium Association and all Owners in such portions of the Total Parcel.

UNOFFICIAL COPY

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, Facilities and any other supporting components now or hereafter located in or constituting a part of the Commercial Parcel, for the support of the Condominium Improvements.

(b) A non-exclusive Easement in, to, over, under, across and upon certain areas of the Commercial Parcel for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation of storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable lines, and other utility lines which serve the Condominium Improvements. The installation of any utility lines shall be subject, as to location, to the approval of the Owner of the Commercial Parcel, which approval shall not be unreasonably withheld, conditioned or delayed.

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

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

(e) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Commercial Parcel to the extent necessary to permit the construction, equipping, fixturing and furnishing of the Condominium Parcel, and the Maintenance of the Condominium Parcel as required or permitted pursuant to this Declaration, or as necessary in an Emergency Situation, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article 6 hereof.

(f) A non-exclusive Easement for ingress and egress over, on and across those doorways, passageways, stairs, stairwells, elevators and elevator shafts located in the Commercial Parcel required or necessary to permit access to the Condominium Improvements.

UNOFFICIAL COPY

(d) A non-exclusive Easement, permitting encroachments of any part of the Commercial Improvements upon any part of the Condominium Parcel in the event and to the extent that, by reason of the original construction of the Commercial Improvements or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Commercial Improvements or the subsequent settlement or shifting of any part of the

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

(b) A non-exclusive Easement in, to, over, under, across and upon certain areas of the Condominium Parcel for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation of storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable lines, and other utility lines which serve the Commercial Improvements. The installation of any utility lines shall be subject, as to location, to the approval of the Owner or Owners of the Condominium Parcel which approval shall not be unreasonably withheld, conditioned or delayed.

(a) A non-exclusive Easement in and under the Condominium Parcel to the extent reasonably necessary to permit the construction, reconstruction, equipping, and maintenance of structural members, walls, ceilings, and any other supporting components of the Commercial Improvements.

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

EASEMENTS IN FAVOR OF THE COMMERCIAL PARCEL

ARTICLE IV

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

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

(b) **Service Dock Area.** Maintenance of the loading docks, service areas, delivery entrances, and related corridors, facilities and equipment located or to be located within the Commercial Parcel which are intended to service the Condominium Parcel.

(a) **Trash Room.** Maintenance of the rubbish chutes, rubbish room, and all equipment located or to be located within the Commercial Parcel and used in connection with the disposal of waste from the Condominium Improvements. Each Owner shall be responsible, at its own cost, for providing scavenger service to remove rubbish and other materials generated by such Owner.

5.1 The Owners of the Condominium Parcel shall be solely responsible for the following services, including the cost thereof, to the extent required:

PERFORMANCE OF WORK

ARTICLE V

4.3 Easements provided for, declared or created under this Article 4 shall be binding upon the Condominium Parcel and each Owner or Owners of the Condominium Parcel and shall run in favor of the Commercial Parcel Owner and their tenants and invitees, and inure to the benefit of and be appurtenant to the Commercial Parcel and each portion thereof.

4.2 Each Easement created under this Article 4 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Condominium Parcel shall, except in an Emergency Situation, be subject to such reasonable limitations as the applicable Owner of the Condominium Parcel affected by such Easement may, from time to time after consultation with the Owner of the Commercial Parcel, impose with respect to the establishment of paths of ingress and egress which such Easements may use to prevent any unreasonable interference with the use and operation of the applicable portion of the Condominium Parcel and in order to assure the reasonable security of the applicable portion of the Condominium Parcel.

(e) A non-exclusive Easement for ingress and egress (and where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Condominium Parcel to the extent reasonably necessary to permit the construction, equipping, fixturing and furnishing of the Commercial Improvements, and the Maintenance of the Commercial Improvements as required or permitted pursuant to this Declaration, or as necessary in an Emergency Situation, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article 6 hereof.

Commercial Improvements, any part of the Commercial Improvements encroaches or shall hereafter encroach upon any part of the Condominium Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Commercial Improvements continues to exist.

UNOFFICIAL COPY

CEA/325594.1

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

5.3 The Owner of the Condominium Parcel shall be solely responsible for the Maintenance, including the cost thereof, of any shared Facilities serving both the Condominium Parcel and the Commercial Parcel (hereinafter referred to as a "Common Facility"). Notwithstanding the foregoing, in the event that a Common Facility requires repair or maintenance solely due to an act or acts of the Commercial Parcel Owner or its tenants or invitees, then the cost of such repair or maintenance shall be borne by the Commercial Parcel Owner. If the parties are unable to agree upon the cause of a Common Facility requiring repair or maintenance, then the issue shall be submitted to an Architect for resolution in accordance with the provisions of Article 15 hereof.

(b) **HVAC and Utilities.** Maintenance of all heating, ventilating and air conditioning systems and utilities exclusively serving the Commercial Improvements.

(a) **Entrances and Pavement.** Maintenance of all entrances and pavement exclusively serving the Commercial Improvements including the removal of snow from walkways, driveways and entrances and keeping such walkways, driveways and entrances to the Commercial Improvements free from debris and obstructions.

5.2 The Owner of the Commercial Parcel shall be solely responsible for the following services, including the cost thereof, to the extent required:

(g) **HVAC and Utilities.** Maintenance of all heating, ventilating and air conditioning systems and utilities exclusively serving the Condominium Improvements.

(f) **Ramps and Stairways.** Maintenance of all ramps and stairways exclusively servicing the Condominium Parcel including ice and snow removal, pavement upkeep, and removal of all debris.

(e) **Elevators.** Maintenance of all freight and passenger elevators and all equipment and components related thereto, in a manner consistent with the standards of a first-class building.

(d) **Entrances and Pavement.** Except as provided in Section 5.2(a) hereof, Maintenance of all street level pavement adjacent to the Building, including removal of snow from sidewalks, stairways and driveways leading to street level entrances to the Building and keeping such sidewalks, driveways and street level entrances to the Building free from debris and obstructions to pedestrian and vehicular traffic.

(c) **Landscaping.** Maintenance of all planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials now or hereafter located or planted in the area surrounding the Building.

UNOFFICIAL COPY

CEM/2325594.1

(a) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, which determination shall be made by the Architect, then the Owner or Owners benefitted by the structural support shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 20 would not require such approval) the Owners of the portion of the Total Parcel affected thereby, the Architect and Mortgagees under any Mortgage encumbering the portions of the Total Parcel affected thereby. The costs and expenses

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

6.2 Except in the case in which Sections 10.3 or 10.4 hereof or Article 14 hereof 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 following provisions shall apply:

STRUCTURAL SUPPORT**ARTICLE VI**

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

5.5 Except when caused by an Unavoidable Delay, if any Owner fails to perform its obligations under this Article 5 or otherwise required by this Declaration, and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner, the Creditor Owner shall have the right to take possession and control of and to operate, maintain, repair and replace the Facilities (wherever located) required for the furnishing of such service until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure. For any period in which a Creditor Owner is performing pursuant to this Section 5.5, the Defaulting Owner shall pay the Creditor Owner one hundred twenty (120%) percent of the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance plus interest thereon as described in Section 11.5 hereof.

shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Parcel to substantially the same condition as existed immediately prior to any such construction, installation or Maintenance.

UNOFFICIAL COPY

(a) shall comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Total Parcel or any portion thereof, if non-

7.1 Each Owner:

COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

ARTICLE VII

6.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners in accordance with Section 6.2 shall be determined as responsible for such construction, any Owner may, upon not less than thirty (30) days advance written notice to the others Owners (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever may be required, or any Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner or Owners shall be liable for and pay all costs and expenses incurred as a result of any Owner's providing of any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners for substitute or additional support, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of any portion of the Total Parcel during any period of reconstruction.

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

(b) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 20 would not require such approval) the Owners of the portions of the Total Parcel affected thereby, the Architect and the Mortgagees under any Mortgage encumbering the portions of the Total Parcel affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners responsible for the reduction or endangerment in proportion to the relative degree of culpability of such Owner(s) in causing the reduction or endangerment, as determined by the Architect and expressed as a percentage for each such Owner.

(b) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 20 would not require such approval) the Owners of the portions of the Total Parcel affected thereby, the Architect and the Mortgagees under any Mortgage encumbering the portions of the Total Parcel affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners benefited thereby in proportion to the relative benefits to be derived by such Owner(s) from such substitute or additional support, as determined by the Architect and expressed as a percentage for each such Owner.

UNOFFICIAL COPY

CEA/325594.1

7.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics, material men or any other lien arising by reason of its act or any work or materials which it has ordered on any other Owner's portion of the Total Parcel, or on its portion of the Total Parcel if the existence or foreclosure of such lien on its portion of the Total Parcel would adversely affect any Easement hereunder. Notice of the filing of any such lien shall be served upon the Mortgages. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may, but is not required to, take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date of payment of such costs and expenses by the Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be required to remove such lien within

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

compliance by it with respect to its portion of the Total Parcel or any part thereof would subject any other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any other Owner or for the improvements themselves, or would jeopardize any other Owner's right to occupy or utilize beneficially its portion of the Total Parcel or any part thereof, or would result in the imposition of a lien against any of the property of any other Owner or would increase costs of insurance of any other Owner or would impose any threat or danger to any person or property; and

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

thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Mortgages; (ii) within said thirty (30) day period, foreclosure proceedings relating to such lien cannot be completed; and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner and to the Mortgages, if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to an escrow agent for the mutual benefit of the parties cash 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. Such escrow agent shall be a title insurance company designated by the Creditor Owner and reasonably satisfactory to the Defaulting Owner who shall hold such sum in an interest bearing account acceptable to the parties. The escrow agent shall disburse the proceeds held in escrow first to pay any final non-applicable judgment with respect to such lien claim and second to the Defaulting Owner to the extent excess proceeds remain in the escrow account after the above payment or in the event of a final non-applicable judgment with respect to such lien claim removes any such lien without the requirement of payment or in the event said lien claim is otherwise removed. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under any Mortgage, and in such event the Defaulting Owner shall cause such liens to be discharged or removed within ten (10) days after the occurrence of any of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time after the end of said 10-day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

UNOFFICIAL COPY

CEA/325594.1

(a) The Owner of the Condominium Parcel and the Owner of the Commercial Parcel shall jointly keep the Improvements (including without limitation the foundation) insured under a single insurance policy under an "all risk" or "special form" property policy

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

ARTICLE IX INSURANCE

8.3 If any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to Section 8.2, then any Creditor Owner may, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, plus interest thereon as provided in Section 11.5 hereof, and shall also have a lien against the portion of the Total Parcel owned by the Defaulting Owner in accordance with Article 11 hereof.

8.2 Until such time as the Condominium Parcel and the Commercial Parcel have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, the Owner of the Condominium Parcel shall be responsible for Sixty Seven percent (67%) of the real estate tax bill for the Total Parcel and the Owner of the Commercial Parcel shall be responsible for Thirty Three percent (33%) of the real estate tax bill for the Total Parcel. The Owner of the Condominium Parcel shall pay the combined tax bill or bills for the Total Parcel prior to their due date. The Owner of the Commercial Parcel shall be responsible for and shall pay or reimburse the Owner of the Condominium Parcel (within ten (10) days after the demand of the Owner of the Condominium Parcel therefor, but in no event later than seven (7) days prior to the due date of the related tax bill) for Thirty Three percent (33%) of the total real estate taxes levied in the combined tax bill or bills for the Total Parcel.

8.1 The Owners shall make good faith efforts and cooperate with each other so that the Condominium Parcel and the Commercial Parcel 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 (hereinafter referred to as the "Assessor") of Cook County, Illinois. The Owner of the Condominium Parcel shall also have the right to divide the Condominium Parcel into separate tax parcels attributable to the Condominium Units. At such time as the Condominium Parcel and the Commercial Parcel have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, the Owners of the Condominium Parcel and the Commercial Parcel shall pay the real estate tax bill for the Condominium Parcel and the Owner of the Commercial Parcel shall pay the real estate tax bill for the Commercial Parcel.

ARTICLE VIII REAL ESTATE TAXES

UNOFFICIAL COPY

CEA/325594.1

9.3 Each policy described in Section 9.1 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder; and (iii) shall, if available, provide, except for the liability insurance required under Section 9.1(b), that all amounts payable thereunder shall be paid to the Depository in accordance with Articles 16 and 21 hereof. Nothing contained in this Section 9.3 shall prevent the naming of any person, as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual

9.2 The Owners shall apportion the premiums on the insurance policies described in Section 9.1 hereof based on the manner in which the insurance company or a third party acceptable to all of the Owners apportions such premiums. In the event the Owner of the Condominium Parcel and the Owner of the Commercial Parcel cannot agree upon the insurance companies to provide the insurance required under Section 9.1 hereof or any Owner disagrees with the apportionment of the insurance premium, the question of selection of an insurance company or apportionment of premium shall be submitted to arbitration as provided in Article 12 (Arbitration) hereof. Notwithstanding anything contained in this Article 9 to the contrary, as long as the Declarant owns the Commercial Parcel or any portion thereof, the Declarant shall: (i) select the insurance companies to provide the insurance required under this Article 9, (ii) select the insurance agent or consultant described in Section 9.4 hereof, and (iii) make the decisions and determinations described in Section 9.4 hereof; provided, however, that the insurance companies selected by the Declarant and the insurance policies issued by such companies shall at all times comply with the requirements of this Article 9. Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-/VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. Each of the Owners hereby agrees to cooperate to procure and maintain insurance policies described in Section 9.1 hereof which jointly cover the interests of all of the Owners.

(b) The Owner of the Condominium Parcel and the Owner of the Commercial Parcel shall jointly maintain Commercial General Liability Insurance under a single insurance policy covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Total Parcel, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class, mixed-use buildings in the City of Chicago, but in all events for limits of not less than Two Million and No/100 (\$2,000,000.00) Dollars combined single limit per occurrence with a general policy aggregate of Three Million and No/100 (\$3,000,000.00) Dollars for personal and bodily injury or property damage, and shall also include non-owned and hired automobile liability insurance for limits of not less than Five Hundred Thousand and No/100 (\$500,000.00) Dollars.

for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policy shall be endorsed with a replacement coverage endorsement and an agreed amount clause and a "joint loss" clause, and no co-insurance penalty shall be applicable.

UNOFFICIAL COPY

CEA/325594.1

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

9.5 Certificates in the form of Accord 27 or similar form delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner (or, if appropriate, to the Condominium Association) and to the Mortgagees, at least thirty (30) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Copies of such policies shall be delivered upon request. Should an Owner fail to pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner shall pay the Defaulting Owner's share of such premiums or costs and the Defaulting Owner shall reimburse the Creditor Owner for any such amounts paid by the Creditor Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

9.4 Limits of liability or types of insurance specified in this Article 9 or carried by the Owners shall be reasonable and prudent for an Owner of a mixed-use development similar to the Total Parcel, and subject to the Declarant's rights under Section 9.2 hereof, shall be jointly reviewed by the Owners at least once in every five-year period to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverage or endorsements should be deleted. Deductible amounts for insurance required under Section 9.1 shall be in such amounts as are customary or prevalent for an Owner of a mixed-use development similar to the Total Parcel. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable, execute an instrument in recordable form evidencing such increase or modification, which any Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance agent or consultant to perform such review periodically on their behalf and the cost of employing any such agent or consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder. Absent mutual agreement to the contrary by all applicable Owners, the minimum amount of insurance set forth in Section 9.1(b) shall be increased on February 1, 2005 and each five years thereafter in an amount equal to the percentage increase in the CPI from December 31, 2000.

and customary form of mortgage clause; provided, however, that a Mortgagee receiving any proceeds of any insurance policy described in Section 9.1(a) or Section 9.1(c) shall deposit the insurance proceeds with the Depositary in accordance with Articles 16.

UNOFFICIAL COPY

10.3 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Condominium Improvements the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements only, then any such damage shall be repaired and restored by the owner of the portion of the improvements in which any such damage occurs in as timely a manner as practicable under the circumstances, and such owner shall, in accordance with the provisions of Article 17 hereof, 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

10.2 Subject to Article 6 hereof, the Owner of the Commercial Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owner of the Condominium Parcel pursuant to this Declaration, shall keep the Commercial Parcel and all Facilities located therein or for which the Owner of the Commercial Parcel 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 and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Parcel further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Except as otherwise expressly provided in this Declaration (including in any exhibits hereto), any such costs incurred in accordance with this Section 10.2 shall be paid for by the Owner of the Commercial Parcel.

10.1 Subject to Article 6 hereof, the Owner of the Condominium Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owner of the Commercial Parcel pursuant to this Declaration (including Common Facilities as described in Section 5.3 hereof) in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Condominium Parcel further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property. Except as otherwise expressly provided in this Declaration (including in any exhibits hereto), any such costs incurred in accordance with this Section 10.1 shall be paid for by the Owner of the Condominium Parcel.

MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

ARTICLE X

policies to the extent of any recovery actually collected under such insurance policies, plus deductible amounts.

UNOFFICIAL COPY

CEM/23594.1

-18-

10.6 In any instance of repair or restoration pursuant to Sections 10.3 or 10.4 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable, independent, professional, construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing such repair or restoration, exceeds the amount of insurance proceeds, if any,

10.5 If the cost and expense of performing any repair and restoration to any Owners' 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 Owners' 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.

10.4 If the Improvements are damaged by fire or other casualty and if the provisions of Section 10.3 are not applicable because the nature of the damage is such that it does not fall within either of the categories set forth in clauses (a) or (b) of Section 10.3, then the repair and restoration of such damage shall be the responsibility of the Owner or Owners whose portions of the Total Parcel 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.

time any owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished any other Owner under Article 5 hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 17 hereof 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 one hundred twenty (120%) percent of 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.

UNOFFICIAL COPY

CEN/325594.1

-19-

10.9 For purposes of this Article 10 architects' and engineers' fees, attorneys' fees, consultants' fees, insurance fees, reasonable costs and expenses of institutional lenders incurred in connection with financing repairs or restoration of Improvements, 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.

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

10.7 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Total Parcel, shall be refunded to the respective Owner.

of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner. expenses incurred in connection with such payment, plus interest at the Default Rate from the date reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and (to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, of another Owner's written demand and therefor, then the Creditor Owner may (but shall not be obligated with this Section 10.6, or fails to deliver the security provided for within thirty (30) days after receipt and expense (or estimated cost and expense) of performing any repair or restoration in accordance work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the readjusted upward or downward as the work progresses based on actual costs and expenses of the of repair and restoration, then the amount of security required to be deposited or available shall be share owed. If the amount of the security required is based on an estimate of the cost and expense an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the reasonably acceptable to the other Owners and the Depository. Such security may be in the form of such repair or restoration, any Owner may deliver to the Depository security for payment of its share excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing Owners demanding that each Owner deposit with the Depository the amount of such excess cost and paid or payable by reason of the damage, then any Owner may at any time give notice to the other

UNOFFICIAL COPY

The lien created by this Section shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on any Condominium Parcel or any portion thereof. Such lien shall arise immediately upon the recording of a notice by an Owner with the Recorder following the occurrence of a fire or other casualty or act of God or force majeure stating that it is a lien created by this Section of the Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid to the Creditor Owner, or the Owner of the portion of the Total Parcel being withdrawn from the Act and requiring restoration shall have

(d) the architectural unity and aesthetic appearance of the restored Improvements as a first-class, mixed use property.

(c) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction of the Total Parcel or any part thereof; and

(b) the continuous and efficient operation of all electrical, utility, mechanical, plumbing and other systems serving the Improvements;

(a) the structural integrity and safety of the Improvements;

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

11.1 If, at any time, any Owner fails within ten (10) days after notice or demand to pay any sum of money due another Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor owner may have, the Creditor Owner shall have the right to pursue a cause of action against the Defaulting Owner to recover such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 11. No lien rights shall exist in favor of any Creditor Owner in connection with any sums due hereunder, it being the intent that any such Creditor Owner may pursue an action at law to recover an award of damages against the Defaulting Owner.

RIGHTS AND REMEDIES

ARTICLE XI

UNOFFICIAL COPY

CEA/235594.1

11.8 repaired and restored the Improvements on such Owner's portion of the Total Parcel as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

11.3 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall be payable from the date any such sum first is due hereunder until paid in full, at a rate of interest (hereinafter referred to as the "Default Rate") equal to the lesser of: (a) the floating rate which is equal to four percent (4%) per annum in excess of the Prime Rate, or (b) the then maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt. The term "Prime Rate" means, for each calendar month, the highest prime rate reported in the Money Rates column or section of *The Wall Street Journal* published on the second business day of that month, as having been the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) as of the first calendar day of such month. If *The Wall Street Journal* ceases publication of the Prime Rate, the "Prime Rate" shall mean the prime rate (or base rate) announced by La Salle National Bank, Chicago, Illinois, or any successor institution thereto (whether or not such rate has actually been charged by such bank). If such bank discontinues the practice of announcing the Prime Rate, the "Prime Rate" shall mean the highest rate charged by such bank on short-term, unsecured loans to its most creditworthy large corporate borrowers.

11.4 The rights and remedies of an Owner provided for in this Article 11 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. Any Owner may enforce, by a proceeding in equity for mandatory injunction, any other Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Declaration. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

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

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

11.7 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs (plus interest at the Default Rate from the date expended) shall be added to the amount of any applicable lien created under this Article 11.

11.8 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 Section 2.23 hereof,

UNOFFICIAL COPY

CEA/325594.1

12.3 The arbitrators shall commence hearings within sixty (60) days of selection, unless the Owners and the arbitrators agree upon an expedited or delayed schedule of hearings. Prior to the hearings, any Owner may send out requests to compel document production from the Owners. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by such Owners or may be ordered by the arbitrators to the extent reasonable. The arbitrators may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrators in rendering a decision may

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

12.1 The following matters shall be submitted for arbitration to the American Arbitration Association (hereinafter referred to as the "AAA") or if the AAA ceases to exist, then to another arbitration service acceptable to the parties pursuant and subject to the provisions of this Article 12: an amount not exceeding \$100,000, which \$100,000 shall mean \$100,000 in 1999 equivalent dollars, which shall not be resolved within sixty (60) days after same has arisen; and (a) All disputes, claims or controversies arising under this Declaration involving expeditions manner and without delay. The applicable Mortgagees shall be parties to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagees hereunder. Any such arbitration shall be held in Chicago, Illinois, and shall be conducted and completed in an AAA. The AAA shall have jurisdiction upon the giving of such notice and the filing of such demand. Matter shall be initiated by any Owner making a written demand therefor by giving written notice thereof to the other Owners involved in the Matter and by filing a copy of such demand with the AAA. Arbitration of any claim, controversy or matter is referred to herein as a "Matter".

(b) All other matters which are required under this Declaration to be submitted for, or determined by, arbitration.

ARBITRATION**ARTICLE XII**

the Creditor Owner in any proceeding arising out of this Article 11, together with full power and authority to compromise any claims arising out of the terms of this Article 11 and to grant releases.

UNOFFICIAL COPY

CEA/325594.1

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

UNAVOIDABLE DELAYS**ARTICLE XIII**

12.6 For purposes of this Article 12, "1999 equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 1999. The 1999 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 defined in Section 2.7 hereof) last published prior to the date of such determination and (y) the Consumer Price Index for December 1, 1999, and the denominator of which is the Consumer Price Index for December 1, 1999.

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

12.4 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.

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 involved in the Matter being arbitrated, except that each Owner shall be responsible for its own expenses.

UNOFFICIAL COPY

14.3 In the event of a taking other than (a) a taking described in Section 14.2 hereof, or (c) a taking of all or substantially all of the Total Parcel, then, subject to the provisions of Section 14.5 hereof, the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners affected by such taking and the Mortgagees, if required by the terms of the Mortgage. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the Improvements as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and the costs of such work shall be paid by those Owners whose portions of the Total Parcel were the subject of the taking in such shares as such Owners may agree among themselves and shall be performed on behalf of the Owners by a

14.2 In the event of (a) a taking (other than a temporary taking) of all or a part of the Condominium Parcel only, or (b) a taking (other than a temporary taking) of a part of the Commercial Parcel only, then, subject to the provisions of Section 14.5 hereof, the Owner of the portion of the Total Parcel in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Parcel in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depositary by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 17 hereof and to retain any excess not required for such repair and restoration.

14.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation (of all or any part of the Total Parcel 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. All Awards resulting from the taking of all or any part of the Total Parcel, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depositary and disbursed by the Depositary as hereinafter provided.

CONDEMNATION

ARTICLE XIV

Owner (other than inability to make payment of money) (hereinafter referred to as an "Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereafter in this Article the "Non-Performing Owner") shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of any other Owner, keep the other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

UNOFFICIAL COPY

CHA/23594.1

contractor jointly selected by the Owners. The selection of such contractors shall be subject to the approval of the Mortgagees, if required. In the event such Owners, and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration pursuant to Article 12 hereof (Arbitration). If such repair and restoration is to be performed solely in the portion of the Total Parcel owned by one of the Owners, then, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined in Article 21 (Alterations), the approval of the Owners of, and any Mortgagees with respect to, the other portions of the Total Parcel shall not be required with respect to the plans and specifications therefor, nor shall the consent of the Owners of, and any Mortgagees with respect to, the other portions of the Total Parcel be required with respect to selection of a contractor therefor. If as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 3 and 4 hereof and for the furnishing of services under Article 5 hereof.

14.4 The Award for any taking described in Section 14.3 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 14.5 hereof). Each portion of the Award attributable to a particular portion of the Total Parcel shall only be utilized to repair and restore that portion of the Total Parcel to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Parcel over the cost of repair and restoration to that portion of the Total Parcel shall then be allocated to the respective Owners of that portion of the Total Parcel or, if applicable, to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Parcel in accordance with the terms of such encumbrance.

14.5 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 14.6 hereof), any Owner reasonably determines that the portion of the Total Parcel owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the improvements owned by it as may be required by Sections 14.2 and 14.3 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Parcel, but only if all the Owners of the other portions of the Total Parcel affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of the Total Parcel owned by it and shall restore its portion of the Total Parcel to a sightly and safe condition and in such a manner as to safeguard the other portions of the Total Parcel, and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 14.3 hereof are applicable.

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

UNOFFICIAL COPY

16.1 A depositary (hereinafter referred to as 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

DEPOSITARY**ARTICLE XVI**

15.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursable for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their equitable share of such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Defaulting Owner shall, within ten (10) days after written demand for reimbursement, reimburse the Creditor Owner for any such payment, plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

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.

15.1 The appointment of an architect in accordance with this Article 15 shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Total Parcel. Any party desiring that a determination of a dispute be submitted to an Architect pursuant to the provisions of this Declaration shall notify the other party or parties involved in said dispute and in said notice identify three (3) firms consisting of both architects and engineers 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. Each such firm shall not have or have had any relationship with the party so proposing such firm. The responding party or parties shall choose one of said three (3) firms who shall be deemed the "Architect" hereunder. Failure of the responding party or parties to so choose one of said firm within fifteen (15) days of said notice shall be deemed to be an appointment of the first listed of said three (3) firms to be the Architect hereunder.

ARCHITECT**ARTICLE XV**

UNOFFICIAL COPY

16.7 The monies on deposit shall be held in an interest-bearing account pursuant to an agreement among the Depository and the Owners whose portion of the Total Parcel has been the subject of any casualty loss or condemnation. Any interest paid or received by the Depository on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the

16.6 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.

16.5 Each Owner whose portion of the Total Parcel is the subject of any such casualty loss or condemnation shall be obligated to pay the reasonable fees and expenses of the Depository in proportion to their respective insurance proceeds or respective condemnation awards, as the case may be. Any Depository appointed to act hereunder shall execute an agreement with the Owners whose portion of the Total Parcel 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.

16.4 As to any Damaged Parcel with regard to such funds which shall have been submitted to the Condominium Declaration pursuant to the Act, notwithstanding that any individual Unit Owners may have granted mortgages or trust deeds encumbering all or any portion or portions of the Damaged Parcel, the right and power of the Owner of such Damaged Parcel to appoint the Depository under Sections 16.2 or 16.3 shall be exercised solely by the Condominium Association, and the Unit Owners and their mortgagees shall be bound thereby.

16.3 The Owners of the Damaged Parcels shall mutually appoint the Depository. Upon the failure of such Owners to appoint the Depository within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration in accordance with Article 12 (Arbitration) hereof and the arbitrators shall appoint the Depository.

16.2 As used hereinafter in this Article, the phrase "Damaged Parcel" shall refer to either the Condominium Parcel or the Commercial Parcel 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 Parcel or the Commercial Parcel, 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 Depository or to appoint the Depository with regard to such funds. If such right of election is not exercised within said thirty (30) day period, then the Owner of the Damaged Parcel shall have the right to appoint the Depository with regard to such funds.

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 Depository. Except as otherwise provided herein, the Depository 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.

mechanics liens;

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

(i)

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 (hereinafter referred to as the "Work") shall be accompanied by a certificate of the applicable Owner or Architect, and with respect to the information described in Section 17.1(a)(ii) below, verified by the Architect, dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:

17.1 (a)

DISBURSEMENTS OF FUNDS BY DEPOSITARY

ARTICLE XVII

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 Fifty Thousand and No/100 (\$50,000.00) Dollars shall be paid directly to the party so entitled rather than to the Depositary.

16.9

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

16.8

The Depositary shall not be mingled with the Depositary's own funds and shall be held by the Depositary in trust for the uses and purposes herein provided.

UNOFFICIAL COPY

CEA/325594.1

17.2 No contractor, subcontractor, material men, engineer, architect or any other person whatsoever, other than the Owner of the Condominium Parcel, the Owner of the Commercial Parcel 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,

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

Mortgagees whose approval is required above;

place and the continued priority of the lien of the Mortgagees securing the parties) insuring over possible mechanics lien claims relating to Work in willingness of the title insurer to issue an endorsement (satisfactory to such will be performed, of the lien waivers and other documentation, and the on portions of the Total Parcel on which or for the benefit of which Work approval by the title insurer, the Owners, the Mortgagees of the Mortgagees (ii) approval by the title insurer, the Owners, the Mortgagees of the Mortgagees sworn statement; and

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

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

request.

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

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 (iii)

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); (ii)

UNOFFICIAL COPY

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

(f) the total amount of all liens or claims being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder by the responding Owner under the provisions of this Declaration, and describing the applicable provision or provisions and the details of any such lien claim;

(e) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder or otherwise known by the responding Owner against the enforcement of the requesting Owner's rights hereunder;

(d) whether the responding Owner has performed or is performing Work the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof, but has not yet charged to such other Owner, and if there is any such Work, specifying the nature and extent thereof;

(c) whether there are any sums (other than those arising out of the normal course of operation of the Improvements within the previous forty-five (45) days) which the responding Owner is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amount thereof;

(b) whether there is any existing default hereunder (or, to the responding Owner's knowledge, grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;

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

18.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner (subject to payment of the fees described below in this Section 18.1, if applicable), execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate (hereinafter referred to as an "Estoppel Certificate") stating:

ESTOPPEL CERTIFICATES**ARTICLE XVIII**

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, material man, engineer, architect or any other person whatsoever. If at any time the Owners, with the written consent of the Mortgagees, shall jointly instruct the Depositary in writing with regard to the disbursement of any funds held by the Depositary, then the Depositary shall disburse such funds in accordance with said instructions and the Depositary shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

UNOFFICIAL COPY

19.1 Declarant reserves the right and power to record a special amendment (hereinafter referred to as a "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. A Special Amendment may also contain such complementary, additional and supplemental grants and reservations of Easements as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Parcel and may also make such other modifications of, or additions or deletions to, this Declaration as may be necessary, in Declarant's sole judgment, in order to effectuate the Maintenance, operation and administration of the Total Parcel or any portion thereof. Declarant also reserves the right to include, within a Special Amendment, revisions to the legal descriptions of the Condominium Parcel and the Commercial Parcel. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Total Parcel, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. Each Special Amendment shall be recorded with the Recorder and shall be effective from and after the date of recording. The right of the Declarant to act pursuant to rights reserved or granted under this Section 20.1 shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Parcel.

SPECIAL AMENDMENTS TO DECLARATION

ARTICLE XIX

18.2 So long as any portion of the Total Parcel remains subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of such portion of the Total Parcel subject to the Act 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 any portion of the Total Parcel subject to the Act may only be requested by the Condominium Association on behalf of the Owner of such portion of the Total Parcel subject to the Act.

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

(i) the current address or addresses to which notices given to the responding Owner are required to be mailed under Article 21 (Notices) hereof; and

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

UNOFFICIAL COPY

If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of one or more of the other Owners or the Mortgagees, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the affected Owners and the applicable Mortgagees, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 20.1. If such affected Owners and the applicable Mortgagees consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Mortgagees whose consents are requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the other Owners consent to the proposed Alterations, and if, in the good faith opinion of any other Owner or Owners affected by such proposed Alterations or the applicable Mortgagees, the Altering Owner has violated or will violate the provisions of Section 20.1(a) or (b), such Owners or Mortgagees (hereinafter referred to as 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

- (c) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of one or more of the other Owners or the Mortgagees, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the affected Owners and the applicable Mortgagees, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 20.1. If such affected Owners and the applicable Mortgagees consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Mortgagees whose consents are requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the other Owners consent to the proposed Alterations, and if, in the good faith opinion of any other Owner or Owners affected by such proposed Alterations or the applicable Mortgagees, the Altering Owner has violated or will violate the provisions of Section 20.1(a) or (b), such Owners or Mortgagees (hereinafter referred to as 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
- (v) materially change the expected pedestrian and vehicular traffic patterns or patterns of ingress and egress.
- (iv) affect facilities benefiting such other Owner(s) other than minimally or incidentally; or
- (iii) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Parcel;
- (ii) alter the facade of the Improvements;
- (i) unreasonably diminish the benefits afforded to such other Owner(s) by any Easement or unreasonably interrupt such other Owner(s) use or enjoyment of any Easement;

Owners affected by such Alterations if such Alterations will:

(b) Unless otherwise provided in Section 20.1(a) and this Section 20.1(b) or in Section 20.4 below, Alterations shall be made only with the prior written consent of the other Owner or

Alterations within the meaning of this Article 20.

Improvements which existed prior to the necessity of restoration shall not be deemed to be restoration of the Improvements which contain substantially the same architectural features as the Section 20.1 and all of the other provisions of this Article 20. Any plans and specifications for any Owner's portion of the Total Parcel, provided that such Alterations comply with the balance of this (hereinafter referred to as "Alterations") to the part of the Improvements within such Altering at such Altering Owner's sole cost and expense, make additional improvements or alterations Any Owner (hereinafter referred to as an "Altering Owner") may, at any time,

ALTERATIONS

ARTICLE XX

UNOFFICIAL COPY

21.1 All notices, demands, elections or other communications required, permitted or desired to be served hereunder (hereinafter referred to as "Notices") shall be in writing and shall be

NOTICES**ARTICLE XXI**

20.3 An Altering Owner performing any Alterations or Work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the various Parcels which comprise the Total Parcel and agrees that any lien rights which the contractor or subcontractors have under the Mechanics Lien Act shall only be enforceable against the portion of the Total Parcel owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against any other portion of the Total Parcel and agrees to comply with the applicable provisions of the Mechanics Lien Act in connection with giving notice of such "no lien" provision.

20.2 Applications for building permits to make Alterations shall be filed and processed by the Altering Owner, without the joinder of the other Owners in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owners. If joinder by the other Owners not making Alterations is so required, said Owners shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owners from and against any and all losses, liabilities, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.

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

(d) 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.

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.

UNOFFICIAL COPY

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

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

LIMITATION OF LIABILITY

ARTICLE XXII

21.2 Any Notice sent as aforesaid shall be deemed received upon delivery, or if delivery is refused, upon attempted delivery. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least thirty (30) days prior to the effective date of such address change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

Concurrently with the giving of any notification required hereunder to be given, or which any other party hereto may desire to give to any Owner, a duplicate original of such notification shall be given to the Mortgagees affected thereby at the address for the giving of notice set forth in the Mortgage securing the indebtedness to such Mortgage.

For Notices to the Owner of the
Condominium Parcel:

Wrightview Condominiums
3634-36 West Wrightwood
Chicago, Illinois 60647

with a copy to:

Phillip I. Rosenthal
3700 W. Devon, #E
Lincolnwood, Illinois 60712

For Notices to the Owner of the
Commercial Parcel:

Angel Rivera
3739 W. Wrightwood, Unit 1N
Chicago, Illinois 60647

delivered in person or mailed as certified or registered mail, postage prepaid, return receipt requested, addressed as below stated:

UNOFFICIAL COPY

23.5 The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law and as provided below, for successive periods of twenty (20) years each, subject to amendment or termination as hereinabove set forth in Article 19 or Section 23.4; provided,

23.4 Except as otherwise provided herein this Declaration may be amended or terminated only by an instrument signed by the Owners and the Mortgagees. So long as any portion of the Total Parcel is submitted to the Act, the Condominium Association administering such portion of the Total Parcel may, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners in such portion of the Total Parcel, which amendments or termination shall be binding on all Unit Owners. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

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

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

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

GENERAL**ARTICLE XXIII**

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

UNOFFICIAL COPY

This Declaration is executed by Albany Bank and Trust Company N.A., as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and Albany Bank and Trust Company N.A., hereby warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by every person, firm or

Declaration.

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

Declaration and is an integral part hereof.

23.11 Each exhibit referenced herein and attached hereto is hereby incorporated in this

otherwise.

23.10 This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third-party beneficiary (except the Mortgagees) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or

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

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

interest therein.

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

shall remain a first-class, mixed-use property.

23.6 The provisions of this Declaration shall be construed to the end that the Total Parcel

of Richard M. Daley, Mayor of the City of Chicago, living at the date of this Declaration, after the date of the last to survive of the class of persons consisting of all of the lawful descendants concerned shall continue and endure only until the expiration of a period of twenty-one (21) years imposing limitations upon the time for which such covenants may be valid, then the provision alienation, or (c) any other applicable statute or common law rule analogous hereto or otherwise or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful Improvements and the failure to restore or rebuild the same within five (5) years after such herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the however, that this Declaration, and all Easements, covenants, conditions and restrictions contained

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Assistant Trust Officer

ATTEST:

Vice President

BY:

See Attached Ruler

individually.

~~American National Bank and Trust Company of Chicago, as Trustee as aforesaid, and not~~

this ___ day of _____, 2003.

IN WITNESS WHEREOF, the said Albany Bank and Trust Company N.A. as Trustee as aforesaid and not individually, has caused its corporate seal to be affixed hereunto and has caused its name to be signed to these present by its Vice President and attested by its Assistant Trust Officer,

corporation hereafter claiming any interest under this Declaration that Albany Bank and Trust Company N.A., as Trustee aforesaid, and not personally, has joined in the execution of this Declaration for the sole purpose of subjecting the title holding interest and the trust estate under said Trust No. 11-5855 to the terms of this Declaration; that any and all obligations, duties, covenants and agreements of every nature herein set forth by Albany Bank and Trust Company N.A., as Trustee as aforesaid, to be kept or performed, are intended to be kept, performed and discharged by the beneficiaries under said Trust No. 11-5855 or their successors, and not by Albany Bank and Trust Company N.A. either personally or as such Trustee; and further, that no duty shall rest upon said Trustee to sequester trust assets, rentals, avails, or proceeds of any kind or otherwise to see to the fulfillment or discharge of any obligation, express or implied, arising under the terms of this agreement, except where said Trustee is acting pursuant to direction as provided by the terms of said Trust No. 11-5855 and after the Trustee has first been supplied with funds required for the purpose. In the event of any conflict between the terms of this paragraph and of the remainder of the Declaration on any question of apparent liability or obligation resting upon said Trustee, the exculpatory provisions hereof shall be controlling.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Notary Public
My commission expires:

PREPARED BY AND
MAIL TO: Phillip I. Rosenthal
3700 W. Devon, Suite E
Lincolnwood, Illinois 60712

Given under my hand and Notarial Seal this _____ day of _____, 2003

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ Vice President of Albany Bank and Trust Company N.A. and Assistant Trust Officer thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Trust Officer respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and the said Assistant Trust Officer did also then and there acknowledge that he as custodian of the corporate seal of said Bank did affix the said corporate seal of said Bank to said instrument as his own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

STATE OF ILLINOIS
COUNTY OF COOK

SS

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Name: J. Heine
Title: Secretary

ATTEST: J. Heine

By: J. Heine
Name: J. Heine
Title: Secretary

Albany Bank Trust Co. N.A.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its duly authorized officers at Chicago, Illinois, on this 2 day of August, 2003.

Hereby consents to the recording of the attached Declaration of Covenants, Conditions, Restrictions and Easements for the 3634-36 West Wrightwood Development and agrees that the Mortgages are subject and subordinate to the provisions thereof.
Mortgage dated July 24, 2002 and recorded as document 11-5855 to the Albany Bank and Trust Company, N.A. made by Albany Bank and Trust Company, N.A. as trust number 11-5855 to the Albany Bank and Trust Company, N.A. to secure an indebtedness in the amount of \$538,460.00.

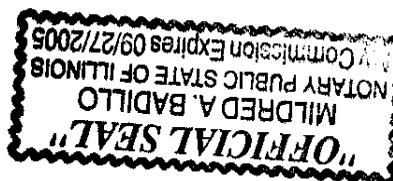
The undersigned, as holder of the following Mortgage:

CONSENT OF MORTGAGE

UNOFFICIAL COPY

Property of Cook County Clerk's Office

My Commission Expires:



Mildred A. Badillo
Notary Public

(NOTARY SEAL)

GIVEN under my hand and notarial seal, this 8th day of Aug, 2003.

I, Mildred A. Badillo, a Notary Public in and for said County, in the State aforementioned, do hereby certify that Cheryl Levesque, personally known to me to be the SVP of First Bank and Trust Company, a national banking association, and Brenda Hennessey, personally known to me to be the Secretary of said banking association, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appear before me this day in person and acknowledged that they signed and delivered the said instrument as SVP and Secy of said banking association, pursuant to authority given by the Board of Directors of said banking association, as their free and voluntary act and as the free and voluntary act and deed of said banking association, for the uses and purposes therein set forth.

STATE OF ILLINOIS
COUNTY OF COOK
)
) SS.
)

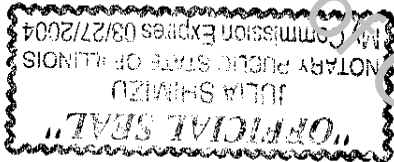
UNOFFICIAL COPY

Notary Public

GIVEN under my hand and Notarial Seal this

2/8/03

I, the undersigned, a Notary Public in and for said County and State, DO HEREBY CERTIFY that the above Officers of ALBANY BANK & TRUST COMPANY, N.A., who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such TRUST OFFICER and VICE PRESIDENT, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said association, as Trustee as aforesaid, for the uses and purposes therein set forth and the said Officer then and there acknowledged that (s)he, as custodian of the Corporate Seal of said association, did affix the Seal to said instrument as his/her own free and voluntary act and as the free and voluntary act of said association, as Trustee as aforesaid, for the uses and purposes therein set forth.



STATE OF ILLINOIS)
(SS.)
COUNTY OF COOK)

ATTEST: Julia Shmizu
Vice President

Trust Officer

BY:

[Signature]

ALBANY BANK & TRUST COMPANY, N.A. not personally, but solely as Trustee as aforesaid, pursuant to terms of that TRUST AGREEMENT dated 7/23/02 bearing the TRUST NUMBER 11-5855

Dated at Chicago, Illinois this

2/8/03

respective successor and

This Declaration of Covenants, Restrictions, Conditions, and Easements for the 3634 West Wrightwood Development Agreement is executed by the undersigned, ALBANY BANK & TRUST COMPANY N.A., not individually but solely as Trustee, as aforesaid, and said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing of this Agreement shall be payable only out of the trust property which is the subject of this Agreement, and it is expressly understood and agreed by the parties hereto, notwithstanding anything herein contained to the contrary that each and all of the undertakings and agreements herein made are made and intended not as personal undertakings and delivered by the Trustee solely in the exercise of the powers conferred upon it as such Trustee and no personal liability or personally responsibility is assumed by or shall at any time be asserted or enforced against said Trustee on account of any undertaking or agreement herein contained, either expressed or implied or for the validity or condition of the title to said property, or for any agreement with respect thereto. Any and all personal liability of ALBANY BANK & TRUST COMPANY N.A. is hereby expressly waived by the parties hereto, and their respective successor and

UNOFFICIAL COPY

THAT PART OF LOT 10 IN CRISTENSEN'S SUBDIVISION OF THAT PART OF BLOCK 5 SAID BLOCK IN KIMBALL'S SUBDIVISION OF THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE 25 ACRES IN THE NORTHEAST CORNER THEREOF) LYING BELOW THE CITY OF CHICAGO DATUM 20.77 DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE WEST, ALONG WITH SOUTH LINE OF SAID LOT 1.50 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST FACE OF AN INTERIOR WALL; THENCE NORTH ALONG SAID EXTENSION, 1.50 FEET TO A POINT OF BEGINNING ON THE NORTH FACE OF AN INTERIOR WALL; THENCE CONTINUING NORTH, ALONG SAID WEST FACE, 40.19 FEET TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG SAID SOUTH FACE, 22.37 FEET TO A POINT

PARCEL B

THAT PART OF LOT 10 IN CRISTENSEN'S SUBDIVISION OF THAT PART OF BLOCK 5 SAID BLOCK IN KIMBALL'S SUBDIVISION OF THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE 25 ACRES IN THE NORTHEAST CORNER THEREOF) LYING ABOVE THE CITY OF CHICAGO DATUM ELEVATION 20.77 AND BELOW THE CITY OF CHICAGO DATUM 33.64 DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE WEST, ALONG WITH SOUTH LINE OF SAID LOT 1.60 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST FACE OF AN INTERIOR WALL; THENCE NORTH ALONG SAID EXTENSION, 1.20 FEET TO A POINT OF BEGINNING ON THE NORTH FACE OF AN INTERIOR WALL; THENCE CONTINUING NORTH, ALONG SAID WEST FACE, 66.73 FEET TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG SAID SOUTH FACE, 7.74 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 28.16 FEET TO A POINT ON THE NORTHEAST FACE OF AN INTERIOR WALL; THENCE SOUTHWEST, ALONG SAID NORTHEAST FACE, 3.20 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 28.65 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID NORTH FACE, 19.74 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

PARCEL A

PARCEL ONE: 3634 WEST WRIGHTWOOD

LEGAL DESCRIPTION OF THE COMMERCIAL PARCEL

EXHIBIT "A"

UNOFFICIAL COPY

ON THE EAST FACE OF AN INTERIOR WALL, 7.40 FEET TO A POINT ON THE INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 3.80 FEET TO A POINT ON THE INTERIOR WALL; THENCE SOUTHWEST, ALONG SAID SOUTHWEST FACE, 3.80 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 26.03 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID NORTH FACE, 24.37 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

ON THE EAST FACE OF AN INTERIOR WALL, 60.36 FEET TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID SOUTH FACE, 20.18 FEET TO A POINT ON THE WEST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID WEST FACE, 27.55 FEET TO A POINT ON THE NORTHWEST FACE OF AN INTERIOR WALL; THENCE SOUTHWEST, ALONG SAID NORTHWEST FACE, 3.20 FEET TO A POINT ON THE WEST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID WEST FACE, 29.80 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG

PARCEL A

PARCEL TWO:

P.L.N.: 13-16-313-022

26-

ALL IN COOK COUNTY, ILLINOIS.

THAT PART OF LOT 10 IN CRISTENSEN'S SUBDIVISION OF THAT PART OF BLOCK 5 SAID BLOCK IN KIMBALL'S SUBDIVISION OF THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 10; THENCE NORTH, ALONG THE WEST LINE OF SAID LOT 10, 76.25 FEET; THENCE EAST, PERPENDICULAR TO THE LAST DESCRIBED LINE, 1.25 FEET TO A POINT OF BEGINNING; THENCE CONTINUING EAST 16.20 FEET; THENCE NORTH 9.00 FEET; THENCE WEST 15.90 FEET; THENCE SOUTH 9.00 FEET TO THE POINT OF BEGINNING;

PARCEL C

ON THE EAST FACE OF AN INTERIOR WALL, 24.37 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

Property of Cook County

P.L.N.: 13-~~16~~-313-022

ILLINOIS.

THAT PART OF LOT 10 IN CRISTENSEN'S SUBDIVISION OF THAT PART OF BLOCK 5 SAID BLOCK IN KIMBALL'S SUBDIVISION OF THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE 25 ACRES IN THE NORTHEAST CORNER THEREOF) LYING BELOW THE CITY OF CHICAGO DATUM ELEVATION 20.77 AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE WEST, ALONG WITH SOUTH LINE OF SAID LOT, 27.04 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST FACE OF AN INTERIOR WALL; THENCE NORTH ALONG SAID EXTENSION AND FACE, 17.50 FEET TO A POINT OF BEGINNING ON THE NORTH FACE OF AN INTERIOR WALL; THENCE CONTINUING NORTH, ALONG SAID WEST FACE, 11.47 FEET TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG SAID SOUTH FACE, 9.50 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 11.50 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID NORTH FACE, 9.50 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY,

PARCEL B

ILLINOIS.

SAID NORTH FACE, 17.76 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY,

UNOFFICIAL COPY

LOT 10 IN CRISTENSEN'S SUBDIVISION OF THAT PART OF BLOCK 5 (EXCEPT THE SOUTH 22 FEET THEREOF) LYING SOUTH OF THE NORTH 233 FEET OF SAID BLOCK IN KIMBALL'S SUBDIVISION OF THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE 25 ACRES IN THE NORTHEAST CORNER THEREOF) EXCEPT THE FOLLOWING FIVE PARCELS: 1.) THAT PART OF SAID LOT 10 LYING ABOVE THE CITY OF CHICAGO DATUM ELEVATION 20.77 AND BELOW CITY OF CHICAGO DATUM 33.64 AND DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE WEST, ALONG THE SOUTH LINE OF SAID LOT 44.95 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE EAST FACE OF AN INTERIOR WALL; THENCE NORTH ALONG SAID EXTENSION, 1.20 FEET TO A POINT OF BEGINNING ON THE NORTH FACE OF AN INTERIOR WALL; THENCE CONTINUING NORTH, ALONG SAID EAST FACE, 60.36 FEET TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID SOUTH FACE, 20.18 FEET TO A POINT ON THE WEST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID WEST FACE, 27.55 FEET TO A POINT ON THE NORTHWEST FACE OF AN INTERIOR WALL; THENCE SOUTHWEST, ALONG SAID NORTHWEST FACE, 3.20 FEET TO A POINT ON THE WEST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID WEST FACE, 29.80 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG SAID NORTH FACE, 17.76 FEET TO THE POINT OF BEGINNING, 2.) THAT PART OF SAID LOT LYING BELOW THE CITY OF CHICAGO DATUM ELEVATION 20.77 AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE WEST, ALONG WITH SOUTH LINE OF SAID LOT, 27.04 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST FACE OF AN INTERIOR WALL; THENCE NORTH ALONG SAID EXTENSION AND FACE, 17.50 FEET TO A POINT OF BEGINNING ON THE NORTH FACE OF AN INTERIOR WALL; THENCE CONTINUING NORTH, ALONG SAID WEST FACE, 11.47 FEET TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG SAID SOUTH FACE, 9.50 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 11.50 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID NORTH FACE, 9.50 FEET TO THE POINT OF BEGINNING; 3.) THAT PART OF SAID LOT 10 LYING ABOVE THE CITY OF CHICAGO DATUM ELEVATION 20.77 AND BELOW CITY OF CHICAGO DATUM 33.64 DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE WEST, ALONG WITH SOUTH LINE OF SAID LOT 1.60 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST FACE OF AN INTERIOR WALL; THENCE NORTH ALONG SAID EXTENSION, 1.20 FEET TO A POINT OF BEGINNING ON THE NORTH FACE OF AN INTERIOR WALL; THENCE CONTINUING NORTH, ALONG SAID WEST FACE, 66.73 FEET

Units 2E, 2W, 3E AND 3W, in the WRIGHTVIEW CONDOMINIUMS on a survey of the following described real estate:

**LEGAL DESCRIPTION OF THE
CONDOMINIUM PARCEL**

EXHIBIT "B"

UNOFFICIAL COPY

CEA/325594.1

Property of

P.L.N.: 13-313-022

TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG SAID SOUTH FACE, 7.74 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 28.10 FEET TO A POINT ON THE NORTH FACE OF AN INTERIOR WALL; THENCE SOUTHEAST, ALONG SAID NORTHEAST FACE, 3.20 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 28.65 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID NORTH FACE, 19.74 FEET TO THE POINT OF BEGINNING; 4.) THAT PART OF SAID LOT 10 LYING BELOW THE CITY OF CHICAGO DATUM 2017 DESCRIBED AS FOLLOWS, COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10: THENCE WEST, ALONG WITH SOUTH LINE OF SAID LOT 1.50 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST FACE OF AN INTERIOR WALL; THENCE NORTH ALONG SAID EXTENSION, 1.50 FEET TO A POINT OF BEGINNING ON THE NORTH FACE OF AN INTERIOR WALL; THENCE CONTINUING NORTH, ALONG SAID WEST FACE, 40.19 FEET TO A POINT ON THE SOUTH FACE OF AN INTERIOR WALL; THENCE WEST, ALONG SAID SOUTH FACE, 22.37 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 7.40 FEET TO A POINT ON THE SOUTHEAST FACE OF AN INTERIOR WALL; THENCE SOUTHWEST, ALONG SAID SOUTHEAST FACE, 3.80 FEET TO A POINT ON THE EAST FACE OF AN INTERIOR WALL; THENCE SOUTH, ALONG SAID EAST FACE, 26.03 FEET TO A POINT ON THE AFORESAID NORTH FACE OF AN INTERIOR WALL; THENCE EAST, ALONG SAID NORTH FACE, 24.37 FEET TO THE POINT OF BEGINNING; 5.) THAT PART OF SAID LOT 10 DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 10; THENCE NORTH, ALONG THE WEST LINE OF SAID LOT 10, 76.25 FEET; THENCE EAST, PERPENDICULAR TO THE LAST DESCRIBED LINE, 1.25 FEET TO A POINT OF BEGINNING; THENCE CONTINUING EAST, 16.20 FEET; THENCE NORTH 9.00 FEET; THENCE WEST 15.90 FEET; THENCE SOUTH 9.00 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.