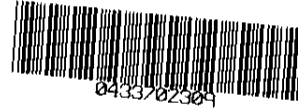


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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made and entered into as of the 22nd day of November, 2004 by OLIVERMcMILLAN GLENVIEW, LLC, a Delaware limited liability company (the "Declarant").

RECITALS:

A. The terms used in these Recitals, if not otherwise defined in the Recitals or in the Preamble, shall have the meanings set forth in Article I of this Declaration.

B. Declarant is the owner of that certain real estate situated in the Village of Glenview, County of Cook, State of Illinois and legally described on Exhibit A attached hereto and made a part hereof (collectively, the "Parcel").

C. Declarant has constructed upon the Parcel a three (3) story mixed-use building (the "Building") containing two (2) stories of residential apartments and street level retail space, with a lower level garage for use by the residential tenants.

D. Neither the residential nor the retail portion of the Parcel are functionally independent of the other and each depends upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to the efficient operation and intended use of both.

E. Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Property, to assure the harmonious relationship of the owners of each such respective portion, estate or interest in the Parcel, and to protect the

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respective values of each such portion, estate and interest in the Parcel, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the retail portion of the Parcel, which will be binding upon each present and future owner of such portion, and which will inure to the benefit of each of the present and future owners of the residential portion of the Parcel, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the residential portion of the Parcel, which will be binding upon each present and future owner of such portion, and which will inure to the benefit of each of the present and future owners of the retail portion of the Parcel.

NOW, THEREFORE, Declarant does hereby declare that the Parcel shall be transferred, held, sold, conveyed and occupied, subject to the covenants, restrictions, easements, charges and liens hereinafter set forth:

ARTICLE I DEFINITIONS

Section 1. **Definitions.** Whenever used in this Declaration, the following terms shall have the respective meanings specified below:

- (a) **ALTERATIONS.** As defined in Article XIV, Section 1(a).
- (b) **ALTERING OWNER.** As defined in Article XIV, Section 1(a).
- (c) **ARBITRABLE DISPUTE.** Any dispute arising under this Declaration that is expressly made subject to arbitration under the provisions of Article XXII hereof.
- (d) **ARBITRATION.** The procedure pursuant to which an Arbitrable Dispute is resolved.
- (e) **ARBITRATOR.** The individual selected to decide an Arbitrable Dispute.
- (f) **ARCHITECT.** As defined in Article XVIII, Section 1.
- (g) **AWARD.** As defined in Article XIII, Section 1.
- (h) **CREDITOR OWNER.** An Owner (i) to whom payment of money or other duty or obligation is owed under this Declaration by another Owner who has failed to make such payment or to perform such duty or obligation as and when required by this Declaration, or (ii) who has exercised any self-help remedy provided for in this Declaration. An Owner may be a Creditor Owner notwithstanding that the term "Creditor Owner" is not specifically stated in a particular provision of this Declaration.
- (i) **DECLARATION.** This Declaration, together with all Exhibits, amendments, modifications, addenda and supplements.
- (j) **DEFAULT RATE.** A rate of interest equal to the lesser of the: (i) floating rate that is equal to five percent (5%) per annum in excess of the annual rate of interest

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from time to time announced by the largest federally insured bank in Chicago, Illinois (or such other bank as may reasonably be selected by Declarant), as its corporate base rate or so called prime rate of interest, or (ii) then maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a corporate base rate is not announced, and no maximum lawful rate applies, then the Default Rate shall equal eighteen percent (18%) per annum.

(k) **DEFAULTING OWNER.** An Owner who has failed to perform any of its duties or obligations as and when required under this Declaration or to make payment of money owed under this Declaration to another Owner. An Owner may be a Defaulting Owner notwithstanding that the term "Defaulting Owner" is not specifically stated in a particular provision of this Declaration.

(l) **DELAYED OWNER.** An Owner unable to perform due to an Unavoidable Delay.

(m) **DEPOSITARY.** The Person from time to time acting pursuant to Article XVI.

(n) **EASEMENTS.** All easements declared, granted or created pursuant to the terms and provisions of this Declaration.

(o) **EMERGENCY SITUATION.** A situation (i) impairing or imminently likely to impair structural support of the Building, (ii) causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Building or any property in, on, under, within, upon or about the Building, (iii) causing or imminently likely to cause substantial economic loss to an Owner, or (iv) substantially disrupting or imminently likely to substantially disrupt business operations in the Building. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

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

(q) **GARAGE.** That portion of the Residential Parcel consisting of a lower level garage for use by the Residential Tenants. The Garage shall consist of no less than 1.62 parking spaces per residential unit in the Residential Building.

(r) **HAZARDOUS MATERIALS.** Any hazardous substance, pollutant, contaminant, or waste regulated under the Comprehensive Environmental Response,

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Compensation and Liability Act, as amended (42 U.S.C. §9601 et seq.); asbestos and asbestos-containing materials; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §136 et seq.); PCBs and other substances regulated under the Toxic Substances Control Act, as amended (7 U.S.C. §136 et seq.); source material, special nuclear material, byproduct materials, and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the Occupational Safety and Health Act Hazard Communication Standard, 29 C.F.R. §1910.1200 et seq.; industrial process and pollution control wastes whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et seq.), and other substances and materials regulated under Laws relating to environmental quality, health, safety, contamination and clean-up.

(s) **IMPACTED OWNER**. As defined in Article VI, Section 2.

(t) **INDEMNITEE**. As defined in Article VI, Section 1.

(u) **LAWS**. All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental or quasi-governmental departments, commissions, boards, entities, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary or extraordinary, which now or at any later time may be applicable to the Building, the Property or any parts thereof.

(v) **MAINTENANCE**. Operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, attaching, anchoring, restoration, reconstruction and replacement when necessary or desirable of the Building (or any portion thereof) or Facilities and includes the right of access to and the right to remove from the Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration. Maintenance also includes the right to erect sidewalk protective barricades and covered pedestrian construction walkways, and to use scaffolding and other construction means, methods and techniques reasonably necessary to perform Maintenance and to protect pedestrians and street traffic. Maintenance further includes timely payment of utility bills. Maintenance excludes obligations for which another Owner is responsible under Article IV (Structural Support), Article V (Damage to Building) or Article XIII (Condemnation).

(w) **MECHANICS' LIEN ACT**. 770 ILCS 60/0.01 et seq., and any amendments and/or successors thereto.

(x) **MORTGAGE**. Any mortgage (or any trust deed) of an interest in the Property given primarily to secure the repayment of money owed by the mortgagor.

(y) **MORTGAGEE**. The mortgagee from time to time under a Mortgage.

(z) **OBJECTING PARTY**. As defined in Article XIV, Section 1(c).

(aa) **OWNED FACILITIES**. A collective reference to Retail Owned Facilities and Residential Owned Facilities.

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(bb) **OWNER**. The Residential Owner, the Retail Owner, the Owner of any portion of the Property, the Residential Property or the Retail Property, or any of them.

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

(dd) **PERSON**. An individual, partnership, association, corporation, limited liability company, trust, land trust, and any other form of business or not-for-profit organization, or one or more of them.

(ee) **PLAT**. That certain plat of subdivision of the Parcel creating the legally defined lots that comprise the Residential Parcel and the Retail Parcel prepared by the Surveyor and recorded with the Recorder as Document No. 0020733381, and any other plat recorded on behalf of Declarant with respect to the Property.

(ff) **PRIOR LIEN**. A Mortgage that has been recorded against the Building or Parcel prior to the time of the recording of the Creditor Owner's notice of lien.

(gg) **PROPERTY**. A collective reference to the Residential Property and the Retail Property.

(hh) **RECORDER**. The Recorder of Deeds of Cook County, Illinois.

(ii) **RESIDENTIAL BUILDING**. That portion of the Building located within the Residential Parcel.

(jj) **RESIDENTIAL LEASE**. Written lease, sublease or other occupancy agreement demising all or any portion of the Residential Premises from the Residential Owner to a Residential Tenant.

(kk) **RESIDENTIAL OWNED FACILITIES**. All Facilities other than Retail Owned Facilities.

(ll) **RESIDENTIAL OWNER**. The Person or Persons (excluding occupants, tenants and Mortgagees) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Residential Property.

(mm) **RESIDENTIAL PARCEL**. That portion of the Parcel consisting of the residential apartments (shown on the Plat as Lot 19) and the Garage (shown on the Plat as Lot 17).

(nn) **RESIDENTIAL PREMISES**. That portion of the Residential Building to be demised by the Residential Owner to Residential Tenants.

(oo) **RESIDENTIAL PROPERTY**. The Residential Parcel, improved with the Residential Building.

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(pp) **RESIDENTIAL TENANTS**. Persons who have leased space in the Residential Premises, pursuant to a Residential Lease.

(qq) **RETAIL BUILDING**. That portion of the Building located within the Retail Parcel.

(rr) **RETAIL LEASE**. Written lease, sublease or other occupancy agreement demising all or any portion of the Retail Premises from the Retail Owner to a Retail Tenant.

(ss) **RETAIL OWNER**. The Person or Persons (excluding occupants, tenants and Mortgagees) whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Retail Property.

(tt) **RETAIL OWNED FACILITIES**. All Facilities that exclusively serve the Retail Property.

(uu) **RETAIL PARCEL**. That portion of the Parcel consisting of the retail space and the split level retail parking garage, shown on the Plat as Lot 18 and that portion of Lot 15 that is excluded from the Blanket Ingress and Egress Easement, Blanket Utility Easement and Blanket No Building Easement.

(vv) **RETAIL PREMISES**. That portion of the Retail Building to be demised by the Retail Owner to Retail Tenants.

(ww) **RETAIL PROPERTY**. The Retail Parcel improved with the Retail Building.

(xx) **RETAIL TENANTS**. Persons who have leased space in the Retail Premises, pursuant to a Retail Lease.

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

(zz) **SURVEYOR**. Cowhey Gudmundson Leder, Ltd., 300 Park Boulevard, Itasca, Illinois 60143.

(aaa) **2004 EQUIVALENT DOLLARS**. As defined in Article XX, Section 15.

(bbb) **TUNNEL**. That certain tunnel located on the Retail Parcel that affords access to the Garage for the Residential Tenants, depicted on the Plat as "above ground passageway."

(ccc) **UNAVOIDABLE DELAY**. A delay in the performance of any obligation hereunder that is directly caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, flood, civil commotion, acts of terrorism, strikes, lockouts, unavailability of labor or materials to projects generally in the

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suburban Chicago area, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of an Owner applicable to projects generally in the suburban Chicago area (other than inability to make payment of money).

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

(eee) **VILLAGE DECLARATION.** The Declaration of Easements, Covenants, Conditions and Restrictions recorded with the Recorder on July 2, 2002 as Document No. 0020733382.

(fff) **WORK.** As defined in Article XVII, Section 1(a).

Section 2. **Construing Various Words and Phrases.** Wherever it is provided in this Declaration that a party “may” perform an act or do anything, it shall be construed as that party “may, but shall not be obligated to,” so perform or so do. The following words and phrases shall be construed as follows: (i) “at any time” shall be construed as “at any time or from time to time”, (ii) “any” shall be construed as “any and all”, (iii) “including” shall be construed as “including but not limited to”, and (iv) “will” and “shall” shall each be construed as mandatory. Except as otherwise specifically indicated, all references to Article or Section numbers or letters shall refer to Articles and Sections of this Declaration and all references to Exhibits shall refer to the Exhibits attached to this Declaration. The words “herein”, “hereof”, “hereunder”, “hereinafter” and words of similar import shall refer to this Declaration as a whole and not to any particular Section or subsection. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as context may require. Captions are used in this Declaration for convenience only and shall not be used to construe the meaning of any part of this Declaration.

ARTICLE II EASEMENTS APPURTENANT TO RESIDENTIAL PARCEL

Section 1. **In General.** For purposes of this Article II, the following shall apply:

(a) Declarant has granted, reserved, declared and created the Easements described in this Article II. The term “granted” as hereinafter used in Article II describing Easements shall be deemed to mean “granted, reserved, declared and created”. The Easements in this Article II shall bind and be enforceable against Declarant, its successors, grantees and assigns.

(b) The Easements granted in this Article II benefit the Residential Owner and its respective successors, grantees, assigns and Permittees.

(c) The Easements granted by Declarant in this Article II shall bind and burden the Retail Property, which shall, for purposes of this Article II, be deemed to be the servient estate. Where only a portion of the Retail Property is bound and burdened by the Easement, only that portion shall be deemed to be the servient estate.

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(d) The Easements granted by Declarant in this Article II are appurtenant to and shall benefit the Residential Property, which shall, for the purpose of this Article II with respect to such Easement, be deemed to be the dominant estate. Where only a portion of the Residential Property is so benefited, only that portion shall be deemed to be the dominant estate. No property other than the Residential Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the dominant estate.

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

(f) In exercising an Easement granted under this Article II, the Residential Owner shall minimize the impact of its exercise on the Retail Owner, taking into consideration the impact of any disruption on the Retail Owner or the Retail Tenants, and shall comply with the relevant provisions of the Retail Leases.

(g) The Retail Owner may, (i) in connection with the Maintenance of the Retail Building, or (ii) in an Emergency Situation, or (iii) to prevent a dedication of, or an accruing of rights by, the public in and to the use of the Retail Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. Provided that some meaningful form of ingress and egress is always available, the Retail Owner may, from time to time, impose (x) reasonable limitations on the Residential Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Retail Property described in this Article II, and (y) reasonable security controls consistent with the Retail Owner's operation of its business in the Retail Property and any overall security system for the Property. In imposing limitations and controls, the Retail Owner shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the Retail Owner's own needs and requirements.

(h) Unless otherwise expressly provided in this Declaration, the Retail Owner shall not unreasonably withhold, condition or delay its consent to a request by the Residential Owner to relocate an Easement granted under this Article II. Any disputes concerning the existence, location, nature, scope and use of any of the Easements granted under this Article II shall constitute Arbitrable Disputes.

(i) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient estate as and only to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate for exercise of rights of self-help granted under Section 3(c) of Article V, and its rights under Article IX or Article XIII or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

Section 2. Ingress and Egress.

(a) To the Residential Owner, a non-exclusive Easement for ingress and egress for Persons, material and equipment in, over, on, across and through such portions of the Retail Property as are reasonably necessary or desirable to permit the use and operation or the

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Maintenance of (i) the Residential Building, (ii) any Facilities located in the Retail Building that provide or are necessary to provide the Residential Property with any utilities or other services necessary to the operation of the Residential Property, including, without limitation, Residential Owned Facilities, and (iii) any other areas in the Retail Property as to which an Easement for use or Maintenance has been granted to the Residential Owner.

(b) To the Residential Owner, a non-exclusive Easement for ingress and egress for Persons and vehicles in, over, on, across and through such portions of the Retail Property, including, without limitation, Lot 12 (as such lot is designated on the Plat) and through the Tunnel, as are reasonably necessary or desirable to permit the use and operation of the Garage by the Residential Tenants.

(c) The Retail Owner shall not diminish the benefits of the Easements granted in this Section 2 by constructing walls or other barriers in the Retail Building that would impede ingress and egress without the prior written consent of the Residential Owner. Ingress and egress Easements provided for in Article II providing for a particular path of ingress and egress may be relocated by the Retail Owner as a result of Alterations or installation of Facilities, so long as a reasonable alternate path of ingress and egress is substituted. If an Easement is relocated, then the Owners shall execute, acknowledge and deliver to each other, within a reasonable period after either Owner's request, an instrument, in recordable form, showing such relocated Easement.

Section 3. **Structural Support** To the Residential Owner, a non-exclusive Easement in all Structural Supports located in or constituting a part of the Retail Property for the support of (a) the Residential Building, (b) any Facilities or areas located in the Retail Property with respect to which the Residential Owner is granted an Easement, and (c) the Residential Owned Facilities.

Section 4. **Use of Facilities**. To the Residential Owner, a non-exclusive Easement (a) for the intended use of all Facilities which are located in the Retail Property, including the Residential Owned Facilities, and serve or are connected to Facilities located in the Residential Property that provide or are necessary to provide the Residential Property with any utilities or other services necessary to the operation of the Residential Property, and (b) permitting the exercise of the rights of self-help granted to the Residential Owner pursuant to this Declaration or otherwise during any period in which such rights may be exercised.

Section 5. **Common Walls, Ceilings and Floors**. To the Residential Owner, a non-exclusive Easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs constructed in and along the boundaries of the Residential Parcel and the Retail Parcel that also serve as walls, ceilings or floors for the Residential Building.

Section 6. **Utilities**. To the Residential Owner (and if requested by the applicable Utility Company, the Retail Owner shall grant to such Utility Company), a non-exclusive Easement for utility purposes required by the Residential Building, in those areas of the Retail Property where such utilities shall be located, including Facilities for utilities running along the support columns located in the Retail Building, and Facilities for utilities running on, under or through the Tunnel. If at any time it shall become necessary to relocate or add to utility easements (including installation of Facilities) other than where currently located in the Building

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in order to provide required utility service to the Residential Building, the Retail Owner agrees to grant such additional or relocated utility easements (at such locations mutually agreed to by the Residential Owner and the Retail Owner), provided (a) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Retail Building for the purposes for which the Retail Building is used, (b) the Retail Owner shall not be required to grant an easement that would convert otherwise available rentable space or space in the Retail Building used for the Retail Owner's business to such Easement, unless such relocation or additional easements are required by Law and no other space is reasonably available, and the Retail Owner is equitably compensated for the value of such converted space, and (c) the Residential Owner shall pay the Retail Owner's reasonable costs or expenses in connection with granting such easement. As between the Residential Owner and the Retail Owner, the provisions of this Section 6 shall control over the provisions of Section 2.1.4 of the Village Declaration.

Section 7. **Mechanical Rooms.** To the Residential Owner, a non-exclusive Easement for the use and Maintenance of any generator, mechanical, electrical, machine, meter, equipment or pump rooms that may be located in the Retail Property and serve the Residential Parcel.

Section 8. **Emergency Stairway.** To the Residential Owner, a non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation from the Residential Building on, over, across and through the fire escape stairways and emergency exit corridors located in the Retail Building.

Section 9. **Encroachments.** To the Residential Owner, an Easement permitting the existence of encroachments if (a) such encroachments presently exist, or (b) are replaced in the same location, unless, because of damage caused by casualty, or other event requiring replacement, it is feasible from a cost and design perspective to replace in a non-encroaching manner, or (c) by reason of settlement or shifting of the Building, any part of the Residential Building or Residential Owned Facilities not currently located within the Retail Parcel encroaches or shall hereafter encroach upon any part of the Retail Parcel. No such encroachment shall be placed where such encroachment did not previously exist nor shall the encroachment be enlarged deliberately. This Easement shall exist only so long as the encroaching portion of the Residential Building or Facilities continues to exist, or replacements are made in the same location which do not enlarge the encroachment, subject to the obligation to try to eliminate the encroachment under the circumstances articulated in this Section 9.

ARTICLE III EASEMENTS APPURTENANT TO RETAIL PARCEL

Section 1. **In General.** For purposes of this Article III, the following shall apply:

(a) Declarant has granted, reserved, declared and created the Easements described in this Article III. The term "granted" as hereinafter used in Article III describing Easements shall be deemed to mean "granted, reserved, declared and created". The Easements in this Article III shall bind and be enforceable against Declarant, its successors, grantees and assigns.

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(b) The Easements granted in this Article III benefit the Retail Owner and its respective successors, grantees, assigns and Permittees.

(c) The Easements granted by Declarant in this Article III shall bind and burden the Residential Property which shall, for purposes of this Article III, be deemed to be the servient estate. Where only a portion of the Residential Property is bound and burdened by the Easement, only that portion shall be deemed to be the servient estate.

(d) The Easements granted by Declarant in this Article III are appurtenant to and shall benefit the Retail Property, which shall, for the purpose of this Article III with respect to such Easement, be deemed to be the dominant estate. Where only a portion of the Retail Property is so benefited, only that portion shall be deemed to be the dominant estate. No property other than the Retail Property as it may exist from time to time in accordance with the terms of this Declaration shall constitute part of the dominant estate.

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

(f) In exercising an Easement granted under this Article III, the Retail Owner shall minimize the impact of its exercise on the Residential Owner, taking into consideration the impact of any disruption on the Residential Owner and the Residential Owner's Permittees.

(g) The Residential Owner may (i) in connection with the Maintenance of the Residential Building, or (ii) in an Emergency Situation, or (iii) to prevent a dedication of, or accruing of rights by, the public in and to the use of the Residential Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement and on the Retail Tenants. Except for actions required to comply with applicable Laws or in an Emergency Situation, the Residential Owner may not close or restrict ingress and egress within any areas of the Retail Premises, nor may the Residential Owner prevent, close off or unreasonably restrict the flow of pedestrian traffic from the sidewalks to the Retail Premises. Provided that some meaningful form of ingress and egress is always available, the Residential Owner may, from time to time, impose (x) reasonable limitations on the Retail Owner's or any Permittee's use of an Easement providing for ingress and egress in, over, on, across and through the Residential Property described in this Article III, and (y) reasonable security controls consistent with the Residential Owner's operation of its business in the Residential Property and any overall security system for the Property. In imposing limitations or controls, the Residential Owner shall take into consideration the reasonable needs and requirements of the user of the Easement as well as the Residential Owner's own needs and requirements.

(h) Unless otherwise expressly provided in this Declaration, the Residential Owner shall not unreasonably withhold, condition or delay its consent to a request by the Retail Owner to relocate an Easement granted under this Article III. Any disputes concerning the existence, location, nature, scope and use of any of the Easements granted under this Article III shall constitute Arbitrable Disputes.

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(i) Any exclusive Easement granted under this Declaration shall in all events be subject to the concurrent use by the Owner of the servient estate as and to the extent reasonably necessary for Maintenance of the property of the Owner of the servient estate, for exercise of rights of self-help granted under Section 3(c) of Article V, and its rights under Article IX or Article XIII or elsewhere in this Declaration and for other uses which do not unreasonably interfere with the exercise of the Easement granted.

Section 2. Ingress and Egress.

(a) To the Retail Owner, a non-exclusive Easement for ingress and egress only for Persons, materials and equipment in, over, on, across and through such portions of the Residential Property as are reasonably necessary or desirable to permit the use and operation or the Maintenance of (i) the Retail Building, (ii) any Facilities located in the Residential Building that provide or are necessary to provide the Retail Building with any utilities or other services necessary to the operation of the Retail Building, including, without limitation, Retail Owned Facilities, and (iii) any other areas in the Residential Property as to which an Easement for use or Maintenance has been granted to the Retail Owner.

(b) The Residential Owner shall not diminish the benefits of the Easements granted in this Section 2 by constructing walls or other barriers in the Residential Building that would impede ingress and egress, without the prior written consent of the Retail Owner. Ingress and egress Easements provided for in Article III providing for a particular path of ingress and egress may be relocated by the Residential Owner as a result of Alterations or installation of Facilities, so long as a reasonable alternate path of ingress and egress is substituted. If an Easement is relocated, then the Owners shall execute, acknowledge and deliver to each other, within a reasonable period after either Owner's request, an instrument, in recordable form, showing such relocated Easement.

Section 3. Structural Support. To the Retail Owner, a non-exclusive Easement in all Structural Supports located in or constituting a part of the Residential Property for the support of (a) the Retail Building, (b) any Facilities or areas located in the Residential Property with respect to which the Retail Owner is granted an Easement, and (c) any Retail Owned Facilities.

Section 4. Use of Facilities. To the Retail Owner, a non-exclusive Easement (a) for the intended use of all Facilities which are located in the Residential Property, including the Retail Owned Facilities, and serve or are connected to Facilities located in the Retail Property that provide or are necessary to provide the Retail Building with any utilities or other services necessary to the operation of the Retail Property, and (b) permitting the exercise of the rights of self-help granted to the Retail Owner pursuant to this Declaration or otherwise during any period in which such rights may be exercised.

Section 5. Residential Building Roof Access. To the Retail Owner, a non-exclusive Easement in, over, on and across any roof included within the Residential Building or any penthouse constructed thereon for ingress and egress of Persons, materials and equipment to the extent reasonably necessary to permit installation or Maintenance of Facilities of the Retail Owner as permitted by this Declaration.

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Section 6. **Encroachments**. To the Retail Owner, an Easement permitting the existence of encroachments if (a) such encroachments presently exist, or (b) are replaced in the same location, unless, because of damage caused by casualty or other event requiring replacement, it is feasible from a cost and design perspective to replace in a non-encroaching manner, or (c) by reason of any settlement or shifting of the Building, any part of the Retail Building or Retail Owned Facilities not currently located within the Residential Parcel encroaches or shall hereafter encroach upon any of the Residential Parcel. No such encroachment shall be placed where such encroachment did not previously exist nor shall the encroachment be enlarged deliberately. This Easement shall exist only so long as the encroaching portion of the Retail Building or Facilities continues to exist, or replacements are made in the same location which do not enlarge the encroachment, subject to the obligation to try to eliminate the encroachment under the circumstances articulated in this Section 6.

Section 7. **Common Walls, Ceilings and Floors**. To the Retail Owner, a non-exclusive Easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs constructed in and along the boundaries of the Retail Parcel and the Residential Parcel that also serve as walls, ceilings or floors for the Retail Building.

Section 8. **Utilities**. To the Retail Owner (and if requested by the applicable Utility Company, the Residential Owner shall grant to such Utility Company), a non-exclusive Easement for utility purposes required by the Retail Building in those areas of the Residential Property where such utilities are currently located. If at any time it shall become necessary to relocate or add to utility easements (including installation of Facilities) other than where currently located in the Building in order to provide required utility service to the Retail Building, the Residential Owner agrees to grant such additional or relocated utility easements (at such locations mutually agreed to by the Residential Owner and the Retail Owner), provided (a) such easements do not unreasonably interfere with the reasonable use and enjoyment of the Residential Building for the purposes for which the Residential Building is used, (b) the Residential Owner shall not be required to grant an easement that would convert otherwise available rentable space or space in the Residential Building used for the Residential Owner's business to such Easement, unless such relocation or additional easements are required by Law and no other space is reasonably available, and the Residential Owner is equitably compensated for the value of such converted space, and (c) the Retail Owner shall pay the Residential Owner's reasonable costs or expenses in connection with granting such easement. As between the Residential Owner and the Retail Owner, the provisions of this Section 8 shall control over the provisions of Section 2.1.4 of the Village Declaration.

Section 9. **HVAC Equipment and Facilities**. To the Retail Owner, the right to the use and Maintenance of the HVAC equipment and Facilities exclusively serving the HVAC equipment, located on the roof of the Residential Building, and the right to place additional equipment and Facilities thereon.

Section 10. **Mechanical Rooms**. To the Retail Owner, a non-exclusive Easement for the use and Maintenance of any generator, mechanical, electrical, machine, meter, equipment or pump rooms that may be located in the Residential Property and serve the Retail Parcel.

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ARTICLE IV STRUCTURAL SUPPORT

Section 1. **Structural Safety and Integrity.** No Owner shall do or permit any act that would adversely affect the structural safety or integrity of any portion of the Building.

Section 2. **Construction of Additional Support.** Any Owner causing or permitting the adverse effect on the structural safety or integrity of any portion of the Building (solely for purposes of this Article IV, the "***Responsible Owner***") shall commence the construction of all necessary remedial structural support and mitigation of any adverse effect on the structural integrity or safety of the Building, to achieve comparable (or better) structural integrity within a reasonable time under the circumstances and shall diligently complete or cause completion of such construction in accordance with plans and specifications detailing necessary remedial structural support prepared by or approved by the Architect and the other Owner (whose approval will not be unreasonably withheld, conditioned or delayed). The Responsible Owner shall pay all costs and expenses, including all architectural and engineering fees in connection with construction of the remedial structural support. In addition, if the remedial structural support requires ongoing Maintenance costs in excess of the amount of Maintenance costs being incurred and payable prior to the remediation, the Responsible Owner shall pay such excess cost. The provisions of Article X shall govern if the adverse effect on the structural safety or integrity of the Building results from a fire or other casualty. The construction of such necessary remedial structural support shall be performed by a contractor or contractors jointly selected by the Owners (with the advice of the Architect). If the Owners fail to agree upon the selection of a contractor, the selection of the contractor shall constitute an Arbitrable Dispute.

Section 3. **Effect of Delay.** If delay in constructing necessary remedial structural support would endanger the structural safety or integrity of any portion of the Building, or if the Owner that is the Responsible Owner cannot readily be determined or is disputed, and it is not likely that such work will be commenced in time to avoid a reduction in structural integrity or safety, then the Owner of the portion of the Building in which the reduction occurred or is occurring shall, upon not less than ten (10) business days' advance written notice to the other Owner (except that such advance written notice shall not be required in an Emergency Situation), provide necessary remedial structural support as and wherever required, or the Owners shall jointly undertake to provide substitute or additional structural support; provided however, the Responsible Owner shall be liable for and pay all reasonable costs and expenses incurred as a result of the other Owners' provision of any necessary remedial structural support.

ARTICLE V BUILDING SERVICES

Section 1. **Services to the Retail Owner.** The Residential Owner shall furnish or cause to be furnished the following services to the Retail Property when, as and if required for the use, occupancy and operation of the Retail Owner's business in the Retail Property:

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- (a) Condenser Water. Maintenance of any cooling tower and Facilities located in the Residential Building furnishing condenser water to the Retail Building, furnished to the point of connection to valves and Facilities to be located in the Retail Building.
- (b) Steam Heat. Not applicable.
- (c) Domestic Water and Sanitary Sewer. Maintenance of water tanks and domestic water pumps, vent drainage and ejection pumps, piping and related Facilities (i) furnishing domestic water to the Building to the point of common connection to pumps, pipes and Facilities serving the Retail Property exclusively, and (ii) providing drainage of sanitary sewage from the point of connection to the Retail Property.
- (d) Hot Water. Maintenance of boilers and related Facilities furnishing hot water to the Retail Building.
- (e) Trash Removal and Scavenger Service. Not applicable.
- (f) Roof. Maintenance of the roof of the Building.
- (g) Emergency Sprinkling and Standpipe System. Maintenance of all common pipes, pumps, and related Facilities for the emergency sprinkler and Building standpipe system serving the Building.
- (h) Storm Water. Maintenance of pipes and other Facilities providing storm water drainage for the Building.

The Retail Owner shall have the election from time to time to provide its own system to replace any of the foregoing services, by delivering at least thirty (30) days' prior written notice of such election to the Residential Owner. After such election with respect to any service, the Residential Owner shall have no further obligation to provide or furnish such service.

Section 2. **Payment for Services and Limitation**. Subject to the provisions of Section 6 of this Article V, payment for services rendered pursuant to this Article V, including overhead and supervision fees, shall be due thirty (30) days after presentation to Retail Owner of an invoice therefor.

Section 3. **Performance of Services/Disruption**.

(a) Performance and Disruption. The Residential Owner shall use reasonable diligence in performing the services required under this Article V. The Owners further agree that in providing such services, the providing Owner shall not be liable in damages, for failure to furnish or delay in furnishing any such service when such failure or delay is occasioned, in whole or in part, by Unavoidable Delay or for any other reason other than the gross negligence or willful act of an Owner, its agents, employees or contractors. The Residential Owner further agrees, in the event of a disruption of service because of an Unavoidable Delay, that it shall use all due diligence and commercially reasonable efforts to restore service. Each Owner reserves the right to discontinue partially or totally the required service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs or in case of an Emergency Situation; provided, except in an Emergency Situation, if the stoppage would

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unreasonably interfere with an Owner's business operations in such Owner's Property, an Owner shall not stop such required service unless the stoppage is required to comply with Laws. An Owner shall give notice of such stoppage to the other Owners if reasonably possible and will provide substitute service if reasonably possible to do so. In no event shall an Owner be liable for consequential damages as a result of a disruption in services.

(b) Contracting. Each Owner shall have the right to fulfill its obligations hereunder by contracting with managing agents, contractors, subcontractors or other appropriate parties selected by it, including affiliated Persons.

(c) Owner's Failure to Perform Services.

(1) If an Owner shall fail to perform as required by the terms and conditions of this Article V (except when such failure is caused by another Owner or by Unavoidable Delay or except when an Owner obligated to perform the service is entitled to discontinue such service pursuant to Section 3(a) of this Article V) and such failure shall continue for a period of forty-eight (48) hours after receipt of written notice thereof to the Defaulting Owner from the Creditor Owner, the Creditor Owner shall have the right to perform the same (without limiting any other rights or remedies of such Owner) until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation.

(2) If a dispute exists as to whether an Owner has failed to perform, then such dispute will constitute an Arbitrable Dispute that may be submitted to arbitration under Article XXII hereof if not resolved within ten (10) days after notice from an Owner that a dispute has arisen. Failure to submit the matter to arbitration shall not vitiate an Owner's other rights under this Declaration.

(3) As a condition to exercising its self help right, the Creditor Owner shall notify the Defaulting Owner in advance of the time, place and manner it intends to perform. The Creditor Owner shall use reasonable efforts to minimize costs of its performance. Where the cost of performance by the Creditor Owner would include charges in excess of \$10,000 by a third party contractor or vendor that is not the contractor or vendor employed by the Defaulting Owner for such performance, the Creditor Owner shall seek no less than three (3) competitive bids and select the lowest responsive bid. Notwithstanding the foregoing, the provisions of this Section 3(c)(2) shall not apply in an Emergency Situation, or when the failure to act could trigger, in the good faith judgment of the Retail Owner or the Residential Owner, as the case may be, liability, rent abatement or a monetary or material non-monetary default under a Retail Lease or a Residential Lease, as applicable.

Section 4. Replacement of Facilities. An Owner shall, in replacing Facilities, replace such Facilities with Facilities substantially equivalent or better providing substantially the same quality of service or better.

Section 5. Conflict with Other Provisions. The provisions of Article IV (Structural Support), Article X (Damage to Building) and Article XIII (Condemnation) control over provisions of Article V where such provisions are inconsistent with provisions of Article V. The

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provisions of Article V requiring any Owner to contribute to the Maintenance of Facilities do not supersede the provisions of Article IV (Structural Support), Article X (Damage to Building) or Article XIII (Condemnation) that would require a different allocation or payment of costs or use of a different source of funds.

Section 6. **Change in Cost Allocation.** If an Owner in good faith believes that the cost of any service to be provided in this Article V is not reasonably allocated among the Owners, then such Owner (the “*Reallocating Owner*”), may give to the other Owners written notice of objection to any such allocation. Such notice shall specify the cost allocation to which the Reallocating Owner objects, the reasons why the Reallocating Owner believes that such cost is not reasonably allocated and the Reallocating Owner’s proposed revision. Upon receipt of such notice, the Owners shall consult with each other, in good faith, to arrive at an equitable compromise, based on all of the facts and circumstances. Reasons of the Reallocating Owner may consist of the following: (i) obsolescence of any Facilities and their replacement by more technologically advanced Facilities, (ii) replacement of labor by Facilities, (iii) any permanent substantial decrease or increase in use of Facilities by an Owner (excluding any decrease or increase as a result of abandonment or substantial cessation of operations of the Reallocating Owner’s portion of the Property except decrease or increase in energy consumption), or (iv) substantial alteration of the Building as a result of the renovation of any part of the Property or rebuilding following casualty or condemnation. If within thirty (30) days after receipt of such notice, the Owners shall not have agreed upon the allocation or reallocation of any such cost or costs, and the Reallocating Owner has not withdrawn its objection to the allocation, then such disagreement shall be an Arbitrable Dispute. Requests for reallocation may be made in advance but shall be made no more than once in any calendar year by any Owner. Reallocations shall be prospective, effective as of the latest to occur of (x) the date the Reallocating Owner requested it be made effective, (y) thirty (30) days after the date the Reallocating Owner’s request is made, and (z) such other later date as agreed to by the Owners. No retroactive reallocations shall be made.

Section 7. **Common Area Expenses.** Each Owner shall pay its respective Allocable Share of Common Area Expenses (as each such term is defined in the Village Declaration), upon the terms and provisions set forth in Article IX of the Village Declaration.

ARTICLE VI INDEMNIFICATIONS; LIENS; COMPLIANCE WITH LAWS; ZONING; ENVIRONMENTAL AND ENGINEERING REVIEW

Section 1. **Indemnity by Owners.** Each Owner covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owners, their respective predecessors and successors, their present and former directors, officers, employees, shareholders, members, partners, agents, heirs, assigns, executors, administrators, representatives, and any corporate entities, partnerships, or other legal-recognized entities in which they may have an interest or authority, as well as any past, present, and/or future parent corporation, subsidiary, partnership, joint venture, affiliate, insurer, attorney, accountant, other legal representative, or related entity thereof, and all those claiming by or through them (any of such parties, an “*Indemnitee*”) from and against any and all claims, including any actions or

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proceedings, for losses, liabilities, damages, judgments, costs and expenses arising from such Owner's negligent use, possession or management of its portion of the Building, Property or Owned Facilities or activities therein or arising out of such Owner's negligent use, exercise or enjoyment of an Easement or Facility, and from and against all costs, reasonable attorneys' fees and expenses (including appeals of any judgment or order), expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against any Indemnitee by reason of any such claim, upon notice from such Indemnitee, the indemnifying Owner further covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to such Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to such Indemnitee.

Section 2. Liens. An Owner shall remove, within thirty (30) days after receipt of notice of the filing thereof, any mechanics', materialmen's, manager's or broker's or any other similar lien arising by reason of the acts of such Owner, any tenant of such Owner, or their respective agents, employees and contractors, or any work or materials or services for which such Owner, any tenant of such Owner, or their respective agents, employees or contractors filed against (a) another Owner's portion of the Building, Property or Owned Facilities, or (b) its own portion of the Building, Property or Owned Facilities, if the existence or foreclosure of such lien against its own portion of the Building, Property or Owned Facilities would adversely affect the other Owner (such other Owner in (a) or (b) being the "**Impacted Owner**"). However, in the event the Owner desires to contest the validity of any such lien, such Owner shall, within thirty (30) days after receipt of notice of its filing, (x) in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Impacted Owner of its intention to contest the validity or amount of such lien, and (y) deliver to the Impacted Owner, at the Impacted Owner's option, either: (1) cash or a surety bond from a responsible surety company acceptable to the Impacted Owner in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs that may thereafter accrue by reason of such lien claim, or (2) other security or indemnity reasonably acceptable to the Impacted Owner's title insurance company and the Impacted Owner. In any case, such Owner must remove or release any such lien prior to its foreclosure. If the Owner fails to comply with the foregoing provisions of this Section 2, thereby becoming a Defaulting Owner, the Impacted Owner, thereby becoming a Creditor Owner, may take such action as the Creditor Owner may deem necessary or prudent to defend against or remove such lien. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses, including appeals of any judgment or order) paid or incurred by the Creditor Owner in defending against, removing or attempting to remove or defend against such lien and may use any security delivered to the Creditor Owner for such purposes and for any other damages from the Defaulting Owner's breach under this Section 2.

Section 3. Compliance With Laws. Each of the Owners shall:

(a) comply with all Laws, subject to the right of an Owner to delay compliance during the period that an Owner is contesting the validity and/or application of any Law, by all legal means;

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(b) comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Property or any portion thereof or the requirements of any insurance coverage on the other Owner's portion of the Property or Owned Facilities if noncompliance by it with respect to its respective portion of the Property or any portion thereof or Owned Facilities would (i) increase the premiums of any policy of insurance maintained by the other Owner or the premiums of any policy of insurance maintained by all Owners (unless the non-complying Owner pays all such increases), (ii) render any other Owner's portion of the Property or Owned Facilities uninsurable, or (iii) create a valid defense to another Owner's right to collect insurance proceeds under policies insuring such other Owner's portion of the Property or Owned Facilities; and

(c) deliver to the other Owners, within ten (10) business days after receipt, a copy of any written report, citation or notice affecting or relating to compliance of the Property with Laws.

Section 4. Zoning; Use.

(a) Without limiting the provisions of Section 3(a) of this Article VI, no Owner shall make any Alterations, allow any use of its portion of the Property, or take or fail to take any action with respect to its portion of the Property that would violate or cause the Building or Property to be in violation of the provisions of any applicable local zoning ordinance, as any such ordinance may be amended from time to time.

(b) Each Owner shall have the right to use its portion of the Building for any legal use, subject to the restrictions set forth below. The Residential Building may be converted to condominiums or a cooperative apartment building, but the conversion to condominiums or cooperative apartments shall not permit transient residents occupying rooms by the day or by the week. The Residential Parcel shall not be rented for use by any direct competitor of Retail Tenants (or subtenants) occupying the Retail Parcel at such time. The uses set forth in Section 6.3 of the Village Declaration as prohibited uses shall not be permitted at the Property, and are hereby incorporated herein as if fully set forth in this Declaration. Each Owner shall comply with the rules and regulations set forth in Exhibit "C" to the Village Declaration, as such may be amended or supplemented from time to time in accordance with the provisions thereof.

(c) Any dispute concerning whether an Owner has breached the foregoing shall constitute an Arbitrable Dispute; provided, however, an Owner shall also be entitled to pursue injunctive relief if the decision in such Arbitration would not likely be made in sufficient time to prevent the unpermitted use.

Section 5. Environmental and Engineering Review. The use, presence or release of Hazardous Materials (except use or presence in the ordinary course of the permitted and usual business operations conducted in the Building and then only in compliance with all applicable environmental Laws) is prohibited. Each Owner shall have the right in certain instances listed below to obtain from an environmental engineer or an inspecting architect or engineer of such Owner's choice and such Owner's own cost and expense, an audit, review, assessment or report (each referred to as a "Review") relating to the Property, which Review may include tests or inspections of the other Owners' portion of the Property as part of such Review. Any entry by an Owner must also comply with the terms and provisions of any lease, occupancy agreement or

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management agreement relevant to such Review. The Owner requesting a Review shall further use reasonable efforts to minimize the disruption of the other Owners' operation of business in its portion of the Property and repair any damage to property of another Owner caused by a Review. The instances in which an Owner may obtain a Review necessitating tests or inspections of the other Owner's portion of the Property are:

- (a) if such Owner has entered into or is preparing to enter into a contract to sell or refinance its portion of the Property or any interest therein;
- (b) if such Owner's Mortgagee has requested a Review;
- (c) if a Review is required by Laws; or
- (d) if such Owner, in good faith, reasonably believes that another Owner may have breached the provisions of Section 3 of this Article VI as it relates to the matters that could be disclosed by a Review or that such Owner may be adversely affected or subject to liability as a result of matters that could be disclosed by a Review.

Section 6. Signage.

(a) Residential Building Signage. Subject to the provisions of this Section 6, the Retail Owner hereby grants to the Residential Owner an easement for use and Maintenance of signage on the exterior of the Retail Building necessary or desirable in connection with the use and operation of the Residential Property, the location, size and design of which shall be subject to the Retail Owner's prior written consent, not to be unreasonably withheld, conditioned or delayed. The Retail Owner's refusal to consent because of an objection by a Retail Tenant shall be deemed reasonable. Signage shall include all attachments to the Building and power serving the signage. As between the Retail Owner and the Residential Owner, the Residential Owner shall be responsible at the Residential Owner's sole cost and expense for compliance of all such signs with all Laws. The Residential Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use the signs at the designated locations on the Building.

(b) Retail Building Signage. Subject to the provisions of this Section 6, the Residential Owner hereby grants to the Retail Owner an easement for the use and Maintenance of signage on the exterior of the Residential Building necessary or desirable to identify any of the Retail Tenants located in the Retail Property. As between the Retail Owner and the Residential Owner, the Retail Owner shall be responsible at the Retail Owner's sole cost and expense for compliance of all such signs with all Laws. The Retail Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install, permit and use the signs at the designated locations on the Building. Upon reasonable advance notice to the Retail Owner (except in an Emergency Situation) the Residential Owner may temporarily remove signage during any period it is cleaning, repairing, painting, replacing or otherwise Maintaining the Building.

Section 7. Exterior Building Appearance. Although the Owners agree that no Owner has an obligation to operate a business within its respective portion of the Property, and that an Owner may change operations or even cease to operate at any time, the Owners acknowledge and agree that it is in their mutual interest to maintain a consistent standard of

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design, exterior appearance, architectural elements and street level signage. Whenever an Owner contemplates a material change in the exterior appearance of the Building, such Owner (the "**Changing Owner**") shall, at least thirty (30) days prior to the commencement of the change, submit to the other Owners (collectively, the "**Affected Owner**") plans and specifications showing the proposed design change and anticipated schedule for implementation, and the Affected Owner shall submit comments within thirty (30) days after receiving same. Failure to submit comments within the thirty (30) day period shall be deemed an approval of the Changing Owner's plans and specifications, subject to compliance with the other relevant provisions of this Declaration. If the Affected Owner has comments, the Affected Owner and the Changing Owner shall consult with each other, in good faith, with due diligence, to reach consensus on the changes proposed by the Changing Owner. If the Owners do not agree within a thirty (30) day period after comments are received from the Affected Owner, the Changing Owner shall be permitted to proceed, provided the proposed changes comply with applicable Law. In no event shall the Affected Owner request changes that require the Changing Owner to utilize design standards/architectural elements superior to those utilized by the Affected Owner on its respective portion of the Building. Approval of the plans and specifications by the Affected Owner shall not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor shall such approval create any liability or responsibility for compliance with applicable Laws.

ARTICLE VII TAXES

Section 1. **Payment of Real Property Taxes.** To the fullest extent possible, real estate taxes and general and special assessments (collectively, "**Real Property Taxes**") levied and assessed against any Owner's Property shall be separately assessed by the taxing authority. Each Owner shall pay or cause to be paid on or before the date such taxes become delinquent all such taxes levied and assessed on its Property. Real Property Taxes may be paid in installments where installments are permitted by the taxing authorities. In the event that the Residential Property and the Retail Property are not separately assessed but are part of the same tax bill, Real Property Taxes shall be equitably determined by the Owners by utilizing the property valuation and the tax rate that would have been used by the applicable tax assessor in separately assessing the Residential Property.

Section 2. **Personal Property Taxes.** In addition to Real Property Taxes, each Owner shall cause to be paid before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon the business operations on its Property as well as upon the merchandise, inventory, furniture, fixtures, equipment and other personal property of such businesses. In the event any such items of property of any Owner are assessed with property of any other Owner, such assessment shall be equitably divided between such Owners.

Section 3. **Tax Protests.** Each Owner shall have the independent right to protest taxes and other charges to the extent the same affect only such Owner's portion of the Property at any time such portions of the Property are separately assessed and taxed, provided, that in all events the Owners shall consult and reasonably cooperate with one another regarding any

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information or advice communicated with the applicable assessor, any governmental entity and/or a court having jurisdiction in connection with such protest.

Section 4. **Failure to Pay Real Estate Taxes.** 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 this Article VII at a time when Real Property Taxes have not been separately assessed by the taxing authority, then any other Owner may, after ten (10) days' written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, with interest thereon at the Default Rate. The Creditor Owner shall also have a lien against the Defaulting Owner's portion of the Property in accordance with Article XI.

ARTICLE VIII INSURANCE

Section 1. **Insurance Required.**

(a) **Real and Personal Property.** The Residential Owner shall keep the Residential Building and Residential Owned Facilities insured on an "all risk" basis for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. The Retail Owner shall keep the Retail Building and Retail Owned Facilities insured on an "all risk" basis for an amount not less than ninety percent (90%) of the insurable replacement cost thereof. Such insurance may, at the option of the Retail Owner, exclude tenant improvements or betterments or personal property owned by Retail Tenants from coverage. Each Owner shall insure on an "all risk" basis its loss of income caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts and with such deductibles as may be carried by prudent owners of buildings in the area in which the Building is located, and shall pay all premiums for such coverage. Replacement cost shall be determined annually (or less often, as permitted by the insurance carriers) by an independent appraiser or by a method acceptable to the insurance company providing such coverage, such as every five years using an index method or other method satisfactory to the Owners and insurance carriers. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal. Such policies may also have a so-called "margin clause", provided, that the Owner whose policy has a margin clause has also had replacement cost determined within the past two (2) years by an appraiser. Insurance policies required by this Section 1 shall be purchased from reputable and financially responsible insurance companies, taking into consideration the nature and amount of insurance required, who shall hold a current alphabetic rating and financial size category of not less than A-/VII, or its equivalent (or such lesser rating as the Owners may jointly agree) according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service.

(b) **Public Liability.** Each Owner shall (i) insure against public liability claims and losses on commercial general liability form of insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Property,

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or as a result of operations thereon (including contractual liability covering obligations created by this Declaration including, but not limited to, indemnity obligations contained herein), and (ii) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage in such amounts as may be required by Law and as may from time to time be carried by prudent owners of buildings in the area in which the Building is located, but in all events for limits, as to each Owner and its portion of the Building, of not less than \$5,000,000 combined single limit for personal and bodily injury or property damage. In cases where more than one Owner's liability policy would respond and the matter is subject to an Owner's indemnity obligation under this Declaration, the policy of the indemnifying Owner shall be primary over the policy of the other Owners until a different result is finally determined by judicial proceeding or arbitration award. Each such policy shall be endorsed to provide cross-liability or severability of interests for the named insureds.

(c) Boiler and Machinery. Each Owner shall insure its boiler and machinery risks, on a comprehensive, blanket basis covering each of their equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis for not less than \$1,000,000 limit each accident. Specifically, the Retail Owner shall insure all such Facilities located in the Retail Property (except Residential Owned Facilities) or that constitute Retail Owned Facilities, and the Residential Owner shall insure all such Facilities located in the Residential Property (except Retail Owned Facilities) or that constitute Residential Owned Facilities. If a joint policy, such coverage may also provide to each Owner in accordance with its own needs, for loss of income caused by business interruption or extra expense incurred to reduce loss of income, in such amounts as may be carried from time to time by prudent owners of buildings in the area in which the Building is located. Alternatively, each Owner may separately insure its loss of income caused by business interruption or extra expense incurred to reduce such loss of income in required amounts.

(d) Builder's Risk. Each Owner shall carry "all risk" builder's risk insurance (including loss of income and "soft costs") or comparable coverage for not less than the completed value of the work then being performed by such Owner required or permitted hereunder. Such insurance shall include coverage for items stored off-site and items in transit for an amount sufficient to cover fully any loss. Loss of income and "soft costs" occurring during the period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of buildings in the area in which the Building is located. Coverage shall be required under this Section 1(d) only to the extent such coverage is not provided for within the property coverage described in Section 1(a).

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

(f) Liquor Liability. Each Owner shall carry dram shop or host liquor liability insurance as may be required by Law in order to conduct a business involving the sale of alcoholic beverages in its portion of the Property.

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Section 2. Insurance Companies.

(a) Separate Policies. Each Owner, unless the Owners agree to maintain a joint policy as provided in Section 2(b) below, shall separately insure and maintain each of the coverages specified in Section 1 above. The separate policies shall be coordinated so that there are no gaps in coverage (as to limits, extent of coverage, or otherwise), and each insurance company shall agree that the entire Building will be covered among the Owners' separate policies.

(b) Joint Policies. The Owners may agree, with respect to each of the insurance policies required in Section 1(a), Section 1(c) and Section 1(d) hereof, that the interest of all Owners shall be insured by the same insurance companies. Such policies may be issued in combination covering one or several items and covering jointly the interests of each Owner. In the case of any insurance policy covering the Owners jointly, the Owners shall apportion the premium based on the manner in which the insurance company has underwritten the risks and shall request that the insurer provide the information to make such allocation. The Owners will consult with one another at least annually (and may retain a consultant to advise them, the cost of employing such consultant to be shared in the same manner as provided in Section 2(d) of this Article VIII) concerning the advantage and disadvantages to each Owner and the Building as a whole of separate insurance policies as opposed to joint policies, where separate policies are permitted, and will give careful consideration to these matters before choosing to have separate policies.

(c) Insurance Provisions. Each policy described in Section 1 hereof (other than Section 1(e)) shall: (i) provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy, (ii) insure as "named" insureds all the Owners (except that the Owners other than the primary insured shall be "additional" insureds under policies described in Section 1(b) and Section 1(e)), (iii) provide, except for liability insurance described in Section 1(b), for which it is inapplicable by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available, and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy, unless the party to be benefited by such endorsement or provision pays such increase, (iv) provide, except for liability insurance required by Section 1(b) and Section 1(i), that all losses payable thereunder shall be paid to the Depository in accordance with the terms of Article XVI hereof, unless the Owners otherwise agree, subject to the consent of the Mortgagees, (v) provide for a minimum of thirty (30) days' advance written notice of the cancellation, non-renewal or material modification thereof to Mortgagees and all insureds (including the other Owners) thereunder, and (vi) not include a co-insurance clause. Unless otherwise specified herein, the "all-risk" form of property-related insurance required to be procured and maintained by the Owners shall provide no less coverage (with the exception of deductible amounts) than the standard form of insurance currently promulgated by the Insurance Services Office, Inc., its successor, or other substantially similar insurance organization having responsibility for the design and publication of standardized insurance coverage forms for use by the insurance industry.

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(d) *Limits of Liability.* Insurance specified in this Article VIII or carried by the Owners shall be jointly reviewed by the Owners periodically at the request of any Owner, but no review will be required more often than annually (unless there is a substantial change in the Building or operations conducted in the Building), to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred and the financial responsibility of the insureds, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable Laws and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Initial deductible amounts shall not exceed amounts agreed to by the Owners. Limits of liability for coverage set forth herein shall not limit what a Mortgagee may in its Mortgage require its mortgagor to carry. Limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon such review, and upon any such increase, decrease or modification, the Owners shall, at any Owner's election, execute an instrument in recordable form confirming such increase, decrease or modification, which any Owner may record, at such Owner's sole cost and expense, with the Recorder as a supplement to this Declaration. With the consent of all Owners, the Owners may employ an insurance consultant to perform such review on their behalf or to administer insurance-related matters, and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for joint policies of insurance required or provided for hereunder bear to each other.

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

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

ARTICLE IX MAINTENANCE AND REPAIR

Section 1. **Maintenance of Retail Building.** Except as expressly provided in (i) Section 1 of Article V relating to Maintenance of certain Facilities and areas of the Building,

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(ii) Article X in the event of fire or other casualty, and (iii) Article IV relating to structural support (without limiting or diminishing an Owner's obligations under Article IV), the Retail Owner shall, at its sole cost and expense, perform all Maintenance required to keep the Retail Building, all Facilities located in the Retail Property (other than Residential Owned Facilities and Maintenance of Facilities where such obligation is specifically so stated in Section 1 of Article V) and the Retail Owned Facilities in good and safe order and condition, and shall make all repairs or replacements to such property, whether such repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Retail Owner shall replace all cracked or broken window or door glass in the Retail Building. The Retail Owner shall also repair any damage to any exterior roof of the Building caused by the Retail Owner, its agents, employees or contractors. For purposes of this Section 1 the obligation to Maintain the Retail Building shall include common walls and doors as more fully set forth in Section 3 of this Article IX.

Section 2. **Maintenance of Residential Building.** Except as expressly provided in (i) Section 1 of Article V relating to Maintenance of certain Facilities and areas of the Building, (ii) Article X in the event of fire or other casualty, and (iii) Article IV relating to structural support (without limiting or diminishing an Owner's obligations under Article IV), the Residential Owner shall, at its sole cost and expense, perform all Maintenance required to keep the Residential Building, all Facilities located in the Residential Property (other than the Retail Owned Facilities) and the Residential Owned Facilities in good and safe order and condition, and shall make all repairs or replacements to such property, whether such repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Residential Owner shall perform the Maintenance required in Section 1 of Article V. The Residential Owner shall also repair any damage to any exterior roof of the Building caused by the Residential Owner, its agents, employees or contractors. For purposes of this Section 2 the obligation to Maintain the Residential Building shall include the obligation to Maintain the common walls and doors as more fully set forth in Section 3 of this Article IX.

Section 3. **Common Walls and Doors.** The vertical boundaries between the Retail Parcel and Residential Parcel will be established based on measurement to the inside or outside surface of walls separating the Retail Parcel and Residential Parcel. Notwithstanding the foregoing, the obligations of the Retail Owner under Section 1 of this Article IX or the Residential Owner under Section 2 of this Article IX shall be deemed to include an obligation to the center of common walls (including doors) regardless of the exact location of the boundary; provided, however, the Owners shall coordinate work with respect to common walls and doors and share equally their cost, except that improvements or repairs and maintenance benefiting only one Owner shall be performed by and shall be at such Owner's sole cost.

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ARTICLE X DAMAGE TO BUILDING

Section 1. **Damage Affecting Only Residential Building or Retail Building.** If any portion of the Building is damaged by fire or other casualty and (a) if such damage occurs within the Retail Building only and does not affect Residential Owned Facilities, or (b) if such damage occurs within the Residential Building only and does not affect Retail Owned Facilities (either (a) or (b) referred to as "***Separate Damage***"), then, subject to the provisions of Section 6 of this Article X, any such damage shall be repaired and restored by the Owner of the portion of the Building in which any such damage occurs in as timely a manner as practicable under the circumstances if failure to do so would adversely and materially affect an Easement in favor of another Owner or the services to be furnished another Owner under Article V. Such Owner shall, in accordance with the provisions of Article XVII hereof, be entitled to withdraw any insurance proceeds (including deductible amounts) 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 the cost of repair or restoration is estimated to be less than \$200,000 (in 2004 Equivalent Dollars), the insurance proceeds need not be paid to the Depository but may be paid directly to such Owner for application to the cost and expense of repair or restoration. If at any time either Owner so obligated to repair and restore such damage does not proceed diligently with any repair or restoration, and such failure to proceed would adversely and materially affect an Easement in favor of another Owner or the services to be furnished another Owner under Article V, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) business days after the receipt of such notice, any such work of repair or restoration 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 XVII hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of insurance proceeds received by the Creditor Owner. Repair and restoration under this Section 1 shall be performed in accordance with the provisions of Article XIV.

Section 2. **Joint Damage.** If the Building is damaged by fire or other casualty and if the provisions of Section 1 above are not applicable because the nature of the damage is such that it does not constitute Separate Damage, then to the extent it is economically feasible to separately repair or restore a discrete portion of such damage that would constitute Separate Damage, then such discrete portion shall be treated as Separate Damage. In such event, the repair and restoration of only that portion of such damage that does not constitute Separate Damage shall be the joint responsibility of the Owners. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of both Owners by contractors selected by the Owners. If the Owners fail to agree upon the selection of a contractor or contractors, then the selection of a contractor or contractors shall be an Arbitrable Dispute. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners otherwise agree upon another Person to prepare them. Such plans and specifications shall provide for the damaged portion of

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the Building to be rebuilt as nearly identical as commercially practicable to the condition existing prior to damage unless prohibited by Laws or unless the Owners otherwise agree. The Architect shall furnish to each Owner a set of the plans and specifications that it has prepared or caused to be prepared. Unless the Owners otherwise agree, all contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Owners and Mortgagees, as such repair and restoration progresses, to disburse (in accordance with Article XVII hereof) the insurance proceeds (including deductible amounts) held by the Depository and any other monies deposited with the Depository pursuant to Section 3 below for application against the cost and expense of any such repair and restoration.

Section 3. Cost of Repairs. Subject to the provisions of Section 6 of this Article X, if the cost and expense of performing any repair and restoration provided for in Section 2 above exceeds the amount of available insurance proceeds if any, paid by reason of the damage, then each Owner shall be responsible for the payment of its deductible, and the remaining excess cost and expense (or the entire amount of such cost and expense, if there are no insurance proceeds), shall be borne by the Owners in proportion to the cost and expense (of repairing and restoring to their former condition their respective portions of the Building and Owned Facilities. Notwithstanding the foregoing if an Owner has not carried the insurance required under Article VIII and, therefore, is a Defaulting Owner, then such Defaulting Owner shall pay the costs and expenses not covered by insurance that another Owner is obligated to pay that would not have been payable by such Owner if proper insurance had been carried by the Defaulting Owner to the extent of the amount that would have been available as insurance proceeds had such Defaulting Owner carried the required insurance.

Section 4. Deposit of Costs. In any instance of repair or restoration pursuant to Section 2 above, 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, unless a construction contract providing for the performance of such repair and restoration at a guaranteed maximum price has previously been executed. If the estimate or guaranteed maximum price stipulated, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to Section 3 above. Any Owner maintaining deductible amounts shall deposit the deductible amounts. In lieu of depositing its share of such excess amount or deductible amount based upon the estimate or guaranteed maximum price stipulated, or actual cost and expense of performing such repair or restoration, an Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or an irrevocable loan commitment, satisfactory to the other Owners, issued by a responsible lending institution to disburse an amount equal to such Owner's share of such excess or deductible amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses, in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual cost

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and expenses of the work. No deposit or security shall be required under circumstances described in this Section 4 if the estimated cost is \$200,000 (in 2004 Equivalent Dollars) or less as to repair and restoration under Section 1 of this Article X. If an Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 4, or fails to deliver the security provided for above within ten (10) days after receipt of the other Owners' written demand therefor, then the Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse any Creditor Owner for such payment and such Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

Section 5. Excess Insurance Proceeds. Upon completion of the repair and restoration of any damage to the Building, any remaining insurance proceeds paid by reason of such damage shall be refunded to each Owner as follows: (a) if insurance is provided under separate policies, then each Owner shall be entitled to any remaining proceeds that were paid by such Owner's insurance company, and (b) if the insurance is provided by a single policy covering the Building, then each Owner shall be entitled to the ratio of insurance proceeds attributed to such Owner's portion of the Building and Owned Facilities by the insurer or the Owners to the total insurance proceeds made available by the insurer or the Owners for the repair and restoration. For purposes of this Section 5, insurance proceeds include deductible amounts that have been provided or deposited.

Section 6. Decision or Agreement Not to Repair.

(a) If, as a consequence of substantial damage (as described in clause (b), below) to its own portion of the Building or Owned Facilities due to fire or other casualty, whether or not any other Owner's portion of the Building or Owned Facilities are damaged, any Owner reasonably determines that its portion of the Building no longer can be repaired or restored or operated on an economically feasible basis, then such Owner (the "**Non-Restoring Owner**") shall notify the other Owners of its determination within sixty (60) days after such casualty of its decision not to repair or restore. In such case, if any other Owner (for purposes of this Section, the "**Restoring Owner**") has determined to rebuild, any Non-Restoring Owner shall not be obligated to repair or restore its portion of the Building as may be required hereby, but instead, shall be obligated as follows: the Non-Restoring Owner shall demolish, repair or restore its portion of the Building to the extent, if any, as may be necessary to comply with Laws and to provide essential services set forth in this Declaration, Easements essential to the operations of another Owner and structural support or enclosure for the other portions of the Building or, in the case of the Retail Owner, to comply with the obligations under Retail Leases and shall further comply with the requirements of clause (b) of this Section 6, if applicable, and insurance proceeds necessary to accomplish the foregoing shall be made available to such Non-Restoring Owner.

(b) If the Building is substantially damaged (such that the cost of repair or restoration would exceed fifty percent (50%) of the replacement cost of the Building) or destroyed, and restoration of the Retail Building is not required under existing Retail Leases, and if one of the Owners wants to rebuild and other Owner does not, the following provisions shall apply:

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(1) The Building shall be demolished and stabilized to the extent necessary to comply with applicable Law, and in anticipation of rebuilding and restoration by the Restoring Owner.

(2) The Restoring Owner shall provide, as soon as practicable, plans and specifications for repair and restoration of such Owner's portion of the Building, together with the restoration and repair of the Non-Restoring Owner's portion of the Building as necessary to comply with Laws, provide structural support, essential services, and easements essential to the operation of the Restoring Owner. By way of example, but not limitation, if the Residential Owner desires to repair and restore the Residential Property and the Retail Owner decides not to repair and restore the Retail Property, the Residential Owner may design and construct a "box" containing sub-basement, basement, street level and second floor space, to a shell condition, constructing an exterior and providing interior columnar support and utility systems sufficient to allow the construction of the proposed new Residential Building. If the Retail Owner desires to repair and restore the Retail Building, and the Residential Owner has decided not to repair and restore, then the Retail Owner may construct a low-rise building sufficient to provide enclosure, taking into account structural support and utility systems necessary to allow the Residential Owner at some point in time in the future the ability to construct a building on top of the retail podium.

(3) The Non-Restoring Owner shall provide reasonable comments within thirty (30) days after receipt of the proposed plans and specifications with respect to any issues anticipated with respect to the improvements to be constructed within its respective parcel. Failure to respond within thirty (30) days shall be deemed an approval by the Non-Restoring Owner failing to respond to the proposed plans and specifications. In the event of comments, the two (2) Owners shall consult in good faith, diligently proceeding to resolve any comments and in the event the reasonable concerns of the Non-Restoring Owner are not resolved, the matter shall constitute an Arbitrable Dispute.

(4) The Non-Restoring Owner shall make available to the Restoring Owner proceeds of insurance necessary to perform the demolition and other work and restoration of the Non-Restoring Owner's component to the minimal condition dictated by the approved plans and specifications; provided, however, that any excess design and construction costs necessitated because of the Non-Restoring Owner's decision not to repair or restore shall be borne by the Restoring Owner. Again, by way of example, and not limitation, if the Residential Owner is the Non-Restoring Owner, then the cost of substantially increasing columns and exterior walls for support of a building to be constructed in the future on the Residential Parcel shall be borne by the Residential Owner.

(5) All available insurance proceeds, other than insurance proceeds used to fund the cost of demolition and restoration as provided herein, shall be refunded to the Non-Restoring Owners in the same ratio of proceeds contributed by the Non-Restoring Owners or by the Non-Restoring Owners' insurance company to the total insurance proceeds paid by reason of such damage, or if the insurance is provided by a single policy covering the Building, then in the ratio of insurance proceeds attributed by

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the insurer to such Non-Restoring Owners' portions of the Building and owned Facilities to the total insurance proceeds paid by reason of such damage.

(6) A Non-Restoring Owner shall execute and deliver an agreement permitting rights of entry and granting temporary construction easements as necessary or desirable over the Non-Restoring Owner's property to allow the repair and restoration contemplated by this Section 6.

Section 7. **Costs Defined.** For purposes of this Article X, architects' and engineers' fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

Section 8. **Conflict with Village Declaration.** In the event that the Village Declaration requires an act or imposes an obligation that is more stringent than that required by the provisions of this Article X, the Village Declaration shall control.

ARTICLE XI LIENS, DEBTS, INTEREST AND REMEDIES

Section 1. **Default.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Party:

(a) The failure to make any payment required to be made hereunder within ten (10) business days after the due date and written notice of such default by another Owner; or

(b) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (a) above, within thirty (30) days after the issuance of written notice by another Owner specifying the nature of the default claimed, or, such extended period of time as is reasonably necessary to cure the default, if the default cannot be cured in thirty (30) days and the Defaulting Owner commences to cure within such thirty (30) days and then is diligently pursuing the cure to completion.

Section 2. **Contractual Lien.** If, at any time, any Owner fails within ten (10) business days after written notice or demand (which may be the same written notice delivered under Section 1 of this Article XI) to pay any sum of money due to a Creditor Owner under or pursuant to the provisions of this Declaration or any other time period expressly provided for such payment to be made, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (a) a lien against the portion of the Building and Property owned by the Defaulting Owner, and (b) for a default under Article X, a lien also against any insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Building or Property or otherwise under insurance policies carried pursuant to Article VIII hereof, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article XI. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien through a judicial foreclosure in like manner as a mortgage of real property in the State of Illinois. Such liens shall continue in full force and

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effect until such sum of money and any accrued interest thereon shall have been paid in full. A Creditor Owner shall release its lien upon payment in full. Notwithstanding anything contained herein to the contrary, a Creditor Owner's lien provided for in this Section 2 shall be superior to and shall take precedence over any Mortgage, trust deed or other encumbrance constituting a lien on the portion of the Building or Property owned by the Defaulting Owner, except a Prior Lien.

Section 3. No Diminution of Lien.

(a) No conveyance or other divestiture of title (except foreclosure of a Prior Lien, subject to the provisions of Section 3(b) below) shall in any way affect or diminish any lien arising pursuant to this Article XI, and any lien that would have arisen against any property pursuant to this Article XI had there been no conveyance or divestiture of title (except foreclosure of a Prior Lien, subject to the provisions of Section 3(b) below) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

(b) If at any time any Owner as a Creditor Owner has recorded a notice of lien under Section 2 of this Article XI against the Defaulting Owner's portion of the Property, which lien has not been foreclosed, released or satisfied in full, and if such portion of the Property or any part or interest is thereafter sold, the Creditor Owner shall be entitled to receive from the proceeds of sale of such portion of the Property or part or interest, the lesser of (i) an amount sufficient to satisfy that portion of the unpaid amount owed plus interest thereon at the Default Rate, and (ii) the entire proceeds from the sale, minus any amount paid to satisfy a Prior Lien. If the amount secured by such lien is being contested in a judicial action or is the subject of Arbitration under Article XXII, then the proceeds that a Creditor Owner could apply to satisfy its lien shall be deposited by the Defaulting Owner with the Depository or other escrowee reasonably acceptable to the Creditor Owner and held for disbursement at the joint order of the Owners or as directed by court order or by the Arbitrator.

Section 4. Mortgagee's Subrogation. Any Mortgagee shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article XI affecting the property secured by its Mortgage upon payment by the Mortgagee of the amount secured by such lien.

Section 5. Interest Rate. Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the Default Rate.

Section 6. Cumulative Remedies. In the event of a default by any Defaulting Owner, the Creditor Owner shall have all rights and remedies available at law or in equity. The rights and remedies of a Creditor Owner provided for in this Article XI or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. An Owner may enforce, by a proceeding in equity for mandatory injunction, another Owner's obligation to execute or record any document that such other Owner is required to execute or record 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 or at law or in equity; provided, however, no Owner shall be entitled to "economic loss" (including lost profits, if or however characterized as damages) or special or consequential damages from

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another Owner as a result of any breach by another Owner of its obligations under this Declaration.

Section 7. **No Set-Off.** Each claim of any Owner arising under this Declaration shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

Section 8. **Attorneys' Fees.** A Defaulting Owner shall pay the reasonable attorneys' fees and expenses (including appeals of any judgment or order) paid or incurred by a Creditor Owner in successfully enforcing its rights against a Defaulting Owner under this Declaration. In the case of an appeal, reasonable attorneys' fees and expenses shall be payable after the decision in such appeal.

Section 9. **Self-Help.** Without limiting any other rights or remedies of an Owner, including any other self-help provision of this Declaration that grants an Owner the right to perform an obligation that another Owner has failed to perform, a Creditor Owner shall have the right, in an Emergency Situation, upon reasonable advance notice, if possible under the circumstances and which may be oral, to perform the obligation that the Defaulting Owner has failed to perform until the Defaulting Owner cures such default. A Creditor Owner shall also have the right, in a non-Emergency Situation, after thirty (30) days' prior written notice (which may be the same written notice delivered under *Section 1* and/or *Section 2* of this *Article XI*) to the Defaulting Owner, and such default not being cured, to perform the obligation that the Defaulting Owner has failed to perform until the Defaulting Owner cures the default. The Creditor Owner shall be entitled to payment from the Defaulting Owner for all reasonable costs and expenses (including reasonable attorneys' fees and expenses, including appeals from judgments or orders) paid or incurred by the Owner in performing such obligation that the Defaulting Owner has failed to perform. Where a specific self-help right is granted elsewhere under this Declaration for non-performance of an obligation, such provision shall control over the provisions of this *Section 9*.

Section 10. **No Termination.** No breach of or default under this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, and such limitations shall not affect in any manner any of the rights or remedies that the Owners may have by reason of any breach of or default under this Declaration.

ARTICLE XII UNAVOIDABLE DELAYS

No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and as long as non-performance of such obligation shall be directly caused by 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 Delayed Owner shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after

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the onset of any such Unavoidable Delay. The Delayed Owner shall, from time to time upon written request of the other Owners, keep such other Owners fully informed, in writing, of all further developments concerning any such Unavoidable Delay. If non-performance is due to an Unavoidable Delay affecting the Delayed Owner that does not affect the other Owners' self-help remedy provided for elsewhere in this Declaration and that is otherwise exercisable for such non-performance, then notwithstanding such Unavoidable Delay, the other Owners shall be entitled to the self-help remedy exercisable only under reasonable circumstances with respect to those obligations to have been performed by the Delayed Owner that are the subject of Unavoidable Delay.

ARTICLE XIII CONDEMNATION

Section 1. **In General.** In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Building or Parcel by any competent authority for any public or quasi-public use, the award, damages or just compensation resulting from any such taking (the "*Award*") shall be allocated and disbursed, and any repair and restoration of the Building shall be performed, in accordance with the requirements of this Article XIII. The Owners shall cooperate with one another to maximize the amount of the Award.

Section 2. **Payment of Award to Depository; Temporary Taking Awards.** All Awards resulting from the taking of all or any part of the Building or Parcel, other than damages resulting from a taking for the temporary use of space as hereinafter described and except as otherwise provided in Section 3 below, shall, subject to the provisions of Article XVI hereof, be paid to the Depository by the Owners, regardless of the Owner who received the Award. The Depository shall disburse the Award as hereinafter provided. The obligations of the Retail Owner under this Article XIII relating to payment or deposit of any Award for taking of the Retail Property or any interest therein shall be subject to the rights of the Retail Tenants. In the event of a taking for temporary use of any space not including Residential Owned Facilities or Retail Owned Facilities or affecting services described in Section 1 of Article V hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Property.

Section 3. **Taking of Only One Parcel.** In the event of (a) a taking (other than a temporary taking) of a part of the Retail Property or Retail Owned Facilities only (not including any Residential Owned Facilities), or (b) a taking (other than a temporary taking) of a part of the Residential Property or Residential Owned Facilities only (not including any Retail Owned Facilities), then, subject to the provisions of Section 6 below, the Owner of the portion of the Building or Owned Facilities in which the taking occurred shall repair and restore the remainder of its portion of the Building or Owned Facilities to form an architectural and functional whole, if the failure to do so would adversely and materially affect an Easement in favor of another Owner essential to such Owner's operations or the services to be furnished to another Owner under Article V. 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 Building or Owned Facilities in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason

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of such taking for application to the cost of the repair and restoration in accordance with the provisions of Article XVII hereof and to retain any excess not required for such repair and restoration. If the cost of repair or restoration is estimated to be less than \$200,000, then the Award need not be paid to the Depositary. If at any time any Owner so obligated to repair and restore such damage shall fail to proceed diligently with any repair or restoration, and such failure adversely and materially affects an Easement in favor of another Owner essential to such Owner's operations or the services to be furnished another Owner under Article V, then (i) a Creditor Owner may give written notice to the Defaulting Owner specifying the respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) business days after the receipt of such notice, any such work of repair or restoration is still not proceeding diligently, then a 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 (other than an Emergency Situation involving solely an economic loss) or when the failure to proceed diligently could trigger, in the good faith judgment of the Retail Owner or the Residential Owner, as the case may be, liability, rent abatement or a monetary or material non-monetary default under a Retail Lease or a Residential Lease, as applicable, a 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 XVII hereof, be entitled to withdraw any Award and any other monies held by the Depositary as a result of any such taking, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of the Award. Repair and restoration under this Section 3 shall be performed in accordance with the provisions of Article XIV.

Section 4. Repair and Restoration by All Owners. In the event of a taking other than (a) a temporary taking described in Section 2 above, (b) a taking described in Section 3 above, or (c) a taking of all or substantially all of the Building or Parcel, then, subject to the provisions of Section 6 below, the Owners shall cooperate to repair and restore the remainder of the Building in accordance with plans and specifications (hereinafter described) approved by the Owners. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of the Owners by a contractor jointly selected by the Owners. If the Owners fail to agree upon the selection of a contractor, the selection of the contractor shall constitute an Arbitrable Dispute. If such repair and restoration is to be performed solely in the Retail Building and does not involve Residential Owned Facilities, then the approval of the Residential Owner shall not be required with respect to the selection of the contractor nor to the plans and specifications therefor that do not constitute Alterations requiring consent of the other Owner under Article XIV, provided, that the Retail Owner shall consult with the Residential Owner regarding those matters. If such repair and restoration is to be performed solely in the Residential Building and does not involve Retail Owned Facilities, then the approval of the Retail Owner shall not be required with respect to the selection of the contractor nor to the plans and specifications therefor that do not constitute Alterations requiring consent of the other Owner under Article XIV, provided, that the Residential Owner shall consult with the Retail Owner regarding those matters. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners shall otherwise agree, all subject to the approval of their Mortgagees. Such plans and specifications shall provide for repair and restoration of the remainder of the Building to form an architectural and functional whole, with such changes in the Building as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this

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Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Article II and Article III and for the furnishing of services under Article V. The Architect will furnish to each of the Owners (but only if and to the extent such Owner's approval is required) and each Mortgagee (but only if and to the extent the mortgagor Owner's approval is required) a set of such plans and specifications for their approval. Unless the Owners otherwise agree, the contractor shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval of the Owner in whose portion of the Property such repair and restoration is being performed, as such repair and restoration progresses, to disburse, in accordance with Article XVII hereof, any Award paid to the Depositary for application to the cost and expense of such repair and restoration.

Section 5. **Excess Award.** The Award for any taking described in Section 4 above shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 6 below). Any excess of the Award over the cost of repair and restoration shall then be allocated to an Owner in the same ratio that the apportionment of the Award to such Owner (including other parties with an interest in such Owner's portion of the Property) bears to the apportionment of the Award to the other Owners (including parties with an interest in the other Owners' portion of the Property). If there is no apportionment in any judicial or administrative proceeding, the Owners shall petition for such apportionment, if possible. Otherwise, the Owners shall negotiate with one another in good faith to arrive at an allocation to each of such excess based upon the same general criteria that would have been used in such proceedings to apportion the Award. A failure to reach agreement shall constitute an Arbitrable Dispute.

Section 6. **Demolition.** If, as a result of a taking (other than a temporary taking), an Owner reasonably determines that its portion of the Building no longer can be repaired or restored or operated on an economically feasible basis, then such Owner shall notify the other Owners of its determination within sixty (60) days after such taking and shall not be obligated to repair or restore its portion of the Building as may be required by Section 3 and/or Section 4 of this Article XII. However, such Owner not repairing or restoring shall demolish, repair or restore its portion of the Building to the extent, if any, as may be necessary to provide services set forth in this Declaration, Easements to another Owner or structural support for the other portions of the Building in a manner, and upon terms and conditions comparable to those specified in Section 6(b) of Article X. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 4 of this Article XIII are applicable.

Section 7. **Allocation of Award.** In the event of a taking of all or substantially all of the Building or 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.

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ARTICLE XIV ALTERATIONS

Section 1. Permitted Alterations.

(a) An Owner may, at any time at such Owner's sole cost and expense, make additions, improvements or alterations ("Alterations") to the part of the Building within such Owner's portion of the Property (such Owner, an "Altering Owner"), provided, that Alterations are made in accordance with all of the provisions of this Article XIV. Even though the consent of the other Owners is not required, an Altering Owner shall give fifteen (15) days' prior written notice before commencing an Alteration that would cost in excess of \$100,000 or, in the reasonable business judgment of the Altering Owner, might have a material effect on the normal business operations of another Owner. Alterations shall include relocation of Facilities, which shall be permitted, subject to compliance with the conditions set forth in this Article XIV. Replacement of Facilities may be made by an Altering Owner without consent of the other Owners, subject to the provisions of Section 4 of Article V hereof. The provisions of this Article XIV governing Alterations do not negate or diminish other provisions of this Declaration having to do with additions, improvements or alterations expressly required or permitted in Article IV (Structural Support), Article V (Building Services), Article X (Damage to Building) and Article XIII (Condemnation), which are governed by those respective provisions unless also designated therein as "Alterations" to be governed by this Article XIV.

(b) Alterations shall not be made without the prior written consent of the other Owners (which may be withheld in each such Owner's sole discretion) if such Alterations will:

(1) during their performance or upon their completion, unreasonably diminish the benefits afforded to an Owner by an Easement or unreasonably interrupt another Owner's use or enjoyment of any Easement;

(2) during their performance or upon their completion, degrade or diminish services to another Owner under Article V;

(3) materially increase the costs or expenses for which another Owner is or would be responsible pursuant to Article V hereof;

(4) consist of drilling, coring, chopping, cutting or otherwise making any opening or hole into any Structural Supports in violation of Article IV; or

(5) require the erection of scaffolding by the Residential Owner.

(c) If, at any time, the Altering Owner proposes to make any Alterations that require or could possibly require (in the Altering Owner's reasonable opinion or the reasonable opinion of another Owner) the consent of another Owner, then before commencing or proceeding with such Alterations, the Altering Owner, at its own cost, shall deliver to such other Owner a copy of the plans and specifications showing the proposed Alterations. An Altering Owner may also at any time request confirmation from another Owner that its consent is not required with respect to proposed Alterations, if such Alterations do not require its consent, and such confirmation shall be given within ten (10) business days after the request is made. No response during such ten (10) business day period shall be deemed confirmation that consent is not

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required. If such other Owner consents to such Alterations or does not respond (with approval, disapproval, request for additional information or time or statement of conditions for approval or disapproval) within thirty (30) days (as may be extended) after receipt of plans and specifications, the Altering Owner may proceed to make its Alterations substantially in accordance with such plans and specifications. Within the thirty (30) day response period another Owner may request (i) additional information with respect to the proposed Alterations, in which case such Owner will be granted an additional thirty (30) days to respond from the date the Owner receives such additional information, or (ii) an extension of the time to respond, which extension of time shall not exceed thirty (30) days from the date of the request. An Owner whose consent is requested will not unreasonably delay its response. If, in the good faith opinion of the other Owner, the Altering Owner has violated or will violate the provisions of Section 1(a) or Section 1(b) of this Article XIV, then such Owner (the "**Objecting Party**") shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 1(a) or Section 1(b) of this Article XIV, and shall specify the respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 1(a) or Section 1(b) of this Article XIV in accordance with this Section 1(c), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved (except in an Emergency Situation). The matter shall be submitted to the Architect to determine whether there has been a violation of Section 1(a) or Section 1(b) of this Article XIV. If it is determined by the Architect that there has been no such violation, then the Objecting Party shall reimburse the Altering Owner for all additional reasonable third party construction costs (e.g. contractor mobilization) resulting from the delay caused by the objection. In addition to the 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 Article XIV, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(d) Each Owner, in making Alterations, shall (i) perform all work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all Laws, and (iii) comply with all of the applicable provisions of this Declaration and the Village Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Building in such a manner and at times so as to minimize any noise, vibrations, particulates and dust infiltration or other disturbance that would disturb occupants of the other portions of the Building, but such Owner shall not be liable in any event for damages as a result of any such disturbance (as opposed to physical damage to person or property) normally incidental to construction. The foregoing restriction on damages shall not restrict an Owner's right to seek and obtain injunctive relief from unreasonable disturbances. An Altering Owner may perform work during any hours permitted by applicable Law. However, if requested by an Owner who would otherwise suffer unreasonable disturbance, the Altering Owner shall not unreasonably refuse to perform work outside normal business hours.

Section 2. **Building Permits.** Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of the other Owner in such application, unless the government agency having jurisdiction thereof requires joinder of the other Owner. The Altering Owner shall send copies of any building permits to the other Owner upon request. If joinder by the Owner not making Alterations is so required, such Owner 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

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the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses (including reasonable attorneys' fees and expenses, including appeals of any judgment or order) arising out of the other Owner's execution of the application, permit or other instrument.

Section 3. **No Liens.** An Owner performing any work required or provided for under this Declaration shall use commercially reasonable efforts to include in any construction contract a provision pursuant to which the contractor (a) if applicable, recognizes the separate ownership of the Residential Property and the Retail Property and agrees that any lien rights that the contractor or subcontractors have under the Mechanics' Lien Act shall only be enforceable against the portion of the Property owned by the Altering Owner, or (b) if commercially reasonable under the circumstances, agrees that, to the extent permitted by Law, no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 21 (or its successor) of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

ARTICLE XV ESTOPPEL CERTIFICATES

Section 1. **Estoppel Certificates.** Each Owner shall, from time to time, within ten (10) business days after written request from another Owner, any prospective transferee of such Owner or any Mortgagee or prospective Mortgagee that has complied with the notice provisions of Section 10(a) of Article XX hereof, execute, acknowledge and deliver to the requesting party, a certificate stating:

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

(b) Whether, to the actual knowledge of the Owner executing the certificate (the "**Certifying Party**"), there is any existing default under this Declaration (or grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;

(c) Whether there are any sums that the Certifying Party is entitled to receive or demand from the requesting Owner that have not been paid when due, and if there is any such sum, specifying the nature and amounts thereof;

(d) Whether the Certifying Party has performed or is performing work other than services pursuant to Article V, 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 requesting Owner, and if there be any such work, specifying the nature and extent thereof and the projected timeframe and amount to be paid by the requesting Owner;

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

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(f) To the actual knowledge of the Certifying Party, the total amount of all liens being asserted or capable of being asserted (after giving the requisite notice, if any, required hereunder) by the Certifying Party under the provisions of this Declaration describing the applicable provisions and the details of any such lien claim;

(g) Whether the Owner executing the certificate has requested that a matter be submitted to Arbitration, which matter has not been discharged, released or otherwise resolved, and if so, a copy of any such notice or notices shall be delivered with the certificate;

(h) The nature of any Arbitration proceeding or finding under Article XXII made within the ninety (90) days preceding the date of such certificate;

(i) The current address or addresses to which notices given to the Certifying Party are required to be mailed under Article XIX; and

(j) Such other factual matters as may be reasonably requested.

ARTICLE XVI DEPOSITARY

Section 1. **Appointment of Depositary.** In the event there is more than one Owner of the Property, a depositary (the "***Depositary***") shall be appointed in the manner hereinafter provided, at or before such time as the duties of the Depositary are to be performed, to receive insurance proceeds and Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. The Depositary shall be appointed by the Owners jointly, and shall be one of the then five (5) largest bank or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois or other bank or trust company reasonably agreed to by the Owners. Any Owner may at any time propose a Depositary, and if the Owners fail to agree on a Depositary within ten (10) business days after receipt of the proposal by the other Owner, the disagreement shall become an Arbitrable Dispute. The Owner whose Property was damaged shall pay the Depositary's reasonable fees and expenses for acting as Depositary, as established by this Declaration, and the Depositary may retain such fees and expenses, free of trust, from monies held by it. Notwithstanding anything to the contrary contained herein, in the event one Owner owns the entire Property, no Depositary shall serve hereunder, and no insurance proceeds and no Awards shall be paid to a Depositary.

Section 2. **Liability of Depositary.** The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from its own negligence or willful misconduct. The Depositary's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or Award unless the Depositary shall have been given an express written authorization from the Owners; provided that if only one Owner is entitled to the insurance proceeds or Award, then such Owner may authorize the Depositary to so proceed. In addition, the Depositary may rely conclusively on any certificate furnished by the Architect to the Depositary in accordance with the provisions of Section 1 of Article XVII and shall not be

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liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

Section 3. **Interest on Deposited Funds.** The Depository shall have no obligation to pay interest on any monies held by it, unless the Depository shall have been given an express written undertaking to do so, or unless all of the Owners for whose benefit monies are being held have requested, in connection with a specified deposit of funds with the Depository, that the Depository undertake to do so. However, if the monies on deposit are not held in an interest-bearing account pursuant to an agreement among the Depository and the Owners, then the Depository, within thirty (30) days after request from any Owner given to the Depository and to the other Owners, shall purchase with such monies, to the extent feasible, negotiable United States Government securities payable to bearer and maturing within ninety (90) days from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies that the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depository on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depository. Monies received by the Depository pursuant to any of the provisions of this Declaration shall not be mingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes herein provided.

Section 4. **Indemnification of Depository.** In consideration of the services rendered by Depository, the Owners jointly and severally hereby agree to indemnify, defend and hold harmless the Depository from any and all damages, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Depository's duties hereunder or in the defense of any claim made against Depository by reason of its appointment hereunder, except where due to the negligence or willful misconduct of the Depository or actions not taken in good faith by the Depository. Where the Depository is only disbursing funds for one Owner, and the other Owners are not involved in the deposit or overseeing of disbursement of funds, such other Owners shall not be obligated to indemnify and hold harmless the Depository in connection with such duties of the Depository.

Section 5. **Resignation of Depository.** The Depository may resign by serving not less than sixty (60) days' prior written notice on all of the Owners and Mortgagees. Within thirty (30) days after receipt of such notice, the Owners jointly shall, in the manner set forth in Section 1 above appoint a substitute who qualifies thereunder (but only if there are duties to be performed at such time by a Depository or funds are held by the resigning Depository), and the Depository shall prepare a final accounting of all funds received, held and disbursed by it and transfer all funds, together with copies of all records, held by it as Depository to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within such thirty (30) day period, and there are funds held by the resigning Depository, the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois that qualifies under Section 1 above.

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ARTICLE XVII DISBURSEMENTS OF FUNDS BY DEPOSITARY

Section 1. Disbursement Requests.

(a) Each request by the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any Award or other funds for application to the cost of repair, restoration or demolition (the "*Work*") shall be accompanied by a certificate of the Architect or another Person having knowledge of the facts reasonably acceptable to the Owners, dated not more than ten (10) days prior to the date of the request for any such disbursement, stating the following in its professional judgment based on periodic observations of the Work:

(1) That the sum requested either (i) has been or will be paid by or on behalf of an Owner (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (ii) is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Work. Such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of such Persons in respect thereof and the amount of any retentions, and shall state the progress of the Work up to the date of such certificate and any other information required by the Mechanics' Lien Act and any title insurer affording coverage against mechanics' liens;

(2) That the sum requested, plus all sums previously disbursed, less retentions, 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 and secured on site;

(3) 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

(4) Other reasonable information as may be agreed to by the Owners.

(b) The Depositary shall, out of the monies so held by the Depositary, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other Persons named in the Architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in the certificate and statements due them, within five (5) business days after the last to occur of the following:

(1) compliance with the provisions of Section 1(a) of this Article XVII;

(2) 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 the title insurer affording coverage against mechanics' liens from the Persons named in the sworn statement; and

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

Section 2. **No Lien or Consent by Contractor.** No contractor, subcontractor, materialman, engineer, architect or any other Person whatsoever, other than the Owners and the Mortgagees, shall have any interest in or right to or lien upon any funds held by the Depository. The Owners, with the consent of the Mortgagees, may jointly at any time provide in writing for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other Person whatsoever. If at any time the Owners, with the consent of the Mortgagees, shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with such instructions, and the Depository shall have no liability to anyone by reason of having so disbursed the funds in accordance with such instructions.

ARTICLE XVIII ARCHITECT

Section 1. **Appointment of Architect.** When and if required by the provisions of this Declaration, the Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Building to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). The Architect shall, upon its appointment, execute an agreement with the Owners in the form required by the Owners, which agreement shall also incorporate those services necessary to implement the provisions of this Declaration and shall provide that the Owners may cause the then serving Architect to be replaced without cause upon thirty (30) days' prior written notice. The Owners jointly may replace the Architect for any reason. Any Owner also may cause the Architect to be replaced, and the other Owners shall be deemed to have consented to such replacement, if such Owner demonstrates to the other Owners that such then serving Architect has failed to perform its duties hereunder fairly, diligently or competently. If all Owners do not jointly desire to replace the Architect, then the Owner desiring replacement of the Architect shall serve notice upon the other Owners requesting the removal of the then serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform fairly, diligently or competently. If, in the opinion of the Owners receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 1, an Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owners and Mortgagees of its objection in writing within ten (10) business days after receipt of such notice from the requesting Owner. If, within ten (10) business days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall constitute an Arbitrable Dispute. The Architect sought to be replaced may give evidence or otherwise participate in the Arbitration proceeding, but the proceeding shall not serve any purpose other

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than the purpose of determining whether an Owner is entitled to have the Architect replaced. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the Owners.

Section 2. **Notice of Submission of Dispute to Architect.** In any instance when the Architect serving hereunder 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 or the Mortgagees, an opportunity to furnish information or data or to present such party's views. The Architect shall not be liable for any advice given by it hereunder, or for any other action taken by it hereunder, in good faith and in the absence of negligence or willful misconduct. Except as expressly provided herein, no advice given by the Architect under this Declaration shall be binding on the Owners, and an Owner may accept or reject such advice.

Section 3. **Replacement of Architect.** If any new Architect is appointed hereunder, and if the Architect being replaced is then engaged in the resolution of any dispute or matter theretofore submitted hereunder, or if the Architect being replaced is then engaged in the preparation of any plans and specifications or in the supervision of any work required hereunder or pursuant hereto, then, if the Owners so choose, the Architect being replaced shall continue to act as Architect with respect to, and only with respect to, such pending dispute or matter or the completion of such preparation of plans and specifications or supervision of any such work.

Section 4. **Architect's Fees.** The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and each Owner involved in the work shall pay its equitable share of such fees based on the benefit received by each Owner for such services. In this regard, in any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Building or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of such repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If not otherwise provided in this Declaration, the Owners shall agree on the equitable share owed by each Owner. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) business days after receipt of any invoice therefor from the Architect, then a Creditor Owner may pay the same and the Defaulting Owner shall, within ten (10) business days after written demand for reimbursement, reimburse the Creditor Owner for any such payment.

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ARTICLE XIX NOTICES AND APPROVALS

Section 1. **Notice to Parties.** Each notice, demand, request, consent, approval, disapproval, designation or other communication that an Owner is required, permitted or desires to give or make or communicate to the other Owners shall be in writing and shall be given or made or communicated by personal delivery (including messenger service), written telecommunication (such as telex or facsimile telecopy, with a copy of the notices sent by overnight courier), by national overnight courier service, or by certified United States mail, return receipt required, and to any Mortgagee that has complied with the notice provisions of Section 10(a) of Article XX.

Section 2. **Change of Address.** Any Owner may designate a different address from time to time; provided, however, it has given at least ten (10) business days' advance notice of such change of address. If any Owner shall cease to be the "Owner" of its respective portion of the Building, and the succeeding Owner of that portion of the Building shall fail to give a notice of change of address, then notices may be sent to any one of the following: (a) to the last Owner of record disclosed to the Owner giving notice, (b) to "Owner of Record" at the street address for that Owner's portion of the Building as designated by the U.S. Postal Service (or by the successor of the U.S. Postal Service), or (c) to the grantee at the address shown in the last recorded conveyance of the portion of the Building in question. Unless specifically stated to the contrary elsewhere in this Declaration, any notice shall be deemed to have been given, made or communicated, as the case may be, (i) upon delivery in the case of personal delivery or immediate written telecommunication (such as facsimile or telex) so long as a copy is sent by recognized national courier service guaranteed for delivery on the next business day, (ii) on the business day guaranteed for delivery by a recognized national courier service, with the cost billed or paid by sender, or (iii) on the date three (3) business days after the same was deposited in the United States mail, properly addressed, with postage thereon fully prepaid, when normal mail delivery is in effect.

ARTICLE XX GENERAL

Section 1. **Cooperation of Owners.** In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owner to promote the efficient operation of each respective portion of the Building and the harmonious relationship among the Owners and to protect the value of each Owner's respective portion, estate or interest in the Building. To that end, each Owner shall share information that it possesses relating to matters that are the subject of this Declaration, except such information as an Owner may reasonably deem confidential or that may be the subject of litigation or that such Owner is prohibited from revealing pursuant to court order. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) such other instruments, documents, materials and information as another Owner may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owner hereunder.

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Section 2. **Severability**. The illegality, invalidity or unenforceability under Law of any covenant, restriction or condition or any other provision of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the remaining provisions of this Declaration; provided, however, that such illegal, invalid or unenforceable provision shall be rewritten in a valid, legal or enforceable manner to achieve as closely as possible the original intent.

Section 3. **Headings**. The headings of Articles and Sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles or Sections.

Section 4. **Amendments to Declaration**. Except as otherwise provided in this Declaration, this Declaration may be amended or terminated only by an instrument signed by the then Owners, and consented to by the Mortgagees, if any. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

Section 5. **Perpetuities and Other Invalidity**. The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for the term of this Declaration, which shall be perpetual to coincide with the perpetual Easements provided for under this Declaration (or if Law (including any rule against perpetuities or other statutory or common law rule) prescribes a shorter period, then upon expiration of such period). If Law prescribes such shorter period, then upon expiration of such shorter period, such covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by Law, for successive periods of twenty (20) years each, subject to amendment or termination, to the extent allowed by applicable Law.

Section 6. **Abandonment of Easements**. Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building subject to an Easement, unless the Owner benefited by such Easement states in writing its intention to abandon the Easement, provided, the consent of the Mortgagees shall also be required with respect to any such abandonment.

Section 7. **Applicable Laws**. The parties hereto acknowledge that this Declaration and all other instruments in connection herewith have been negotiated, executed and delivered in the State of Illinois. This Declaration and such other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Illinois, including without limitation, matters affecting title to all real property described herein, without regard to conflicts of laws principles. Venue of any action to enforce or interpret this Declaration shall be in the Circuit Court of Cook County, Illinois.

Section 8. **No Third-Party Beneficiary**. Except with respect to rights expressly granted to Mortgagees hereunder, this Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any Person as a third party beneficiary under any Laws or otherwise.

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Section 9. **Incorporation.** Each provision of the Recitals to this Declaration and each Exhibit attached hereto is hereby incorporated in this Declaration and is an integral part hereof.

Section 10. **Notice to Mortgagees; Rights of Mortgagee.**

(a) If a Mortgagee shall have served on the Owners, in a manner consistent with the notice provisions of this Declaration, a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each and every notice required to be given by one party to the others at the same time as and whenever such notice shall thereafter be given by one party to the others, at the address last furnished by such Mortgagee. After receipt of such notice from a Mortgagee, no notice thereafter given by either party shall be deemed to be binding on a Mortgagee unless and until a copy thereof shall have been so given to the Mortgagee.

(b) A Mortgagee shall have the right to cure or correct a breach of this Declaration by the Owner whose property is secured by the Mortgagee's Mortgage within any applicable cure period provided for such breach by such mortgagor Owner plus an additional period of twenty (20) days after notice to the Mortgagee of expiration of the cure period allowed the mortgagor Owner before the other Owner may exercise any right or remedy to which it may be entitled as a Creditor Owner, except exercise of a self-help right in an Emergency Situation.

(c) Should any prospective Mortgagee require a modification of this Declaration, which modification will not cause an increased cost or expense to the Owner whose property is not subject to the Mortgage of such Mortgagee or in any other way increase the obligations, or diminish the rights of such Owner, then and in such event, such Owner agrees that this Declaration may be so modified and agrees to execute whatever reasonable documents are reasonably required therefor and deliver the same to the other Owner within ten (10) business days following written requests therefor by the other Owner or prospective Mortgagee.

Section 11. **Coordination with Tenants.** Unless an Owner otherwise agrees in writing in each case, and except in an Emergency Situation, each Owner shall coordinate all requests and contacts between tenants of its portion of the Building and the other Owner relating to the enjoyment of any Easements or the exercise of any rights or benefits granted under this Declaration or with respect to any other matters arising under or pursuant to this Declaration; provided, however, any such coordination shall not render such Owner liable either to such tenants or the other Owner for acts of such tenants or other Owner.

Section 12. **Waiver of Mechanics' Liens by Owners.** Other than with respect to work performed or caused to be performed by an Owner pursuant to Article IV or Article V hereof, the Owners do hereby fully and completely waive and release, for themselves, their successors and assigns, any and all claim of, or right to, liens, which such Owners may have under the Mechanics' Lien Act against, or with respect to the Property or improvements owned by any other Owner or any part thereof, or with respect to the estate or interest of any Person whatsoever in the Property or improvements owned by any other Owner, or any part thereof, or with respect to any material, fixtures, apparatus, or machinery furnished or to be furnished thereto pursuant to this Declaration, by the Owners, their successors, assigns, materialmen, contractors, subcontractors, or sub-subcontractors, of any labor, services, material, fixtures,

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apparatus, machinery, improvements, repairs or alterations in connection with the Property or the improvements thereon. The parties agree that, to the extent permitted by law, the legal effect of this provision is that no mechanics' lien or claim may be filed or maintained by any Owner under the Mechanics' Lien Act with respect to that portion of the Property or improvements owned by any other Owner, except as set forth above. The provisions of this *Section 12* are not intended to waive any lien created under Article XI hereof.

Section 13. **Binding Effect.** The Easements, covenants and restrictions created under this Declaration shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land.

Section 14. **Special Amendment by Declarant.** Intentionally deleted.

Section 15. **Monetary Adjustment (Equivalent Dollars).** For purposes of this Declaration, whenever a dollar amount is specified herein, or there is a reference to "**2004 Equivalent Dollars**," the amount shall be converted to equal the equivalent purchasing power at any time of the value of the same number of U.S. Dollars in calendar year 2004. The 2004 Equivalent Dollars of any amount shall be determined by multiplying the amount by a fraction (but not less than zero) (expressed as a percentage), the numerator of which is the monthly Consumer Price Index last published prior to the date of such determination, and the denominator of which is the Consumer Price Index for January 2004. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, City of Chicago, All Items (Base Year 1982-84=100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

Section 16. **Waiver By Jury Trial.** THE OWNERS HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS DECLARATION, THE PROPERTY, OR ANY ACTS OR OMISSIONS OF AN OWNER IN CONNECTION THEREWITH.

Section 17. **Village Declaration.** Except as provided to the contrary elsewhere in this Declaration, in the event of any conflict between this Declaration and the Village Declaration with regard to the rights and obligations of the Owners to each other, this Declaration shall control.

ARTICLE XXI LIMITATION OF LIABILITY

Section 1. **Limitation of Liability.** The liability under this Declaration of an Owner shall be limited to and enforceable solely against the assets of such Owner constituting an interest in the Property or Owned Facilities (including insurance proceeds and any Award attributable to the Property and Owned Facilities and including, where the Owner is a trustee of a land trust, the subject matter of the trust, and any security, such as a letter of credit or bond

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provided pursuant to this Declaration), and no other assets of such Owner, except as hereinafter provided in this Section 1. Assets of an Owner that is a partnership do not include the assets of the partners of such partnership Owner, and the negative capital account of a partner in a partnership that is an Owner and an obligation of a partner to contribute capital to the partnership that is an Owner shall not be deemed to be assets of the partnership that is an Owner. At any time during which an Owner is trustee of a land trust, all of the covenants and conditions to be performed by it hereunder are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under the trust agreement by reason of any of the covenants or conditions contained herein.

Section 2. Transfer of Ownership.

(a) Definitions. As used in this Declaration, the following terms shall have the following respective meanings:

(1) “Transfer” means a conveyance by way of sale, assignment, lease, grant or transfer of the Property (or portion thereof), but not a mortgage or deed of trust.

(2) “Transferor” means the Owner who is a seller, assignor, grantor, lessor or transferor in a particular Transfer.

(3) “Transferee” means the purchaser, assignee, grantee, lessee or transferee in a particular Transfer.

(b) All Transfers. All Transfers by a Transferor shall comply with the following:

(1) Transfer of Entire Interest. In the event of the Transfer of the whole of the interest of any of the Owners in and to the Property in which such Owner presently has an interest, without retaining any beneficial interest other than under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate or other possessory interest, then the powers conferred upon such Owner shall be deemed Transferred and the obligations hereunder assumed by such Transferee.

(2) Retention of Interest. In the event the whole of the interest of such Owner in and to the Property in which it has a present interest be Transferred but a new interest is created in such Owner simultaneously with such transfer by way of leasehold or similar possessory arrangement, or in the event such Owner shall Transfer its interest in its Property or any part thereof by deed of trust or other security instrument as security for indebtedness, then none of the powers or obligations conferred upon such Owner shall be deemed Transferred with the interest assigned, transferred or conveyed by such Owner, but all of the powers and obligations herein referred to shall remain in such Owner so long as it retains any possessory interest in and to the Property other than as a beneficiary under the terms of a deed of trust or mortgage.

(3) Multiple Ownership. In the event any of the Owners shall Transfer its present interest in its Property or a portion of such interest in such manner as to vest its present interest in its Property in more than one Person, then the Persons owning not less

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than fifty-one percent (51%) cumulative interest in the Property (as determined by land square footage) shall designate one of the Persons owning the Property to act on behalf of all of such Persons in the exercise of the powers granted to such Owner under this Declaration. So long as such designation remains in effect, such designee shall be an Owner hereunder and shall have the power to bind such Property and such Transferees. Any such designation must be in writing and served upon the other Owners hereto by registered or certified mail, and must be recorded with the Recorder. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the exercise of the powers vested by this instrument shall be binding upon all Persons having an interest in such Property until such time as written notice of such designation is given and recorded with the Recorder.

(4) Release. Whenever the rights, powers and obligations conferred upon any of the Owners are transferred as permitted herein, the Transferor shall be released or discharged from the obligations thereafter accruing under the terms of this Declaration, and the Transferee(s) as such interest shall be bound by the covenants and restrictions herein contained. Notwithstanding the foregoing, no such Owner shall be so released until notice of such Transfer has been given in the manner set forth below, at which time the Transferor's personal liability for unaccrued obligations shall terminate. A Transferor shall give notice to Declarant and each other Owner of such Transfer and shall include therein at least the following information: (i) the name and address of the new Owner, and (ii) a copy of the legal description of the portion of the Property so Transferred. Until notice of such Transfer is given, the Transferor shall (for purposes of this Declaration only) be the Transferee's agent.

(c) Remedy for Breach. Any Transfer made in violation of this Declaration shall be void and may be set aside upon the petition of a non-Transferring Owner.

ARTICLE XXII ARBITRATION

Section 1. Arbitration. All questions, differences, disputes, claims or controversies arising among or between Owners under this Declaration which, with respect to any of such matters, if not resolved within thirty (30) days after written notice from an Owner, claiming that a matter is in dispute, setting forth a brief description of the matter and the position of the parties, and specifying the intent of such Owner to seek Arbitration if not resolved (or such other shorter or longer time period expressly provided herein), shall be submitted for Arbitration. There shall be one (1) arbitrator selected who is located at the Chicago, Illinois office of the American Arbitration Association for Arbitration in accordance with its then existing Commercial Arbitration Rules. Each Owner who is a party to the Arbitration shall cause the Arbitrator to be selected within ten (10) business days after the date of submission of the matter to Arbitration, and proceedings shall commence within five (5) business days after selection of the Arbitrator, notwithstanding that a longer period may be allowed under the Commercial Arbitration Rules. In the case of disputes where the joint selection or appointment of a Person to perform professional or other services, the decision of the Arbitrator shall be limited to the Persons proposed by the Owners in their attempt to agree or from those included in an approved list

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submitted by the Owners. In the case of any other matter (other than a monetary claim) which the parties fail to agree upon which this Declaration expressly requires the Owners to jointly decide or agree upon, the decision of the Arbitrator shall be limited to the terms (or a compromise of such terms) or within the scope of the terms proposed by each of the Owners in the negotiations of the issue and the provisions of this Declaration, if any, which require the Arbitrator to make a particular finding. In the case of an Arbitrable Dispute involving a monetary claim, the Arbitrator must select the position/amount requested by one of the parties, as opposed to a compromise between the positions (so-called "baseball" arbitration). Any award issued by the Arbitrator shall take into account and be consistent with any standards, terms or conditions contained in this Declaration expressly governing the subject of the dispute, except in those instances where the Arbitrator is required to select a Person from those selected by the Owners and none meets such standards, terms or conditions. Arbitration may be initiated by any Owner. The Owner initiating Arbitration shall notify the Mortgagees of the filing of a claim and demand in Arbitration within five (5) days thereafter. Owners may not seek injunctive relief in the Arbitration. The fees and costs of Arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne equally by the Owners involved in the Arbitration; provided that the Arbitrator may include in its award any of the fees and costs of Arbitration. Any award of the Arbitrator shall be final and binding upon the Owners and judgment thereon shall be entered by any court of competent jurisdiction. Any award including payment of delinquent amounts shall include interest on such delinquent amounts at the Default Rate.

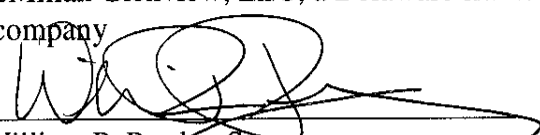
Section 2. **Non-Arbitrable Disputes**. Notwithstanding the foregoing provisions of this Article XXII, the following matters shall not be Arbitrable Disputes:

- (a) disputes constituting a monetary claim involving an amount as to any one claim in excess of \$200,000.00;
- (b) disputes arising under Article VI, Section 2;
- (c) the enforcement or foreclosure of a contractual lien under Article XI, Section 2;
- (d) disputes involving both matters that are Arbitrable Disputes and matters that are not Arbitrable Disputes that are not divisible;
- (e) the enforcement of an Arbitration award; and
- (f) insurance or indemnity claims.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

OliverMcMillan Glenview, LLC, a Delaware limited liability company

By:


William P. Persky, Secretary

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STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On November 23, 2004, before me, MARCELLE SAMAROSKY
personally appeared William P. Persky personally known to me (~~or proved to me on the basis of~~
~~satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within
instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~
authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s) or
the entity upon behalf of which the person(s) acted, executed the instrument.

Marcelle Samarosky
Notary Public

This instrument prepared by
and after recording return to:

Shannon Walsh
McDermott, Will & Emery
227 West Monroe Street
Suite 4700
Chicago, Illinois 60606-5096
(312) 372-2000



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STREET ADDRESS:

CITY:

COUNTY: COOK

TAX NUMBER:

LEGAL DESCRIPTION:

LOTS 17, 18 and 19 IN GLEN TOWN CENTER, A RESUBDIVISION OF LOT 3 IN GNAS MIXED USE RETAIL CENTER, IN THE WEST 1/2 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 0020733381, IN COOK COUNTY, ILLINOIS.

PIN- 04-27-103-028-0000
04-27-103-029-0000
04-27-103-030-0000

Property location:
Bldg E
Tower Drive South
of Willow Road
Glenview, IL

Property of Cook County Clerk's Office