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3101-09 N. LINCOLN and 3110 N. GREENVIEW

## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

DATED AS OF JULY, 2005

GREENVIEW POINT, LLC

Property of Cook County Clerk's Office

This instrument was prepared by and mail to:

STEPHEN D. RICHEK  
20 North Clark Street  
Suite 2450  
Chicago, Illinois 60602

14-29-100-016

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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION is made and entered into as of this \_\_\_ day of July, 2005, by Greenview Point, LLC.

### RECITALS:

- A. The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meaning set forth in Article 1 hereof.
- B. Declarant is the owner of the Total Parcel situated in Chicago, Cook County, Illinois and legally described in Exhibit "A".
- C. The Total Parcel is presently improved with six (6) story building with a commercial space on the first floor.
- D. Subsequent to the submission of the Residential Property to the provisions of the Condominium Property Act of the State of Illinois, neither the Residential or Commercial Property will be functionally independent of the others and each will depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to the efficient operation and intended use of the Residential Property and Commercial Property.
- E. The Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective portions, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total Property, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Residential Property which will be binding upon each present and future Owner of the Residential Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each the present and future Owners of the Commercial Property or of any portion thereof or interest or estate therein, to the extent provided herein, (ii) certain easements, covenants and restrictions against and affecting the Commercial Property, which will be binding upon each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each the present and future Owners of the Residential Property of any portion thereof or interest or estate therein, including any Unit in the Residential Property.

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

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or to any portion of, or interest or estate in, the Total Property and each of the foregoing shall run with the land subject to this Declaration

## ARTICLE 1

### INCORPORATION OF RECITALS

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

## ARTICLE 2

### DEFINITIONS

- 2.1 "Act" means the Condominium Property Act of the State of Illinois in effect on the date hereof, as amended from time to time.
- 2.2 "Architect" shall have the meaning set forth in Article 16 hereof.
- 2.3 "Building" means all improvements located in, on, under or about the Total Parcel.
- 2.4 "Commercial Improvements" means all improvements constructed within and upon the Commercial Parcel. In the event of any reconstruction of the Commercial Improvements pursuant to Article 10 or Article 13, the Commercial Improvements shall include any such improvements reconstructed on the Commercial Parcel.
- 2.5 "Commercial Parcel" means that portion of the Total Parcel legally described on Exhibit "B" attached hereto.
- 2.6 "Commercial Property" means the Commercial Parcel improved with the Commercial Improvement.
- 2.7 "Commercial Property Common Facilities" means all Facilities, equipment and areas within the Commercial Property intended generally for the common use of the tenants or occupants of the Commercial Property.
- 2.8 "Common Elements" means all portions of the Total Property submitted from time to time to the Act pursuant to the Condominium Declaration except the Units.
- 2.9 "Common Walls, Floors and Ceilings" means all common structural and partition walls, floors and ceilings situated on or adjoining Property, or located on one Property but forming the walls, floors or ceilings of the adjoining Property.
- 2.10 "Condominium Association" means an Illinois not-for-profit corporation to be formed for the purpose of administering the Condominium Property pursuant to Act.

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- 2.11 "Condominium Declaration" means any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits any portion of the Total Property to the provisions of the Act.
- 2.12 "Condominium Improvements" means the Residential Improvements after submission to the Act.
- 2.13 "Condominium Property" means any portion of the Total Property, from and after its submission to the Act and so long as it has not been withdrawn from the Act.
- 2.14 "Creditor Owner", except where otherwise defined hereunder in a specific context, means an Owner to which a payment of money or other duty or obligation is owed under this Declaration by another Owner which has failed to make such payment or to perform such duty or obligation as and when required hereunder.
- 2.15 "Declarant" means Greenview Point, LLC.
- 2.16 "Declaration" means the 3101-09 N. Lincoln and 3110 N. Greenview Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, amendments and supplements thereto.
- 2.17 "Default Rate" means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Section 11.5 hereof.
- 2.18 "Defaulting Owner", except where otherwise defined hereunder in a specific context, means an Owner which has failed to make a payment of money owed under this Declaration to another Owner or to perform any of its duties or obligations as and when required hereunder.
- 2.19 "Depository" means the person or entity from time to time acting pursuant to Article 15 of this Declaration.
- 2.20 "Easements" means all easements granted, reserved, provided for, declared or created pursuant to or in accordance with the terms and provisions of this Declaration.
- 2.21 "Emergency Situation" means a situation impairing or imminently likely to impair structural support of the Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Total Property or any property in, on, under, within, upon or about the Total Property. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.
- 2.22 "Facilities" means all components of the chilled and heating hot water, condenser water, central air handling and fan, temperature control, domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, cable television system, master antenna,

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emergency power, telephone, elevator, loading dock, trash removal and other utility systems forming a part of the Building and designed or utilized to furnish utility and other services to any portion of the Building, including but not limited to: annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chutes, coils, compactors, compressor, computers, conduits, controls, control centers, cooling towers, couplers, dampers, devices, ducts, elevator cars, elevator rails, equipment, fans, fixtures, generators, grease traps, hangers, heat traces, heat exchangers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring and the like.

- 2.23 "Maintenance" means and includes operations, maintenance, repair, reconditioning, refurbishing, reconfiguring, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of Facilities or of such other portions of the improvements and includes the right of access to and the right to remove from the improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.
- 2.24 "Mortgage" means a first mortgagee or first trust deed in the nature of a mortgage on the Commercial Property, but shall not include a mortgage or trust deed on a Unit in the Commercial Property if the Commercial Property is submitted to the Act.
- 2.25 "Mortgagee" means the holder of a Mortgage.
- 2.26 "Non-Residential Property" means the Commercial Property.
- 2.27 "Owner" means either the Owner of the Residential Property or the Owner of the Commercial Property, as the context requires. "Owners" means the Owner of the Residential Property and the Owner of the Commercial Property, or any two of them as the context may require.
- 2.28 "Owner of the Commercial Property" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Commercial Property. If and so long as the Commercial Property, or any portion thereof, has been submitted to and remains subject to the provisions of the Act, the Owner of the Commercial Property shall mean collectively all of the Unit Owners in and to the Commercial Property and not individually.
- 2.29 "Owner of the Residential Property" means the person or entity (or persons or entities if more than one) at any time in question holding fee simple title to the Residential Property. If and so long as the Residential Property, or any portion thereof, has been submitted to and remain subject to the provisions of the Act, the Owner of the Residential Property shall mean collectively all of the Unit Owners in and to the Residential Property and not individually.
- 2.30 "Recorder" means the Recorder of Deeds of Cook County, Illinois.

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- 2.31 "Residential Improvements" means all improvements constructed upon and within the Residential Parcel until submitted by the Act. The Residential Improvements shall also mean any improvements on the Residential Parcel which may be reconstructed on the Residential Parcel pursuant to Article 10 or Article 13 of this Declaration.
- 2.32 "Residential Parcel" means that portion of the Total Parcel legally described on Exhibit "C" attached hereto.
- 2.33 "Residential Property" means the Residential Parcel and the Residential improvements.
- 2.34 "Total Parcel" means the parcel of real estate legally described on Exhibit "A" attached hereto.
- 2.35 "Total Property" means the Residential Property, the Condominium Property and the Commercial Property.
- 2.36 "Unavoidable Delay" means those events described in Article 11 hereof which excuse the timely performance of any obligation created hereunder.
- 2.37 "Unit" means any portion of the Total Property submitted to the Act described as a "Unit" in a Condominium Declaration.
- 2.38 "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit Ownership.
- 2.39 "Unit Ownership" means a part of any portion of the Total Property submitted to the Act consisting of one Unit and the undivided interest in the Common Elements attributed thereto.

## ARTICLE 3

### EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY

- 3.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Commercial Property, as the case may be, in favor of the Residential Property are hereby granted, reserved, declared and created (the term "Granted" or "granted" as hereinafter used in describing Easements shall be deemed to mean "granted, reserved, declared and created").
- (a) A non-exclusive Easement in and to all structural members, footings, cziissons, foundations, columns and beams and any other supporting components located in or constituting a part of the Commercial Property for the support of (i) the Residential Improvements and (ii) any Facilities located in the Commercial Property with respect to which the Owner of the Residential Property is granted as Easement under this Declaration.

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- (b) A non-exclusive Easement for the use for their intended purposes of all Facilities located in the Commercial Property and connected to Facilities located in the Residential Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Residential Property or the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Residential Property or Commercial Property.
- (c) A non-exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Building or the subsequent settlement or shifting of any part of the Building, any part of the Residential Improvements encroaches or shall hereafter encroach upon any part of the Commercial Property. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Residential Improvements continues to exist.
- (d) A non-exclusive Easement for pedestrian and vehicular ingress and egress in an Emergency Situation to and from, over, on, across and through the Commercial Property.
- (e) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Commercial Property to the extent reasonably necessary to permit the construction, Maintenance, repair, replacement, restoration or reconstruction of the Residential Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article 6 hereof or to assist in providing the services required under Article 5 hereof.
- (f) A non-exclusive Easement for pedestrian ingress and egress to, from and across, on and over all stairways located within the Commercial Property that provide access, ingress and egress to and from the Residential Property through the Commercial Property.
- (g) A non-exclusive Easement for ingress, egress and access to, and the use of, any service areas and delivery entrances located in, on or about the Commercial Property for shipping and delivery purposes.
- (h) A non-exclusive Easement for the Maintenance of an rubbish chutes serving the Residential Property to the extent such rubbish chutes pass through the Commercial Property.
- (i) Non-exclusive Easements for pedestrian ingress and egress over, across and upon the common hallways and other Common Areas of the Commercial Property to the extent reasonably necessary to provide access to the commercial facilities located within and upon the Commercial Property.
- (j) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Residential Property and (ii) for the use of such Common Walls, Floors and Ceilings.

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- 3.2 Each Easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the applicable Owner of the Commercial Property affected by such Easement may, from time to time after consultation with the Owner of the Residential Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Commercial Property in order to assure the reasonable security of the applicable portion of the Commercial Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement and provided further that Section 3.1(d) shall not be subject to any such limitation.
- 3.3 Easement provided for, declared or created under this Article 3 shall be binding upon the Commercial Property and each Owner of the Commercial Property and shall run in favor of and inure to the benefit of and be appurtenant to the Residential Property and each portion thereof.
- 3.4 In the event of the Submission of the Residential Property to the Act, then all of the Easements granted under Section 3.1 hereof shall inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.
- 3.5 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, Maintenance, operation, replacement and/or removal of such Easement in an manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, Maintenance, operation, replacement and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform, or cause to be performed, the necessary restoration or replacement and shall obtain a lien against that portion of the Total Property owned by the non-performing grantee or its agents.

## ARTICLE 4

### EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

- 4.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Residential Property in favor of the Commercial Property are hereby granted:
- (a) A non-exclusive Easement in and to all structural members, footings, cziissons, foundations, columns and beams and any other supporting components located in



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- or consisting a part of the Residential Property for the support of (i) the Commercial Improvements and (ii) any Facilities located in the Residential Property with respect to which the Owner of the Commercial Property is granted an Easement under this Declaration.
- (b) A non-exclusive Easement (i) for the use for their intended purposes of all Facilities located in the Residential Property and connected to Facilities located in the Commercial Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property.
  - (c) A non-exclusive Easement permitting encroachments in the event and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Declaration of the Building or the subsequent settlement or shifting of any part of the Building, any part of the Commercial Improvements encroaches or shall hereafter encroach upon any part of the Residential Property. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Commercial Improvements continues to exist.
  - (d) A non-exclusive Easement for pedestrian and vehicular ingress and egress in an Emergency Situation to and from, over, on, across and through the Residential Property.
  - (e) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Residential Property to the extent reasonably necessary to permit the construction, Maintenance, repair, replacement, restoration or reconstruction of the Commercial Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article 7 hereof or to assist in providing the services required under Article 6 hereof.
  - (f) A non-exclusive Easement for pedestrian ingress and egress over, upon and through any hallways, stairways, walkways or driveways located within or adjacent to the Building, to the extent reasonably necessary for access to and from public roadways.
  - (g) A non-exclusive Easement for ingress, egress and access to and the use of any loading docks, service areas and delivery entrances located in, on or about the Residential Property for shipping and delivery and similar purposes.
  - (h) A non-exclusive Easement for pedestrian and vehicular ingress and egress from and to public roadways over, on, across and through the driveways, sidewalks, ramps, curbs and roadways contained in and about the Residential Property.
  - (i) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Commercial Property and (ii) for the use of such Common Walls, Floors and Ceilings.

4.2 Each Easement created under this Article 4 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Property shall be subject

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(except in an Emergency Situation) to such reasonable limitations as the applicable Owner of the Residential Property affected by such Easement may, from time to time after consultation with the Owner of the Commercial Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Residential Property and in order to assure the reasonable security of the Residential Property, provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement and provided further that Section 4.1(d) shall not be subject to any such limitation.

- 4.3 Easements provided for, declared or created under this Article 4 shall be binding upon the Residential Property and the Owner of the Residential Property and shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property.
- 4.4 In the event of the submission of the Commercial Property to the Act, then all of the Easements granted under Section 3.1 hereof shall inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.
- 4.5 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, installation, Maintenance, operation, replacement and/or removal of such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, as its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as immediately prior to such construction, Maintenance, operation, replacement and/or removal. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, such Owner can perform, or cause to be performed, the necessary restoration or replacement and shall obtain a lien against that portion of the Total Property owned by the non-performing grantee or its agents.

## ARTICLE 5

### SERVICES TO OWNER OF CONDOMINIUM PROPERTY, RESIDENTIAL PROPERTY AND COMMERCIAL PROPERTY

- 5.1 The Owner of the Residential Property shall furnish the following services to the Owner of the Commercial Property, to the extent required:
- (a) Roof, Storm Drains, Parapets: Maintenance of all of the roofs of the Building, the storm drains and parapets in a manner consistent with the operation of a first-class, mixed-use, building.
  - (b) Façade Maintenance: Maintenance of the façade of the Building, in good repair.

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- (c) Security: Provide security at the entrance to the lobby of the Building and at the loading dock in a manner consistent with the standards of a first-class, mixed-use building.
- (d) City Water Supply System: Hot and cold city water required by the Owner of the Commercial Property from city mains through the water supply system located in the Building and Maintenance of all water lines entering the Building from city mains and water supply system.
- (e) Sanitary Waste System: Maintenance of all drain lines and risers serving the Building in a manner consistent with the operation of a first-class, mixed-use building.
- (f) Electrical Supply System: Electrical requirements (but not the cost of electricity itself) for use in the Commercial Property and Maintenance of the electrical equipment and distribution equipment.
- 5.2 Each Owner shall make a good-faith effort to operate its Facilities and cooperate to secure and furnish all services, (a) at the lowest possible costs reasonably available without degrading the quality of any services furnished and (b) in a manner so as to provide the Owner of the Residential Property and Owner of the Commercial Property with comfortable occupancy and enjoyment of the Residential Property and Commercial Property for their respective intended uses.
- 5.3 Statements for services rendered pursuant to Article 5 hereof, provisions for payment thereof and provisions for additional payments incurred in connection with such services shall be made in accordance with the terms and provisions of Exhibit 5.3 attached hereto and made a part hereof.
- 5.4 If any Owner shall fail to perform as required by the terms and conditions of Sections 5.1, 5.2, 5.3, or 5.4 of this Declaration (except when such failure is caused by another Owner or Unavoidable Delay) and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner, such other Owner or Owners to whom such services are to be provided shall have the right to take possession and control of and to operate, maintain, repair and replace the Facilities (wherever located) required for the furnishing of such service until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure. For any period in which a Creditor Owner is performing pursuant to Section 5.5, the Defaulting Owner shall pay the Creditor Owner its actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance.
- 5.5 If, at any time, a Defaulting Owner shall fail to pay to any Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of Section 5.5 hereof for ten (10) days after written notice from the Creditor Owner demanding payment of said sum of money, then the Creditor Owner may discontinue furnishing of the services for which payment has not been received until said sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes the Defaulting Owner obligation to pay said sum of money and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefore, the Defaulting

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Owner shall not be deprived of any such services unless and until it shall finally be determined by unreviewable court proceedings, arbitration or otherwise that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid.

- 5.6 The parties shall jointly supply scavenger service for removal of garbage to the extent the City of Chicago does not do this.

## ARTICLE 6

### STRUCTURAL SUPPORT

- 6.1 No Owner shall do or permit any act which would adversely affect the structural safety or integrity of the Improvements on any other portions of the Total Parcel.
- 6.2 Except in the case in which Article 10 is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the improvements is endangered, then the following provisions shall apply:
- (a) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, which determination shall be made by the Architect, then the Owner or Owners benefited by the structural support shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 19 would not require such approval) the Owners of the portion of the Total Property affected thereby, the Architect and Mortgagees with respect to any portions of the Total Property affected by a Mortgage and, subject to the provisions of Article 11 hereof, shall pay all costs and expenses including any architect's and other fees, in connection with construction of substitute or additional support.
  - (b) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except as otherwise provided in Article 19 hereof) the Owners of the portions of the Total Property affected thereby, the Architect and the Mortgagees with respect to the portion of the Total Property affected by a Mortgage and, subject to the provisions of Article 11 hereof, shall pay all costs and expenses, including any architects, or other fees, in connection with the construction of substitute or additional support.
- 6.3 The responsible Owner or Owners shall commence, within a reasonable time under the circumstances, the construction of such substitute or additional support free of all mechanics lien claims, and having commenced such construction shall proceed diligently to cause the completion of such construction.

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- 6.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners in accordance with Section 6.2 shall be determined as responsible for such construction, any Owner shall, upon not less than thirty (30) days, advance written notice to the other Owners (except that such advance written notice shall not be required in an Emergency Situation) provided substitute or additional structural support as and wherever may be required, or any Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of any Owner's provisions of any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for not have any liability in connection with the loss of use of the other portion of the Total Property during any period of reconstruction.

## ARTICLE 7

### COMPLIANCE WITH LAWS: REMOVAL OF LIENS, ZONING

- 7.1 The Owner of the Residential Property and the Owner of the Commercial Property:
- (a) shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Total Property or any portion thereof, if non compliance by it with respect to its portion of the Total Property or any part thereof would subject any other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any other Owner or for the Improvements themselves or would jeopardize any other Owner's right to occupy or utilize beneficially its portion of the Total Property or any part thereof, or would result in the imposition of a lien against and of the property of any other Owner or would increase costs of insurance of any other Owner or would impose any threat or danger to any person or property; and
  - (b) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Total Property or any portion thereof or the requirements of any insurance policy affecting insurance coverage on any other Owner's portion of the Total Property if noncompliance by it with respect to its portions of the Total Property or any portion thereof would (i) increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by all Owners, or (ii) render any other Owner's portion of the Total Property uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring any other Owner's portion of the Total Property; provided further, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of on activities in any other Owner's

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portion of the Total Property, such other Owner shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and if upon expiration of ten (10) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur, together with interest at the Default Rate (as hereinafter defined) from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner.

- 7.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics, materialmen or any other lien on any other Owner's portion of the Total Property, or on its portion of the Total Property if the existence or foreclosure of such lien on its portion of the Total Property would adversely affect any Easement hereunder or services to be furnished pursuant to Article 6 hereof, arising by reason of its act or any work or materials which it has ordered. Notice of the filing of any such lien shall be served upon the Mortgagees of the Mortgages. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Mortgagees under the Mortgages; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed; and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner, and to the Mortgagees if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the Creditor Owner or, if loan documents so provide, to the Mortgagees, either: (i) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner and the Mortgagees, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security reasonably acceptable to the Creditor Owner and the Mortgagees of the Mortgages, if

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applicable. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the Mortgages, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within ten (10) days after the occurrence of either of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

- 7.3 Each Owner (hereafter in this Section 7.3, the "Indemnifying Owner") covenants and agrees, at its sole costs and expense, to indemnify and hold harmless the other Owners (hereinafter in this Section 7.3, the "Indemnitee") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement and from and against all costs, attorneys fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.
- 7.4 Without limiting the provisions of Section 7.1(a), neither the Owner of the Residential Property nor the Owner of the Commercial Property make any Alterations (as that term is herein below defined in Section 19.1) or allow any use of their respective portions of the Total Property or take or fail to take any action which would violate the provisions of (a) the Chicago Zoning Ordinance as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Total Property or any portions thereof. The Commercial Property and Residential Property shall continue to be combined and treated as one zoning lot for the purposes of complying with the Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning Ordinance as applicable to any portions of the Total Property without the consent of the other Owners, which consent shall not be unreasonably withheld, except that no Owner shall be required to consent to any change in the Chicago Zoning Ordinance as applicable to any portions of the Total Property which (i) increases density, (ii) increases maximum height in any portion of the Total Property, or (iii) changes the character or permitted use of any portion of the Total Property.

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## ARTICLE 8

### REAL ESTATE TAXES

8.1 The Owners shall make good faith efforts and cooperate with each other so that the Property and Non-Residential Property shall, when and as soon as possible, be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor ("Assessor") of Cook County, Illinois. From and after submission of the Residential Property to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each Unit of the Condominium Property. The Owner of the Non-Residential Property shall pay the real estate taxes levied upon the Non-Residential Property, and the Owner of the Residential Property shall pay the real estate taxes levied upon the Residential Property. The Owners of the Non-Residential Property shall also have the right to divide the Non-Residential Property into two (2) separate tax parcels attributed to the Commercial Property.

8.2 At such time as the Non-Residential Property and Residential Property are separately assessed and taxed, each Owner shall pay its respective portion of the such real estate taxes and special assessments. Until separately assessed and taxes, the assessed valuation respecting the "land" and "improvements" (as hereinafter defined) and the taxes computed thereon shall be allocated between the Owners and paid by the respective Owners as set forth in this Section 8.2. Allocations of assessments set forth herein are based upon information contained in the official real estate tax record cards ("cards") of the Assessor, which cards show assessed valuations of land and improvements. Since the terminology used in the Assessor's cards may vary from the terms used in this Declaration, for purposes of this Section 8.2 the following definitions shall apply: "land" shall mean Total Parcel; "improvements" shall mean improvements; "residential improvements" shall mean Residential Improvements; "non residential improvements" shall mean Non-Residential Improvements.

(a) Allocation of Assessed Valuation of Land. The assessed valuation of the land shall be allocated as follows:

(g) Allocation of assessed valuation of land to Residential Property equals:

$$\frac{\text{Value of residential improvements}}{\text{Value of improvements}} \times \text{Assessed valuation of land}$$

(ii) Allocation of assessed valuation of land to Non-Residential Property equals:

Assessed valuation of land minus assessed valuation of land allocated to Residential Property (under Section 8.2(a)(i)).



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(b) Allocation of Assessed Valuation of Improvements. The assessed valuation of the improvements shall be allocated as follows:

(i) Allocation of assessed valuation of improvements to Residential Property equals:

$$\frac{\text{Value of residential improvements}}{\text{Value of improvements}} \quad \times \quad \text{Assessed valuation of improvements}$$

(ii) Allocation of assessed valuation of improvements to Non-Residential Property equals:

Assessed valuation of improvements minus assessed valuation of improvements allocated to Residential Property (under Section 8.2(a)(i)).

(c) Allocation of Payments of Taxes. The Owner of the Non-Residential Property shall pay the combined tax bill or bills for the Total Property prior to their due date. The Owner of the Residential Property shall be responsible for and shall pay or reimburse the Owner of the Non-Residential Property (within ten (10) days after the demand of the Owner of the Residential Property therefore) for its share of the total real estate taxes levied in the combined tax bill or bills for the Total Property, which share shall be calculated as follows:

Residential Property share equals:

$$\frac{\text{Total assessed valuations allocated to Residential Property, under Section 8.2(a) and 8.2(b) hereof}}{\text{Assessed valuation of land and improvements}} \quad \times \quad \text{Total real estate taxes}$$

The value of the residential improvements and all other improvements shall be determined by the Declarant.

8.3 If any Owner (the "Defaulting Owner") shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to this Article 8, then any other Owner (the "Creditor Owner") may, after at least ten (10) days, written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, and shall also have a lien against the portion of the Total Property owned by the Defaulting Owner in accordance with Article 11 hereof.

8.4 Any Owner may, if it shall so desire, endeavor at any time or times, to obtain a lowering of the assessed valuation upon the Property for the purpose of reducing taxes thereon

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

## ARTICLE 9

### INSURANCE

- 9.1 The Owner of the Residential Property and the Owner of the Commercial Property shall procure and maintain the following insurance:
- (a) The Owner of the Commercial Property shall keep its respective portion of the Improvements (including without limitation the foundation) insured for no less than "all risk" or "special form" coverage on real property and broad form on personal property for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. The Owner of any portion of the Total Property that constitutes the Condominium Property, including the Owner of the Commercial Property, if Commercial Property is submitted to the Act, shall keep its portion of the Improvements insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on personal property for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policies shall be endorsed with a replacement coverage endorsement and an agreed clause and no co-insurance penalty shall be applicable.
  - (b) The Owner of the Commercial Property and the Owner of the Residential Property shall maintain Commercial General Liability Insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective portions of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class, residential buildings in the City of Chicago, but in all events for limits of not less than \$1,000,000 combined single limit per occurrence with a general policy aggregate of \$2,000,000 for personal and bodily injury or property damage with at least additional \$3,000,000 umbrella coverage.

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- 9.2 Unless all Owners otherwise agree in writing, but in any event subject to the approval of the Mortgagees, with respect to each of the insurance policies required in Sections 9.1(a), (b) and (c) the interest of all of the Owners shall be insured by the same insurance companies provided such policies are available on a commercially reasonable basis. 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 or a third party acceptable to all of the Owners apportion of such premiums. Such policies (except policies required under Section 9.1(c) may also be issued separately by the same insurance company with respect to each Owner's interest in the Total Property. In the event the Owner of the Residential Property and the Owner of the Commercial Property cannot agree upon the insurance companies to provide the insurance required under Section 9.1(a), (b) and (c) hereof or any Owner disagrees with the apportionment of the insurance premium, the question of selection of an insurance company or apportionment of premium shall be submitted to arbitration as provided in Article 12 hereof. Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/VII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. So long as any portion of the Total Property remains subject to the provisions of the Act, insurance on additions, alterations, improvements and betterments to individual Units shall be the responsibility of those persons designated in the applicable Condominium Declaration as being responsible for such insurance, and any Unit Owner's policies shall be subject to and consistent with the provisions of this Article 9. The Owner of the Commercial Property, as applicable, may procure and maintain the insurance specified in Section 9.1(b) covering their separate interest, apart from the Owner of the Residential Property; provided, that the insurance company is authorized and licensed to transact business in the State of Illinois and holds a current Policyholder's Alphabetical and Financial Size Category Rating of not less than A/VII according to Best's Insurance Reports or a substantially equivalent rating from a nationally recognized insurance rating service. Such policy or policies may be issued in combination covering one or all items and covering jointly the interest of each Owner, and shall name the other Owners as additional insureds. Each of the Owners hereby agree to cooperate to procure and maintain insurance policies which jointly cover the interests of all of the Owners.
- 9.3 Each policy described in Section 9.1 and Section 9.2 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall provide, except for liability insurance described in Section 9.1(b), by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iii)

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shall provide for a minimum of thirty (30) days advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days, advance written notice shall be sufficient and (iv) shall, if available, provide, except for the liability insurance required under Section 9.1(b), that all amounts payable thereunder shall be paid to the Depository in accordance with Articles 15 and 19 hereof. Nothing contained in this Section 9.3 shall prevent the naming of any persons (in addition to those mentioned in clause (ii) hereinabove), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of mortgage clause; provided, however, that a Mortgagee under any Mortgage receiving any proceeds of any insurance policy described in Section 9.1(a) shall deposit the insurance proceeds with the Depository in accordance with Articles 15 and 16 to the extent that the Owner of the portion of the Total Property subject to such Mortgage receiving such proceeds would be required to do so, except that such obligation for such deposit by a Mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then uncured default under the applicable Mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depository a sufficient amount, which when added to the proceeds to be deposited by the Mortgagee, will be at least equal to the cost, as estimated by the Mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds.

- 9.4 Limits of liability or types of insurance specified in this Article 9 or carries by the Owner shall be reasonable and prudent for an Owner of a first-class residential and/or commercial facility, as applicable, and shall be jointly reviewed by the Owners at least annually to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted.

Deductible amounts for insurance required under Sections 9.1(a) and (b) shall be in such amounts as are customary or prevalent for an Owner of a first-class residential and/or commercial facility, as applicable. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance consultant to perform such review periodically on their behalf and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

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- 9.5 Certificates delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owners (or, if appropriate, to the Condominium Association) and to the Mortgagees, at least thirty (30) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Copies of such policies shall be delivered upon request. Should an Owner fail to provide and maintain any policy of insurance required under this Article 9 or pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner may purchase such policy and the costs thereof (or Defaulting Owner's share of such costs) shall be due from the Defaulting Owner upon the Creditor Owner's written demand therefore plus interest at the Default Rate from the date of payment of the Creditor Owner to the date of reimbursement to the Creditor Owner. Additionally, the Creditor Owner shall obtain a lien against the property of the Defaulting Owner, pursuant to Section 11.1 herein below.
- 9.6 Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Declaration, each Owner hereby waives all claims for recovery from the other Owners for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery actually collected under such insurance policies, plus deductible amounts.
- 9.7 In the event the Owner of a portion of the Total Property is subject to any loads, including, without limitation, any restaurant load, general liability load or umbrella liability load as a result of any use or operation of any other portion of the Total Property, in connection with any insurance policy maintained pursuant to this Article 9, then the Owner whose use or operation results in such loads shall be liable for the reimbursement to the Owner or Owners subject to such loads for such increased amounts.

## ARTICLE 10

### MAINTENANCE AND REPAIR: DAMAGE TO THE IMPROVEMENTS

- 10.1 The Owner of the Residential Property, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owner of the Commercial Property pursuant to this Declaration, shall keep (a) the Residential Property and all Facilities located therein or for which the Owner of the Residential Property is assigned Maintenance responsibility in this Declaration and (b) the pavement, fountains, landscaping, stairways, railings, sidewalks, surface course of driveways, curbs, gutters and drains forming part or located on or about the street level and the City of Chicago right of way adjacent to the street level in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof or involve ordinary or extraordinary repairs or

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- replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Residential Property further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property. Except as otherwise expressly provided in Exhibits 6.1(a) through 6.1(o) hereto, any such costs incurred in accordance with this Section 10.1 shall be paid for by the Owner of the Residential Property.
- 10.2 Except as expressly provided in this Section 10.2 the Owner of the Commercial Property shall at its sole costs and expense, make all repairs and replacements of, in, on, within, upon or about the Commercial Property whether said repairs or replacements are to the interior and exterior thereof, or structural and nonstructural components thereof, or involves ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent waste to such property.
- 10.3 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Residential Improvements only, or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements, then, except for damage to any portions of the Commercial Property that form part of the exterior façade of the Building, which shall be repaired and restored by the Owner of the Residential Property, any such damage shall be repaired and restored by the Owner of the portion of the Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article 16 hereof, be entitled to withdraw any insurance proceeds held by the Depository by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished any other Owner under Article 5 hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 16 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 expense incurred by the Creditor Owner in excess

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of said insurance proceeds, plus interest at the Default Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner.

- 10.4 If the Improvements are damaged by fire or other casualty and if the provisions of Section 10.3 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clauses (a), (b) or (c) of Section 10.3, then the repair and restoration of such damage shall be the responsibility of the Owner or Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners who are responsible for such repairs and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Mortgagees, if required. In the event such Owners, and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration. The plans and specifications for such repair and reconstruction shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Mortgagees, if required.
- 10.5 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in Section 10.4 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owner's Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.
- 10.6 In any instance of repair or restoration pursuant to Sections 10.3 or 10.4 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable, independent, professional, construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall therefore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing such repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article 10. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or a loan commitment, reasonably satisfactory to the other Owners and

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- the Mortgagees, if required, issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 10.6, or fails to deliver the security provided for within thirty (30) days after receipt of another Owner's written demand therefore, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment, plus interest at the Default Rate from the date of payment, by the Creditor Owner to the date of reimbursement to the Creditor Owner.
- 10.7 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Total Property, shall be refunded to the respective Owner or, if applicable, to the Mortgagee holding a Mortgage encumbering the Owner's respective portion of the Total Property in accordance with the terms of such encumbrance, to the extent that such sum exceeds the actual repair or restoration costs incurred for all repair or restoration of such Owner's Improvements. Such funds which are paid to each respective Owner or, if applicable, to the aforesaid described mortgage holder, shall be payable only from each Owner's respective insurance proceeds.
- 10.8 If any or all of the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Mortgagees, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statues, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner, subject to the rights of the Mortgagees. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 10.4, 10.5, 10.6, 10.7 and 10.8 hereof are applicable except that demolition and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the violations of the applicable ordinances of the City of Chicago caused by the other party's failure to rebuild.
- 10.9 For purposes of this Article 10, architects, and engineers' fees, attorneys' fees, consultants' fees, insurance fees, reasonable costs and expenses of institutional lenders



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incurred in connection with financing repairs or restoration of Improvements for a term of not more than one year, title insurance premiums and other similar construction expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

## ARTICLE 11

### LIENS, RIGHTS AND REMEDIES

- 11.1 If, at any time, any Owner fails within ten (10) days after notice or demand to pay any sum of money due another Owners, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owners shall have (i) in the event of a default under Articles 10 or 13, a lien against any condemnation award or insurance proceeds payable to Defaulting Owner for loss or damage to such portion of the Total Property or otherwise under insurance policies carried pursuant to Article 9 hereof, or (ii) in the event of a default under any other Section of this Declaration, a lien against the portion of the Total Property owned by the Defaulting Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 11 or to secure performance of a covenant or obligation. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The liens provided for in this Section 11.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on a portion of the Total Property or other interest of the Defaulting Owner, other than a bona fide mortgage or trust deed which is a first mortgage or trust deed against such portion of the total Property at the time of the recording of the notice of lien.
- 11.2 To the fullest extent permitted by law, the provisions of Article 11 of this declaration shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligations of the Unit Owners to repair or restore any portion of the Total property that constitutes the Condominium Property or (ii) the use of insurance proceeds to repair or restore any portion of the Total Property that constitutes the Condominium Property. In the event of fire or other casualty or act of God or force majeure causing damage to any portions of the Total Property subject to the Act which would entitle any Owner, under the Act, to withdraw all or any part of such Condominium Property from the Act and not repair and restore such Condominium Property as required by this Declaration, then the other Owners shall have a lien on any insurance proceeds payable for loss or damage to such portion of the Total Property under insurance policies carried pursuant to Article 9 hereof and on any condemnation award pursuant to Article 13, in an amount necessary so that the other Owners shall have sufficient proceeds to demolish or repair and restore the Improvements to a condition so as adequately to assure:
- (a) the structural integrity and safety of the Improvements;

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

The lien created by this Section shall be superior to and take precedence over any Mortgage or other encumbrance constituting a lien on any Condominium Property or any portion thereof. Such lien shall arise immediately upon the recording of a notice by the Owner with the Recorder following the occurrence of a fire or other casualty or act of God or force majeure stating that it is a lien created by this Section of the Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid the Creditor Owner or the Owner of the portion of the Total Property being withdrawn from the Act and requiring restoration shall have repaired and restored the Improvements on such Owner's portion of the Total Property as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

- 11.3 Without limiting any equitable remedies to which the other Owners may be entitled, so long as any portion of the Total Property remains subject to the provisions of the Act, each Unit Owner shall be liable only for such portions of any claim against the Owner of such portions of the Total Property equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit as set forth in the applicable Condominium Declaration. Upon payment of such amount for which a Unit Owner is liable, (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Unit Owner's Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several.
- 11.4 no conveyances or other divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall in any way affect or diminish any lien arising pursuant to this Article 11, and any lien which would have arisen against any property pursuant to this Article 11 has there been no conveyance or divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

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- 11.5 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest equal to the lesser of: (a) the floating rate which is equal to three percent (3%) per annum in excess of the annual rate of interest from time to time announced by LaSalle National Bank in Chicago, Illinois, as its "prime rate" of interest or a reasonable equivalent substitute thereof in the event a prime base rate is no longer announced, or (b) the then-maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt. In the event a "prime rate" or reasonable equivalent thereof is not announced by LaSalle National Bank, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).
- 11.6 Subject to the limitations set forth in Article 14 hereof, the rights and remedies of an Owner provided for in the Article 11 or elsewhere in the Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. Any Owner may enforce, by a proceeding in equity for mandatory injunction, any other Owner's obligation to execute under or pursuant to this Declaration. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.
- 11.7 Each claim of any Owner arising under this Declaration shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.
- 11.8 Actions to enforce any right, claim or lien under this Declaration shall be commenced within three (3) years immediately following the date the cause of action occurred, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, the Mortgagees of the Mortgages are diligently proceeding to foreclose the Mortgages, then such period in which an action by the Owner of the Commercial Property or Owner of the Garage Property must be commenced shall be further extended for such additional time as may reasonable be necessary in order for the Mortgagees of the Mortgages to obtain possession of the Commercial Property or the Garage Property.
- 11.9 The Owner of the Commercial Property shall coordinate all requests and contacts between the owner of any Condominium Property and the tenants of the Commercial Property relating to the enjoyment of any Easements or the exercise of any rights of 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 the Owner of the Commercial Property liable to either such tenants of the Commercial Property or the Unit Owners or tenants of the Units, or the Owner of any Condominium Property for acts of any other party.

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- 11.10 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs shall be added to the amount of any applicable lien created under this Article 11.
- 11.11 In the event a Creditor Owner consists of one or more Unit Owners, then the Condominium Association of which the Creditor Owner is a member shall have the sole and exclusive right to act for, bind, sue for, defend and represent, in accordance with Article 19 hereof, the Creditor Owner in any proceeding arising out of this Article 11, together with full power and authority to compromise any claims out of the terms of this Article 11 and to grant releases.

## ARTICLE 12

### UNAVOIDABLE DELAYS

- 12.1 No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemption's, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner (other than inability to make payment of money)("Unavoidable Delay") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereafter in this Article the "Non-Performing Owner") shall notify the other Owners in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any request of any other Owner, keep the other Owners fully informed, in writing, or all further developments concerning any such Unavoidable Delay.

## ARTICLE 13

### CONDEMNATION

- 13.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 13, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Improvements shall be performed, in accordance with the requirements of this Article 13.
- 13.2 All awards resulting from the taking of all or any part of the Total Property, other than damages resulting from a taking of the temporary use of space as hereinafter described,

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shall be paid to the Depository and disbursed by the Depository as hereinafter provided. In the event of a taking of a temporary use of any space not affecting services described in section 5.1 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 Total Property.

- 13.3 In the event of (a) a taking ( other than a temporary taking) of a part of the Residential Property only (not affecting services described in Sections 5.1, 5.2 or 5.3 thereof, except those having minimal or incidental effect), (b) a taking (other than a temporary taking) of a part of the Commercial Property only, then, subject to the provisions of Section 13.6 hereof, the Owner of the portion of the total Property in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 16 hereof and to retain any excess not required for such repair and restoration.
- 13.4 In the event of a taking other than (a) a temporary taking described in Section 13.2 hereof, (b) a taking described in Section 13.3 hereof, or (c) a taking of all or substantially all of the Total Property, then, subject to the provisions of Section 13.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners affected by such taking and the Mortgagees of the Mortgages. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the Improvements as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and the costs of such work shall be paid by those Owners whose portions of the Total Property were the subject of the taking in such shares as such Owners may agree among themselves and shall be performed on behalf of the Owners by a contractor jointly selected by the Owners. The selection of such contractors shall be subject to the approval of the Mortgagees of the Mortgages, if required. In the event such Owners, and the Mortgagees of the Mortgages, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration. If such repair and restoration is to be performed solely in the portion of the Total Property owned by one of the Owners, the, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined, the approval of the Owners of, and any Mortgagees of the Mortgages with respect to, the other portion of the Total Property shall not be required with respect to the plans and specifications therefore, not shall be consent of the Owners of, and any Mortgagees of the Mortgages with respect to, the other portion of the Total Property be required with respect to selection of a contractor therefore. If as a result of such taking, any Easements or covenants under this Declaration are

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extinguished or materially impaired, then changes shall be made to provide for Easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 3 and 4 hereof and for the furnishing of services under Article 5 hereof.

- 13.5 The Award of any taking described in Section 13.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 13.5 hereof). Each portion of the Award attributable to a particular portion of the Total Property shall only be utilized to repair and restore that portion of the Total Property to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Property allocated to the respective Owners of that portion of the Total Property, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.
- 13.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 13.7 hereof), any Owner reasonably determines that the portion of the Total Property owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the Improvements owned by it as may be required by Sections 13.3 and 13.4 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Property, but only if all the Owners of the other portions of the Total Property affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of the Total Property owned by it and shall restore its portion of the Total Property to a slightly and safe condition and in such a manner as to safeguard the other portions of the Total Property, and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Paragraph 13.4 hereof are applicable.
- 13.7 In the event of a taking of all or substantially all of the Total Property the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners in accordance with said apportionment.

## ARTICLE 14

### ARCHITECT

- 14.1 The appointment of an architect in accordance with this Article 14 shall be for the purpose of resolving disputes and other differences arising under the Declaration during the operation of the Total Property. The Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the

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Improvements to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA Document B141, (the then current edition), entitled "Standard Form Agreement between Owner and Architect". Any Owner may cause any Architect to be replaced if it demonstrates to the other Owners that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently in accordance with the Owner-Architect Agreement. In such event, the Owner desiring replacement of the architect shall serve notice upon the other Owners and the Mortgagees, requesting the removal of the then serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform diligently or competently in accordance with the Owner-Architect Agreement. If, in the opinion of an Owner receiving such notice, the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 14.1, an Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owner of its objection in writing within fifteen (15) days after receipt of such notice from the other Owner. If, within ten (10) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall be settled by arbitration.

- 14.2 In any instance when the Architect serving pursuant to Section 14.1 hereof is authorized by the Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and the Mortgagees. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner and the Mortgagees, an opportunity to furnish information or data or to present such party's views.
- 14.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their equitable share of such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expense of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefore from the Architect, then any other Owner may pay the same and the Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the other Owner for any such payment, plus interest at the Default Rate from the date of payment by the Owner to the date of reimbursement to such Owner.

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## ARTICLE 15

### DEPOSITARY

- 15.1 A depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Section 9.1(a) hereof and condemnation awards arising in connection with this Declaration shall be paid to the Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.
- 15.2 As used hereinafter in the Article, the phrase "Damaged Parcel" shall refer to any of the Residential Property or Commercial Property or any combination thereof, if applicable, as to which a casualty loss shall have occurred. In the event of any casualty loss which affects only the Residential Property or the Commercial Property, then the Mortgagee of a Mortgage applicable to the Damaged Parcel shall have the right, with thirty (30) days after such casualty loss has been finally adjusted, to elect either to act as Depositary or to appoint the Depositary with regard to such funds. If such right of election is not exercised within said thirty (30) day period then the Owner of the Damaged Parcel shall have the right to appoint the Depositary with regard to such funds.
- 15.3 In the event of any casualty loss which affects more than one portion of the Total Property and if each Damaged parcel is subject to a Mortgage, then the Mortgagees of the Damaged Parcels shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, acting jointly, to appoint the Depositary with regard to such funds.
- 15.4 In the event of any casualty loss which affects more than one portion of the Total Property and if one or more but less than all of the Damaged Parcels is or are encumbered by a Mortgage, then the Mortgagee or Mortgagees of such Mortgage or Mortgages and the Owner or Owners of the unencumbered Damaged parcel or parcels shall have the right, within thirty (30) days after such casualty loss, acting jointly, to appoint the Depositary with regard to such funds.
- 15.5 If none of the provisions of Sections 15.3 or 15.4 are applicable, or if none of the rights of election or appointments conferred by said Sections are exercised within thirty (30) days after the casualty loss has been finally adjusted, then the Owners of the Damaged Parcels shall mutually appoint the Depositary. Upon the failure of such Owners to appoint the Depositary within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration and the arbitrators shall appoint the Depositary.



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- 15.6 As to any Damaged parcel with regard to such funds which shall have been submitted to a Condominium Declaration pursuant to the Act, notwithstanding that any individual Unit purchasers may have granted mortgages or trust deeds encumbering all or any portion or portions of the Damaged Parcel, the right and power of the Owner of such damaged Parcel to appoint the Depository under Sections 15.2 through 15.5 shall be exercised solely by the Condominium Association and the Unit purchasers and their mortgagees shall be bound thereby.
- 15.7 Each Owner whose portion of the Total Property is the subject of any such casualty loss or condemnation shall be obligated to pay the reasonable fees and expenses of the Depository in proportion to the proceeds from their respective insurance policies or respective condemnation awards, as the case may be. Any Depository appointed to act hereunder shall execute an agreement with the Owners whose portion of the Total Property is the subject of any such casualty loss or condemnation accepting said appointment in form and content acceptable to such Owners and in accordance with the provisions of this Declaration.
- 15.8 The Depository shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award or awards unless the Depository shall have been given an express written authorization from the Owners; provided that, if only one Owner claims said insurance proceeds or condemnation award or awards, then said Owner shall authorize the Depository to so proceed; provided further, however, that if the Residential Property, Commercial Property, and/or the Garage Property is in any material way affected by the disbursement of any such insurance proceeds or condemnation award or awards, then the consent of the Mortgagee of the appropriate Mortgage shall be required.
- 15.9 The monies on deposit shall be held in an interest-bearing account pursuant to an agreement among the Depository and the Owners whose portion of the Total Property has been the subject of any casualty loss or condemnation. The Depository, within thirty (30) days after receipt of funds, shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depository on monies or securities held in trust, and any gain and the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Declaration shall not be mingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes herein provided.
- 15.10 The Depository may resign by serving written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall jointly, with the consent of the Mortgagees of the Mortgages, appoint a substitute who

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qualifies under Section 15.1 hereof, and the Depository shall transfer all funds, together with copies of all records held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, then the Mortgagees of the Mortgages shall appoint a substitute who qualifies under Section 15.1 hereof within thirty (30) days thereafter, and the Depository shall transfer all funds, together with copies of all records held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Mortgagees of the Mortgages shall fail to appoint a substitute within said additional thirty (3) day period, then the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, who qualifies under Section 15.1 hereof.

- 15.11 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policies required to be carried pursuant to Section 9.1(a) hereof or condemnation awards of less than \$50,000.00 shall be paid directly to the party so entitled rather than to the Depository.

## ARTICLE 16

### DISBURSEMENTS OF FUNDS BY DEPOSITARY

- 16.1 (a) Each request by an Owner of the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any condemnation award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the applicable Owner or Architect, and with respect to the information described in Section 16.1(a)(ii) below, verified by the Architect, dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:
- (i) That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, material men, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics Lien Act set forth in 770 ILCS 60/0.01 et seq. (the "Mechanics Lien Act") and any title insurer affording coverage against mechanics liens;
  - (ii) That the sum request, plus all sums previously disbursed, does not exceed the cost of the Work actually in place up to the date of such certificate, plus the cost of

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materials supplied and actually stored on site (which materials shall be adequately insured against fire, theft and other casualties);

- (iii) That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and
  - (iv) That the cost to complete the unfinished Work will not exceed the funds or security therefore held by the Depository after payment of the then-current request.
- (c) Upon compliance with the provisions of Section 16.1(a) (but not more frequently than once in each calendar month (thirty (30) day, period); and
- (i) upon receipt of contractors' and subcontractors' sworn statements required under the Mechanics Lien Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by any title insurer affording coverage against mechanics liens from the persons named in the sworn statement; and
  - (ii) approval by the title insurer, the Owners, the Mortgagees of the Mortgages on portions of the total Property on which or for the benefit of which Work will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics lien claims relating to Work in place and the continued priority of the Lien of the Mortgages securing the Mortgagees whose approval is required above,

the Depository shall, out of the monies so held by the Depository and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the owner's certificate and contractors', and subcontractors' sworn statements the respective amounts stated in said certificates and statements due them. Notwithstanding the foregoing, any or all of the Owners or the Mortgagees of the Mortgages or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner to the Depository in accordance with the provisions of Section 16.1(a) hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

- 16.2 No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the Owner of the Commercial Property, the Owner of the Garage Property, the Owner of Residential Property and the Mortgagees, shall have any interest

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in or right to any funds held by the Depository; provided, that such funds shall only be used for repair, restoration or demolition as required by this Declaration, except as hereinafter set forth. The Owners, with the written consent of the Mortgagees of the Mortgagees, may jointly at any time provide for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time the Owners, with the written consent of the Mortgagees of the Mortgagees, shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with said instructions and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

## ARTICLE 17

### ESTOPPEL CERTIFICATES

- 17.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner (subject to payment therefore pursuant to Section 17.2 hereof), execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate ("Estoppel Certificate") stating:
- (a) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;
  - (b) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;
  - (c) whether there are any sums (other than those arising out of the normal course of operation of the Improvements within the previous forty-five (45) days) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the requesting Owner, and if there is any such sum specifying the nature and amount thereof;
  - (d) whether the Owner executing the Estoppel Certificate has performed or is performing Work other than services pursuant to Article 5 hereof, the cost of which said Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof, but has not yet charged to such other Owner, and if there is any such Work, specifying the nature and extent thereof;
  - (e) the nature and extent of any set-offs, claims counterclaims or defenses then being asserted or capable of being asserted after giving the requisite notice, if any,

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required hereunder or otherwise known by the Owner against the enforcement of the requesting Owner's obligations hereunder;

- (f) the total amount of all liens being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder by the Owner executing the Estoppel Certificate under the provisions of this Declaration describing the applicable provisions or provisions and the details of an such lien claim;
- (g) whether the Owners executing the Estoppel Certificate has requested that a matter be submitted to arbitration, which matter has not been discharged, released or otherwise resolved, and if so, a copy of any such notice or notices shall be delivered with the Estoppel Certificate;
- (h) the current address or addresses to which notices given to the Owner executing such Estoppel Certificate are required to be mailed under Article 20 hereof; and
- (i) such other facts or conclusions as may be reasonable requested.

The Owner of any portion of the Total Property which is not subject to the Act, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may charge the requesting Owner a fee for preparing, executing and delivering the Estoppel Certificate and may, in its sole discretion, limit to item (b) and (f) described above and the statements made in the Estoppel Certificate.

- 17.2 So long as any portion of the Total Property remains subject to the provisions of the Act, an Estoppel Certificate required from the Owner of such portion of the Total Property subject to the Act shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by the Owner of any portion of the Total Property subject to the Act from an Owner of a portion of the Total Property not subject to the Act may only be requested by the Condominium Association on behalf of the Owner of such portion of the Total Property subject to the Act.

## ARTICLE 18

### CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

So long as any portion of the Total Property is subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Owner of the portion of the Total Property subject to the Act, and consents, waivers, approvals and appointments which may be granted by an Owner, shall be exercised by the Condominium Association administering such portion of the Total Parcel on behalf of the Unit Owners of the Units in such portion of the Total Parcel, except for such rights or benefits expressly granted to Unit Owners, and except for Easements which by their nature are exercisable only by Unit Owners and in the event of any such action taken by a Condominium Association, the Unit

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Owner shall be bound as if such Unit Owners had expressly consented and agreed to such actions by such Condominium Association. Any action to enforce or defend rights, obligations, Easements, burdens and benefits under this Declaration, or the right to settle and compromise any claims, on behalf of the Unit Owners who are members of a Condominium Association shall be taken on behalf of such Condominium Association and all such Unit Owners, solely by such Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the applicable Condominium Declaration or resolution of the board of managers of such Condominium Association. Except as otherwise noted herein, any requirements for any Unit Owner to furnish a notice or deliver a documents may also be performed by the Condominium Association of which such Unit Owner is a member. No Unit Owner or group of Unit Owners shall have the right to take any action under this Declaration or to enforce any of the rights, Easements or privileges granted by this Declaration for the benefit of the Total Property or any part thereof. All obligations under this Declaration of the Owner of a portion of the Total Property subject to the Act shall be obligations jointly and severally of both the applicable Condominium Association and all Unit Owners in such Portion of the Total Property and any lien arising against the Owner of any such portion of the Total Property may be imposed against the Units of all such Unit Owners based upon their percentages of interest in the Common Elements appurtenant to such portion of the Total Property, which each Unit Owner may discharge in accordance with the provisions of Article 11 hereof.

## ARTICLE 19

### ALTERATIONS

- 19.1 (a) Any Owner (hereinafter in this Article 19, "Altering Owner", may, at any time, at such Altering Owner's sole cost and expense, make additional improvements or alterations (hereinafter in this Article 19, "Alterations") to the part of the Improvements within such Altering Owner's Portion of the Total Property, provided that such Alterations comply with the balance of this Section 19.1 and all of the other provisions of this Article 19. Any plans and specifications for any restoration of the Improvements which contain substantially the same architectural features as the Improvements which existed prior to the necessity of restoration shall not be deemed to be Alterations within the meaning of this Article 19. Prohibitions and restrictions on Alterations by the Owner of the Condominium Property shall also apply to individual Unit Owners.
- (b) Unless otherwise provided in Section 19.1(a) and this Section 19.1(b), Alterations shall not be made without the prior written consent of the other Owners if such Alterations will:
- (i) unreasonably diminish the benefits afforded to such other Owners by any Easement or unreasonably interrupt such other Owner's use or enjoyment of any Easement;
  - (ii) alter the façade of the Improvements (other than for signage installed by the Owner of the Commercial Property on the exterior of the Commercial

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- Property for the identification of the Building and occupants of tenants of the Commercial Property;
- (iii) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Property;
  - (iv) affect Facilities benefiting the other Owners other than minimally or incidentally;
  - (v) materially change the expected pedestrian and vehicular traffic patterns or patterns of ingress and egress.
- (c) Notwithstanding anything contained herein to the contrary, (i) the Owner of the Commercial Property shall have the right and is hereby granted the necessary Easements to: (a) make additional openings in the first floors of the Commercial Improvements for the purpose of expanding commercial facilities in the Building and creating additional commercial uses outside of the Building; (b) reconfigure any portion of the Commercial Property; and (c) undertake such changes in the Commercial Property, in its sole discretion, as it desires to make, provided no stairway can be affected.

If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of the other Owners or the Mortgagees of the Mortgage, if applicable, then before commencing with such Alterations, the Altering Owner shall deliver to the other Owners and the applicable Mortgagees, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 19.1. If such other Owners and the applicable Mortgagees consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owner or Mortgagees whose consents are requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the other Owners or the applicable Mortgagees, the Altering Owner has violated or will violate the provisions of Section 19.1(a) or (b), such Owner or Mortgagees (an "Objecting Party") shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provision of Section 19.1(a) or (b) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 19(a) or (b), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 19.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

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- (c) If any matter arises, between the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 19.1(a) or (b), then any Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 19.1(a) or (b) hereof.
- (d) The Owners, in making Alterations, shall (i) perform all Work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code, and (iii) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Total Property in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the other portion of the Total Property, but such Owner shall not be liable in any event for damages as a result of any such disturbance.
- 19.2 Applications for building permits to make Alterations shall be filed and processed by the Altering Owner without the joinder of the other Owners in such application, unless the City of Chicago or other governmental agency having jurisdiction thereof requires joinder of the other Owners. If joinder by the other Owners not making Alterations is so required, said Owners shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.
- 19.3 An Altering Owner performing any Work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of the various Parcels which comprise the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics Lien Act shall only be enforceable against the portion of the Total Property owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against any other portion of the Total Property.

## ARTICLE 20

### NOTICES

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



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For Notices to the Owner of the Residential Property:  
3110 N. Greenview, Chicago, IL 60657

For Notices to the Owner of the Commercial Property:  
3101 N. Lincoln, Chicago, IL 60657

The foregoing notwithstanding, at such time as any portion of the Total Property is submitted to the Act, Notices to the Owners of such portion of the Total Property shall be delivered or mailed, as aforesaid, to any officer, director or managing agent of the applicable Condominium Association to such address as may appear in any public record instead of the addressed set forth above. Such change of address shall be effective, however, only upon the giving of notice thereof to the other Owners in accordance with the provision of Section 20.3 hereof. Copies of all such Notices shall also be sent to the applicable Mortgagees. Concurrently with the giving of any notification required hereunder to be given, or which any other party hereto may desire to give to the Owner of the Residential Property or the Owner of the Commercial Property a duplicate original of such notification shall be given to the Mortgagees affected thereby at the address for the giving of notice set forth in the mortgage or trust deed securing indebtedness to such Mortgagees, or to any other address of which notice by United States Mail, return receipt requested, shall have been given to the other parties hereto.

- 20.2 So long as any portion of the Total Property remains subject to the Act, (a) the Owner of the other portions of the Total Property may, but shall not be obligated to give personal notice to any Unit Owner in such portion of the Total Property, notice to the applicable Condominium Association hereby being deemed sufficient and effective notice to all Unit Owners of such portions of the Total Property and (b) such Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners with respect to the applicable portions of the Total Property under this Declaration, which notice shall be binding on such Unit Owners.
- 20.3 Any Notice delivered as aforesaid shall be deemed received when delivered and receipted for or any Notice mailed as aforesaid shall be deemed received five (5) business days after deposit in the United States Mail, or upon actual receipt, whichever is earlier. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least ten (10) days prior to the effective date of any such change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

## ARTICLE 21

### LIMITATION OF LIABILITY

- 21.1 Each Owner of a portion of the total Property shall cooperate in the securing and performing of the services as set forth in Article 5 of this Declaration but shall not be liable for interruption or inadequacy of service, loss or damage to property or injury

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(including death) to any person for any reason. Each Owner obligated hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs or in the case of an Emergency Situation.

- 21.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Total Property: (1) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself freed and relieved therefrom as hereinabove provided in this Section, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.
- 21.3 The enforcement of any rights or obligations contained in this Declaration against an Owner of any portion of the Total Property shall be limited to the interest of such Owner in the Total Property. No judgment against any Owner of any portion of the Total Property shall be subject to execution, or be a lien on any assets of, such Owner other than Owner's interest in the Total Property.

## ARTICLE 22

### GENERAL

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

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- 22.2 The illegality, invalidity or unenforceability under law of any covenant, restriction or condition or any other provisions of this Declaration shall not impair or affect in any manner the validity or enforceability or effect of the remaining provisions of this Declaration.
- 22.3 The headings of Articles in this Declaration are for convenience of reference only and shall not in any way limit or define the content, substance or effect of the Articles.
- 22.4 (a) Except as otherwise provided herein, this Declaration may be amended or terminated only by an instrument signed by the Owners and the Mortgagees. So long as any portion of the Total Property is submitted to the Act, the Condominium Association administering such portion of the Total Property may, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners in such portion of the Total Property, which amendments or termination shall be binding on all Unit Owners. Any Amendment to or termination of this Declaration shall be recorded with the Recorder.
- 22.5 (b) Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. A Special Amendment may also contain such complementary and supplemental grants and reservations of Easements as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Property. Declarant also reserves the right to include, within a Special Amendment, revisions to the legal descriptions of the Residential Property and Commercial Property. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligations, or other instrument affecting any portion of the Total Property, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to act pursuant to rights reserved or granted under this section shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Property.
- 22.6 The provisions of this Declaration shall be construed to the end that the Total Property shall remain a first-class, mixed-use property.
- 22.7 All the Easements, covenants, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Total Property and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Total Property or any part thereof.

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- 22.8 Easements created hereunder shall not be presumed abandoned by nonuse or the occurrence of damage or destruction of a portion of the Improvements subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon the Easement or unless the Easement has been abandoned for a period in excess of two (2) years.
- 22.9 The parties hereto acknowledge that this Declaration and all other instruments in connection herewith, have been negotiated, executed and delivered in the City of Chicago, County of Cook and State of Illinois. This Declaration and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of Illinois including, without limitation, matters affecting title to all real property described herein.
- 22.10 This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third-party beneficiary (except the Mortgagees) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.
- 22.11 Each provision of the Recitals to this Declaration and each Exhibit attached hereto is hereby incorporated in this Declaration and is an integral part hereof.
- 22.12 No charges shall be made for any Easements or rights granted hereunder unless otherwise provided or permitted under the terms of this Declaration.
- 22.13 Each Owner shall have the right to maintain in its respective portion of Total Property, such signage on the façade of the Building in order to identify such Owner's use of the Building; provided, however, that no signage shall be installed upon the façade to the Residential Improvements without the prior, written consent of the Owner of the Commercial Property.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and sealed this 14 day of July, 2005.

Greenview Point, L.L.C.

By:   
Member



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## EXHIBIT A

LOTS 28 AND 29 IN JOHN P. ALTGELD'S SUBDIVISION OF BLOCKS 1 TO 4, THE NORTH ½ OF BLOCK 6 AND ALL OF BLOCK 7 LYING NORTHEASTERLY OF CENTER LINE OF LINCOLN AVENUE IN SUBDIVISION BY EXECUTORS OF W.E. JONES IN SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT B

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 17.71 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 32.04 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 28 AND 29, TAKEN AS A TRACT, IN JOHN P. ALTGELD'S SUBDIVISION OF BLOCKS 1 TO 4, THE NORTH 1/2 OF BLOCK 6 AND ALL OF BLOCK 7 LYING NORTHEASTERLY OF THE CENTERLINE OF LINCOLN AVENUE IN SUBDIVISION BY EXECUTORS OF W.E. JONES IN SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH CORNER OF SAID LOT 29, BEING ALSO THE POINT OF INTERSECTION OF THE WEST LINE OF NORTH GREENVIEW AVENUE WITH THE NORTHEASTERLY LINE OF NORTH LINCOLN AVENUE; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 29, BEING ALSO THE AFORESAID WEST LINE OF NORTH GREENVIEW AVENUE, A DISTANCE OF 7.21 FEET;

THENCE WEST ALONG A LINE MAKING AN ANGLE OF 89 DEGREES 54 MINUTES 49 SECONDS MEASURED COUNTER-CLOCKWISE, NORTH TO WEST FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 0.34 FEET TO A POINT ON THE EXTERIOR FACE OF A SIX STORY CONCRETE BLOCK BUILDING COMMONLY KNOWN AS 3110 NORTH GREENVIEW AVENUE AND 3101-3109 NORTH LINCOLN AVENUE IN CHICAGO;

THENCE CONTINUING ALONG THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 0.65 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF SAID BUILDING, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES:

SOUTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 22 DEGREES 14 MINUTES 00 SECONDS MEASURED COUNTER-CLOCKWISE, WEST TO SOUTHWESTERLY FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 3.68 FEET; NORTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 112 DEGREES 30 MINUTES 30 SECONDS MEASURED COUNTER-CLOCKWISE, NORTHEASTERLY TO NORTHWESTERLY FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 41.10 FEET;

THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 3.92 FEET;

THENCE NORTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 251 DEGREES 36 MINUTES 23 SECONDS MEASURED COUNTER-CLOCKWISE, SOUTHWESTERLY TO NORTHWESTERLY FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 4.61 FEET;

THENCE NORTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 198 DEGREES 23 MINUTES 37 SECONDS MEASURED COUNTER-CLOCKWISE, SOUTHEASTERLY TO NORTHWESTERLY FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 3.45 FEET;

THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 4.00 FEET;

THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 3.09 FEET;

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THENCE SOUTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 157 DEGREES 50 MINUTES 47 SECONDS MEASURED COUNTER-CLOCKWISE, NORTHWESTERLY TO SOUTHEASTERLY FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 0.84 FEET;

NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.21 FEET;

SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 6.79 FEET;

SOUTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 0.30 FEET;

SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 13.44 FEET;

NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.56 FEET;

SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.95 FEET;

NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 4.85 FEET;

SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.47 FEET;

NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 6.52 FEET;

SOUTH ALONG A LINE MAKING AN ANGLE OF 67 DEGREES 29 MINUTES 54 SECONDS MEASURED COUNTER-CLOCKWISE, SOUTHWESTERLY TO SOUTH FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 11.54 FEET TO THE POINT OF BEGINNING.

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## EXHIBIT C

LOTS 28 AND 29 IN JOHN P. ALTGELD'S SUBDIVISION OF BLOCKS 1 TO 4, THE NORTH ½ OF BLOCK 6 AND ALL OF BLOCK 7 LYING NORTHEASTERLY OF CENTER LINE OF LINCOLN AVENUE IN SUBDIVISION BY EXECUTORS OF W.E. JONES IN SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

EXCEPTING THEREFROM,

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 17.71 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 32.04 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 28 AND 29, TAKEN AS A TRACT, IN JOHN P. ALTGELD'S SUBDIVISION OF BLOCKS 1 TO 4, THE NORTH 1/2 OF BLOCK 6 AND ALL OF BLOCK 7 LYING NORTHEASTERLY OF THE CENTERLINE OF LINCOLN AVENUE IN SUBDIVISION BY EXECUTORS OF W.E. JONES IN SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

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THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES:

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