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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR  
NUGENT SQUARE AT GLENWOOD RESIDENTIAL CONDOMINIUM  
AND  
NUGENT SQUARE AT GLENWOOD COMMERCIAL CONDOMINIUM**

THIS INSTRUMENT PREPARED BY AND AFTER RECORDING MAIL TO:

SHELDON L. LEBOLD  
16061 SOUTH 94<sup>TH</sup> AVE.  
ORLAND HILLS, IL 60477

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS  
FOR  
NUGENT SQUARE AT GLENWOOD RESIDENTIAL CONDOMINIUM  
AND  
NUGENT SQUARE AT GLENWOOD COMMERCIAL CONDOMINIUM**

THIS DECLARATION is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2005, by Nugent Square LLC, an Illinois limited liability company (the Declarant”);

WITNESSETH:

The terms used in these Recitals, if not otherwise defined in these Recitals, shall have the meanings set forth in Article I hereof.

Declarant is the record legal title holder of the Total Parcel situated in the Village of Glenwood, Cook County, Illinois.

The Total Parcel is being improved with one (1) Building that will contain twenty-four (24) residential condominium units and eight (8) commercial condominium units. Additionally, the Total Parcel is being improved with two (2) Buildings that will contain a total of twenty-four (24) parking spaces.

Immediately after recording this Declaration, Declarant intends: (i) to cause the Residential Property to be submitted to the provisions of the Condominium Property Act of the State of Illinois (the “Act”) pursuant to the Residential Condominium Declaration; and (ii) to cause the Commercial Property to be submitted to the provisions of the Act pursuant to the Commercial Condominium Declaration. Said submissions of the Residential Property and Commercial Property to the Act will be subject to the terms and provisions of this Declaration.

The plat of survey attached as Exhibit A hereto and made a part hereof illustrate the Total Parcel and the locations of the Residential Property, the Commercial Property and parking spaces.

Neither the Residential Property nor the Commercial Property will be functionally independent of the other and each will depend upon the other for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to efficient operation and intended use of the Commercial Property and the Residential Property.

Declarant desires by this Declaration to establish: (i) certain easements, covenants and restrictions respecting the Commercial Property, which will be binding upon each present and future owner of the Commercial Property, or any portion thereof or interest, estate, or Unit therein, and which will inure to the benefit of each present and future owner of the Residential Property, or any portion thereof or interest, estate or Unit therein; and (ii) certain easements,

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covenants and restrictions respecting the Residential Property, which will be binding upon each present and future owner of the Residential Property, or of any portion thereof or interest, estate, or Unit therein, and which will inure to the benefit of each present and future owner of the Commercial Property, or of any portion thereof or interest, estate or Unit therein, all so as to provide the owners of each such respective portion, or interest, or estate in the Total Property those services, facilities and rights necessary to the efficient operation of each such respective portion, estate, or interest and so as to assure the harmonious interrelationship of the owners of each such respective portion, estate, or interest and to protect the respective values of each such portion, estate, or interest. Declarant further desires by this Declaration to create certain easements that will inure to the benefit of each present and future owner of Other Property, or any portion, interest, or estate therein, which may be added to the property which constitutes the initial Total Property hereof.

NOW, THEREFORE, the Declarant hereby declares that the Total Property is and shall be owned, transferred, held, sold, mortgaged, conveyed and accepted subject to this Declaration. Declarant does hereby further declare that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges shall exist at all times hereafter among and be binding upon and inure to the benefit of all parties having or acquiring any right, title, or interest in or to any portion, interest, or estate in the Total Property and shall run with the land subjected to this Declaration. Each provision of the foregoing Recitals is an integral part of this Declaration and is hereby incorporated as if fully set forth herein.

## ARTICLE I

### DEFINITIONS

- 1.1. AAA: As defined in Article XII hereof.
- 1.2. Act: The Condominium Property Act of the State of Illinois, as amended from time to time.
- 1.3. Architect: The architectural firm appointed or serving from time to time pursuant to Article XVI of this Declaration.
- 1.4. Assessor: Assessor of Cook County, Illinois.
- 1.5. Building(s): All improvements situated within and upon the Total Parcel.
- 1.6. Commercial Association: The Nugent Square at Glenwood Commercial Condominium Association, an Illinois not-for-profit corporation formed for the purpose of administering the Commercial Property pursuant to the Act.

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1.7. Commercial Building: That portion of the Buildings containing the Commercial Condominium Units, and specifically excluding the Residential Condominium Units.

1.8. Commercial Condominium Declaration: The Declaration of Condominium Ownership for Nugent Square at Glenwood Commercial Condominium, as the same may be amended from time to time.

1.9. Commercial Condominium Property: The Commercial Property from and after its submission to the Act and so long as it has not been withdrawn from the Act and such easements and rights appurtenant to the Commercial Property as have been submitted to the Act.

1.10. Commercial Easement Facilities: As defined in Section 3.1(D) hereof.

1.11. Commercial Parcel: That part of the Total Parcel legally described in Exhibit A attached hereto and made a part hereof.

1.12. Commercial Property: The Commercial Parcel.

1.13. Common Elements: All portions of the Residential and Commercial Condominium Property, except the Units thereof. Limited Common Elements: A portion of the Commercial and/or Residential Common Elements which is designated for the benefit of certain Unit Owners.

1.14. Creditor Owner: An Owner that is rightfully owed money by another Owner pursuant to the terms and provisions of this Declaration.

1.15. Debtor Owner: An Owner that rightfully owes money to another Owner pursuant to the terms and provisions of this Declaration, and with respect to any costs associated with Cap Lot as set forth in Section 6.2(A) hereof, the term Debtor Owner shall include the Other Property Owner.

1.16. Declarant: Nugent Square LLC, an Illinois limited liability company.

1.17. Declaration or Operating Declaration: This Declaration of Covenants, Conditions, Restrictions, and Easements, including all exhibits, amendments, and supplements thereto.

1.18. Defaulting Owner: As defined in Section 5.2 hereof.

1.19. Depositary: As defined in Section 17.1 hereof.

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1.20. Easements: All easements declared and created pursuant to the terms and provisions of this Declaration.

1.21. Emergency Situation: A situation immediately impairing the structural support of the Building or causing or likely to cause injury to a person or persons or substantial damage to the Total Property or property in, on, or about the Total Property.

1.22. Facilities: All components of the central heating and ventilating system, domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, master antenna, emergency power, telephone, 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.

1.23. Insuring Owner: As defined in Section 9.6 hereof.

1.24. Non-Defaulting Owner: As defined in Section 5.2 hereof.

1.25. Non-Insuring Owner: As defined in Section 9.6 hereof.

1.26. Non-Performing Owner: As defined in Article XIII hereof.

1.27. Non-Protesting Owner: As defined in Section 8.4 hereof.

1.28. Other Property: That parcel legally described in Exhibit A attached hereto and made a part hereof.

1.29. Owner(s): The Owner of the Commercial Property or the Owner of the Residential Property or all of the Owners of each class, as the context of the sentence requires interpretation as singular or plural.

1.30. Owner of the Commercial Property (sometimes referred to as "Commercial Owner"): The person or persons or entity or entities whose interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Commercial Property. So long as the Commercial Property is submitted to the provisions of the Act, Owner of the Commercial Property shall mean the Unit Owners collectively of the Commercial Property.

1.31. Owner of the Residential Property (sometimes referred to as "Residential Owner"): The person or persons or entity or entities, whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of the Residential Property. So long as the Residential Property is submitted to the provisions of the Act, Owner of the Residential Property shall mean the Unit Owners collectively of the Residential Property.

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1.32. Owner of Other Property (sometimes referred to as "Other Property Owner"): The person or persons or entity or entities, whose estates or interests, individually or collectively, aggregate, from time to time, fee simple ownership of Other Property.

1.33. Parking Spaces: As defined in Article I (u) of the Residential Condominium Declaration to be recorded subsequent to this Operating Declaration.

1.34. Plat: The plat of survey of Nugent Square at Glenwood, a copy of which is attached hereto as Exhibit "A".

1.35. Protesting Owner: As defined in Section 8.4 hereof.

1.36. Reimbursement Allocation: As defined in Section 6.7 hereof.

1.37. Residential Association: The Nugent Square at Glenwood Residential Condominium Association, an Illinois not-for-profit corporation formed for the purpose of administering the Residential Property pursuant to the Act.

1.38. Residential Building: The portion of the Building containing the Residential Condominium Units and that property containing the Parking Spaces and specifically excluding the Commercial Condominium Units.

1.39. Residential Condominium Declaration: The Declaration of Condominium Ownership for Nugent Square at Glenwood Residential Condominium, as the same may be amended from time to time.

1.40. Residential Condominium Property: The Residential Property from and after its submission to the Act and so long as it has not been withdrawn from the Act, and such easements and rights appurtenant to the Residential Property as have been submitted to the Act.

1.41. Residential Easement Facilities: As defined in Section 2.1(D) hereof.

1.42. Residential Parcel: That part of the Total Parcel legally described in Exhibit A attached hereto and made a part hereof.

1.43. Residential Property: The Residential Parcel.

1.44. Total Parcel: The parcel of real estate legally described in Exhibit A attached hereto.

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1.45. Total Property: The Total Parcel improved with the Building and the Parking Spaces.

1.46. Unavoidable Delay: As defined in Article XIII hereof.

1.47. Unit: A part of the Residential Condominium Property and/or Commercial Condominium Property including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use and as more fully described in the Residential Condominium Declaration and/or the Commercial Condominium Declaration, as the case may be.

1.48. Unit Owner (or Owner): The person or persons or entity or entities whose estates or interests, individually or collectively, aggregate from time to time fee simple absolute ownership of a Unit.

1.49. Unit Ownership: Part of the Residential Condominium Property and/or Commercial Condominium Property, as the case may be, consisting of one Unit and the Unit's undivided interest in the Common Elements for the particular Association to which the Unit is a part.

1.50. Use: The use, operations, maintenance, repair, removal, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of Facilities, including the right of access to and the right to remove temporarily from the Building portions of such Facilities for any of the above purposes.

1.51. Village: The Village of Glenwood, Illinois.

## ARTICLE II

### EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY

2.1. The following perpetual easements in, to, over, upon and through portions of the Commercial Property in favor of the Residential Property are hereby declared and created:

(A) A non-exclusive easement in and to all structural members, foundations, columns, beams and other supporting components located within or constituting a part of the Commercial Property, for the support of: (i) the Residential Property (and replacements thereof); and (ii) any Facilities located in the Commercial Property with respect to which the Owner of the Residential Property is granted an easement under this Declaration.

(B) A non-exclusive easement for the Use of all Facilities located in, on, or about the Commercial Property and connected Facilities located in, on, or about the



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Residential Property (and replacements thereof) which are necessary to provide the Residential Property with utility or other services or are otherwise necessary to the efficient operation of the Residential Property (exclusive of Residential Easement Facilities described in Section 2.1(D) hereof) and which are used by the Owner of the Commercial Property to perform its obligations, if any, under Section 6.2 hereof, during any period such Facilities are in the possession and control of the Owner of the Residential Property pursuant to rights granted in Section 6.5(C) of this Declaration.

(C) An exclusive easement for the maintenance of encroachments in the event and to the extent that, by reason of the original construction of the Building or any reconstruction thereof or the subsequent settlement or shifting of any part of the Building, any part of the Residential Building encroaches or shall hereafter encroach upon any part of the Commercial Parcel or Commercial Building. Such easement for the maintenance of encroachments shall exist only as long as the encroaching portion of the Building shall remain standing, provided, however, that in no event shall an easement for any encroachment be created in favor of the Residential Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Commercial Property by the Owner of the Commercial Property.

(D) A non-exclusive easement for ingress and egress to and for the Use of Facilities located in the Commercial Property ("Residential Easement Facilities") primarily benefiting the Residential Property or necessary for the Owner of the Residential Property to perform its obligations, if any, under Section 6.1 hereof.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the Commercial Property to the extent reasonably necessary: (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Residential Property; (ii) for the use and enjoyment by the Residential Owner of the Easements granted in this Section 2.1 and for the purposes set forth in Article V hereof; or (iii) to permit ingress and egress to and from the public way and for parking on the Cap Lot as same is more fully described in Article IV below.

2.2. Each Easement which is declared and created within this Article II and which provides or requires for its enjoyment, ingress and egress on, over, across, or through the Commercial Property, except for easements created by Sections 2.1(B), 2.1(D), and 2.1(E) hereof, shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Commercial Property may, from time to time, 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 preclude any unreasonable interference with the use and operation of the Commercial Property and in order to assure the security of the Commercial Property.



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2.3. Easements declared and created within this Article II shall be binding upon the Commercial Property and the Owner of the Commercial Property and shall run in favor of and inure to the benefit of the Residential Property and the Owner of the Residential Property and its mortgagees, tenants, subtenants, beneficiaries, guests, invitees and licensees. The Owner of the Residential property may extend the benefit of such easements to its employees, agents, contractors and subcontractors performing any repairs, maintenance, or replacements within the Commercial Property.

## ARTICLE III

### EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

3.1 The following perpetual easements in, to, over and upon portions of the Residential Property in favor of the Commercial Property are hereby declared and created:

(A) A non-exclusive easement in and to all structural members, foundations, columns, beams, and other supporting components located within or constituting a part of the Residential Property for the support of: (i) the Commercial Property (and replacements thereof); and (ii) the Facilities located in the Residential Property with respect to which the Owner of the Commercial Property is granted an easement under this Declaration.

(B) A non-exclusive easement for the Use of all Facilities located in, on, or about the Residential Property and connected to Facilities located in, on, or about the Commercial Property (and replacements thereof) which are necessary to provide the Commercial Property with utility or other services or are otherwise necessary to the efficient operation of the Commercial Property (exclusive of Commercial Easement Facilities described in Section 3.1(D) hereof) and which are used by the Owner of the Residential Property to perform its obligations, if any, under Section 6.1 hereof, during any period such Facilities are in the possession and control of the Owner of the Commercial Property pursuant to rights granted by Section 6.5(A) of this Declaration.

(C) An exclusive easement for the maintenance of encroachments in the event and to the extent that, by reason of the original construction of the Building or any reconstruction thereof or the subsequent settlement or shifting of any part of the Building, any part of the Commercial Building encroaches or shall hereafter encroach upon any part of the Residential Parcel or Residential Building. Such easement for the maintenance of encroachments shall exist only as long as the encroaching portion of the Building shall remain standing, provided, however, that in no event shall an easement for any encroachment be created in favor of the Commercial Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of the Residential Property by the Owner of the Residential Property.

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(D) A non-exclusive easement for ingress and egress to and for the Use of Facilities (“Commercial Easement Facilities”) primarily benefiting the Commercial Property or necessary for the Owner of the Commercial Property to perform its obligations, if any, under Section 6.2 hereof.

(E) A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through the Residential Property to the extent reasonably necessary: (i) to permit the maintenance, repair, replacement, restoration or reconstruction of the Commercial Property; (ii) for the use and enjoyment by the Commercial Owner of the Easements granted in this Section 3.1 and for the purposes set forth in Article V hereof; or (iii) to permit ingress and egress to and from the Total Property during an Emergency Situation.

3.2. Each easement which is declared and created within this Article III and which provides or requires for its enjoyment, ingress, and egress on, over, across, or through the Residential Property, except for easements created by Sections 3.1(B), 3.1(D), and 3.1(E) hereof, shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Residential Property may, from time to time, 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 preclude any unreasonable interference with the use and operation of the Residential Property and in order to assure the security of the Residential Property.

3.3. Easements declared and created within this Article III shall be binding upon the Residential Property and the Owner of the Residential Property and run in favor of and inure to the benefit of the Commercial Property and the Owner of the Commercial Property and its mortgagees, tenants, subtenants, beneficiaries, guests, invitees, and licensees. The Owner of the Commercial Property may extend the benefits of such easements to its employees, agents, contractors, and subcontractors performing any repairs, maintenance, or replacements within the Residential Property.

## ARTICLE IV

### EASEMENTS AND USE RESTRICTIONS REGARDING CAP LOT AND REGARDING PATIO AREA

4.1. Nugent Square at Glenwood is a residential/commercial development of the property described on the Plat. Lot 1 on the Plat comprises the Total Parcel; Lot 2 on the Plat is the Other Property. Declarant is the owner of the Other Property and may improve the Other Property. Cap Lot is designated as “Ingress/Egress Easement”. The Plat creates certain easements in favor of the Village of Glenwood and public utility companies over and across Cap Lot.

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4.2. With respect to the easements over the Cap Lot created by the Plat, the following perpetual easements in, to, over, upon and through Cap Lot, and restrictions, are hereby declared and created for the benefit of the Residential Property:

(A) A perpetual non-exclusive easement for pedestrian and vehicular ingress and egress.

(B) A perpetual non-exclusive easement for vehicular parking on and over those areas and spaces on the paved portions of Cap Lot being marked as parking areas or parking spaces.

Notwithstanding anything contained herein, no advertising of any kind or nature shall be located on or within Cap Lot except for advertising and/or signage by the Declarant.

4.3. As further provided in this Declaration, and in the Residential Condominium Declaration and Commercial Condominium Declaration, as well as any condominium declaration with respect to the Other Property, the Commercial Owner (through the Commercial Association) will be responsible for the maintenance, repair and replacement of all portions of Cap Lot. The costs and expenses associated with the maintenance, repair and replacement of Cap Lot shall be shared by the Residential Owner, Commercial Owner, and the Owner(s) of the Other Property as hereinafter provided in Article VI, Section 6.2 of this Declaration.

4.4. Easements declared and created within this Article IV shall be binding upon, and inure to the benefit of, the Commercial Property and the Owner of the Commercial Property, the Residential Property and the Owner of the Residential Property and the Other Property and the Owner of the Other Property and their respective agents, employees, mortgagees, tenants, subtenants, guests, invitees, and licensees.

4.5. Declarant hereby declares and establishes the following special uses and restrictions with respect to the Patio Area for the benefit of Unit Owners who are granted such benefits in a deed of conveyance, which area is a Limited Common Element lying south of the southernmost Unit in the Commercial Condominium and which is depicted on Exhibit A as a crosshatched area:

(A) The Patio Area may be used for commercial activities as may be approved by the Village of Glenwood, including but not limited to, outside restaurant table (bistro) usage. The Declarant and, after recording the Commercial Condominium Declaration, the Commercial Owner (through the Commercial Association) may grant a non-exclusive license to use part of the Patio Area for commercial activities approved by the Village of Glenwood, and any receipts from such commercial usage shall be held by the Commercial Association and applied to and used for costs of maintenance, repair and replacement of Cap Lot as set forth in Article VI, Section 6.2(A) hereof.

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(B) Any commercial licensee of the Patio Area shall be responsible for maintaining such licensed space in a clean, hygienic and safe condition including, but not necessarily limited to, obligations for refuse cleanup and washing of licensed Patio Area facilities. Any such commercial licensee shall also provide, upon request, proof of insurance coverages (by way of certificate of insurance or otherwise) in amounts which may be reasonably required by the Commercial Association for and against personal injury or property damage claims.

(C) Any commercial licensee of the Patio Area shall conform its usage to aesthetic standards as may be reasonably promulgated, from time to time, by the Commercial Association or the Village.

(D) At all times there shall be access to, and passage through, the Patio Area by the public and, after and outside the business hours of the commercial licensee, usage of any tables or chairs.

(E) Outdoor display of merchandise and/or other commercial materials, except for licensed activities in the Patio Area, are prohibited. This restriction shall not prohibit the temporary outdoor display of merchandise during "sidewalk sale" days that are approved by the Commercial Owner (through the Commercial Association) and the Village of Glenwood.

(F) Commercial use of seating in the Patio Area is prohibited after 1:00 a.m.

(G) Outdoor music in the Patio Area shall comply with any and all Village policies, as now in existence or as amended from time to time hereafter.

Notwithstanding anything contained herein to the contrary, Declarant reserves the right to amend this Operating Declaration so as to provide benefits with respect to the Patio Area to future Owners of unsold Units.

4.6. Declarant has acquired title to the Property legally described on Exhibit A attached hereto and made a part hereof (which property is hereby referred to as the "Lot 2 Property"). Declarant hereby declares and creates, for the benefit of the Lot 2 Property, a perpetual non-exclusive easement over a portion of Cap Lot as hereinafter described solely for the purpose of vehicular ingress and egress ("Ingress/Egress Easement") to and from the Lot 2 Property and Nugent Street. The Ingress/Egress Easement shall be located on and over that paved portion of Cap Lot over which vehicles can travel upon entering Cap Lot at the Nugent Street entrance to Cap Lot and extending to the Lot 2 Property. Declarant hereby reserves the right to more particularly describe the Ingress/Egress Easement Area by recording a Declaration for such purpose. The Ingress/Egress Easement is solely for the benefit of the owners and occupants, from time to time, of the Lot 2 Property, and their respective agents, tenants, guests and invitees.

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The Ingress/Egress Easement shall be valid and enforceable, and shall encumber Cap Lot and benefit the Lot 2 Property.

## ARTICLE V

### STRUCTURAL SUPPORT

5.1. If, for any reason, the structural support for any portion of the Building is reduced below the support required for the structural safety or integrity of the balance of the Building, the Owner responsible for such reduction shall promptly provide substitute adequate structural support at its sole expense. The Architect shall determine, at the request of either Owner, the extent of the reduction and the adequacy of the substitute support which shall be constructed in accordance with plans and specifications prepared by the Architect. The fees of the Architect shall be borne by the Owner responsible for such reduction.

5.2. In the event that the Architect determines that substitute or additional structural support is required in a portion of the Building in which the structural support has been reduced and the responsible Owner fails to commence the construction of such substitute support within a reasonable time, as determined by the Architect, or having commenced such construction fails to proceed diligently to cause the completion of such construction (the "Defaulting Owner"), the Owner of the other portion of the Building (the "Non-Defaulting Owner") shall have the right to complete the construction of the substitute or additional support at the expense of the Defaulting Owner and to enter upon the portion of the Building owned by the Defaulting Owner for such purpose, and all costs and expenses incurred by the Non-Defaulting Owner in effecting such repair or substitution shall be due from the Defaulting Owner on demand and shall be secured by a lien against the portion of the Total Property owned by the Defaulting Owner as provided in Article X hereof.

5.3. If the Owner responsible for reduction of support cannot be immediately identified, then the Owner of the portion of the Building in which the reduction occurs shall provide substitute or additional structural support, as required; provided, however, the Owner ultimately determined by the Architect to be responsible for reduction of support shall be liable for and shall pay all costs incurred in providing the substitute or additional support. Notwithstanding anything to the contrary contained in this Article V, the Owner of the Residential Property shall be solely responsible for all costs and expenses for structural support, safety and integrity of the Parking Spaces and the buildings within which the Parking Spaces are located.

5.4. No Owner shall make any alterations or changes to the Building which would adversely affect the structural integrity of the Building.



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## ARTICLE VI

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

6.1. The Owners of the Residential Property shall furnish the following services to the Owners of the Commercial Property when as and if required:

(A) Heating and Air Conditioning Systems. Each Owner shall have separate heating and air conditioning systems for each and every individual Unit in the Building. Each and every Unit Owner shall be responsible for its own heating and air conditioning system in its Unit. The Owner of the Residential Property shall supply heat to the Residential Property common areas at its sole cost and expense.

(B) Village Water Supply System. All Village water required by the Owner of the Commercial Property and the Owner of the Residential Property from Village mains through the water supply systems located in the Total Parcel shall be supplied by the Village through separate meters to each individual Unit in the Total Parcel. In the event the Village does not provide separate meters to each individual Unit within the Total Parcel, water shall be supplied by the Owner of the Residential Property through one meter located in the Total Parcel. In case the water supply is metered by the Owner of the Residential Property, the Commercial Property water usage shall be metered with a sub-meter. The Owner of the Commercial Property shall pay its share of said water bill based on the sub-meter readings within five (5) days after notice is given by the Owner of the Residential Property to the Owner of the Commercial Property of the amount due and owing.

(C) Sanitary Waste System Maintenance, Repair and Replacement. Routine maintenance, repair and replacement of the drain lines and risers shall be performed by the Residential Owner and the Commercial Owner shall pay its proportionate share of said maintenance, repair and replacement costs, which amount shall be Seventy Five (75%) Percent of the total costs paid by the Owner of the Residential Property. Said proportionate share shall be paid within five days after notice is given by the Owner of the Residential Property to the Owner of the Commercial Property of the amount due and owing.

(D) Roof and Building Maintenance, Repair and Replacement. Maintenance, repair and replacement to the roof of the Building and to the structure of the Building shall be performed by the Residential Owner and the Commercial Owner shall pay its proportionate share of maintenance, repair and replacement costs, which amount shall be Seventy Five (75%) Percent of the total costs paid by the Owner of the Residential Property. Said proportionate share shall be paid within five days after notice is given by the Owners of the Residential Property to the Owners of the Commercial Property of the amount due and owing. Maintenance, repair, and replacement of the buildings

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containing the Parking Spaces shall be performed by the Residential Owner at its sole cost and expense without contribution by the Commercial Owner.

(E) Scavenger Service. Each Owner shall be responsible for providing its own scavenger service to its Unit Owners. The trash receptacles for the Commercial Property and for the Residential Property shall be located on Cap Lot. The Residential Owner and Commercial Owner hereby grant mutual easements to each other to maintain the trash receptacles in the locations described above.

(F) Maintenance of Common Elements Except for Cap Lot. Maintenance of the Common Elements (except for Cap Lot which is set forth in subparagraph 6.2. below) shall be shared by the Residential Owners and the Commercial Owners, including, without limitation, exterior painting, exterior cleaning, etc., shall be supplied by the Owners of the Residential Property. Absent to an agreement to the contrary, such maintenance shall be supplied by the Owners of the Residential Property with the proportionate maintenance cost to be borne as follows: (i) the Commercial Owners as to Twenty Five (25%) Percent; and (ii) the Residential Owners as to Seventy Five (75%) Percent. An Owner's proportionate share shall be paid within five days after notice is given by the Owners of the Residential Property to the Owners of the Commercial Property of the amount due and owing.

6.2. The Owners of the Commercial Property shall be obligated to maintain Cap Lot in favor of the Owners of the Residential Property as follows. Maintenance, repair and replacement of Cap Lot, including, but not limited to, repairs, replacements, resurfacing, landscaping and snow removal, insurance and all other expenses directly associated with the use, operation and maintenance of Cap Lot shall be provided by the Owner of the Commercial Property. Cap Lot shall be maintained in a good and safe order and condition and the Owner of the Commercial Property shall make all repairs and replacements thereon necessary to keep the same in good and safe first class order and condition. The costs for the maintenance of Cap Lot, which costs shall include but not be limited to the costs and expense for repairs, replacements, resurfacing, landscaping and snow removal, insurance, management (including enforcement of any covenants, restrictions, rules and regulations), and all other expenses directly associated with the use, operation and maintenance of Cap Lot, shall be shared by the Residential Owners and Commercial Owners. The costs of maintenance of Cap Lot shall be shared in the following percentages: (i) the Commercial Owners as to Sixty (60%) Percent; and (ii) the Residential Owners as to Forty (40%) Percent. Notwithstanding the foregoing, if the Owners of the Other Property become subject to the terms of this instrument, then the costs of maintenance of Cap Lot shall be shared in the following percentages: (i) the Commercial Owners as to Sixty (60%) Percent; (ii) the Residential Owners as to Twenty Five (25%) Percent; and Other Property Owners as to Fifteen (15%) Percent.

6.3. Each Owner shall make a good faith effort to operate its Facilities and furnish all services, including, without limitation, the temperature condition: (i) at the lowest possible costs reasonably available without degrading the quality of any services furnished; and (ii) in a manner so as to provide each Owner with comfortable occupancy and enjoyment of the



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Commercial Property for its intended use as a retail/commercial/office building and the Residential Property for its intended use as a residential condominium building.

6.4. Statements for services rendered pursuant to this Article VI shall be paid by the Debtor Owner to the Creditor Owner within five days after receipt of notice by Debtor Owner of the amount due and owing to the Creditor Owner.

6.5. The following subparagraphs apply to circumstances where the Owners of either the Residential Property or of the Commercial Property shall fail to perform any service as described in Sections 6.1. or 6.2. of this Declaration.

(A) If the Owners of the Residential Property shall fail to perform any service described in Section 6.1 of this Declaration in accordance with the terms and conditions therein stated (except when the Owners of the Commercial Property has failed to make payments to the Owners of the Residential Property) and such failure shall continue for a period of five days after written notice thereof to the Owners of the Residential Property from the Owners of the Commercial Property, the Owners of the Commercial Property 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 Owners of the Residential Property cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure and affecting the Commercial Property or the Owners of the Commercial Property. During any period in which the Owners of the Commercial Property are operating the Facilities pursuant to Section 6.5(A) hereof, it shall make payments as otherwise provided herein.

(B) If the Owners of the Commercial Property shall fail to perform any service described in Section 6.2 of this Declaration in accordance with the terms and conditions therein stated (except when the Owners of the Residential Property have failed to make payments to the Owners of the Commercial Property) and such failure shall continue for a period of five days after written notice thereof to the Owners of the Commercial Property from the Owners of the Residential Property, the Owners of the Residential Property 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 Owners of the Commercial Property cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure and affecting the Residential Property or the Owners of the Residential Property.

6.6. If at any time a Debtor Owner shall fail to pay to the Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of Section 6.4 hereof for five (5) 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 the amount due is paid by the Debtor Owner, provided,

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however, that, if the Debtor Owner in good faith disputes the Debtor Owner's obligation to pay said sum of money and diligently contests any action or proceeding brought to collect the sum of money or to enforce any lien therefor, the Debtor Owner shall not be deprived of any disputed services unless and until it shall finally be determined by unreviewable court proceedings, arbitration, or otherwise that the Debtor Owner is obligated to pay said sum of money and thereafter the sum of money remains unpaid.

6.7. If the Debtor Owner in good faith believes that any item of cost of maintenance, repair or replacement under Article VI hereof is not reasonably allocated between the Owners (which will include the Other Property Owner with respect to Lot 6 maintenance costs), then the Debtor Owner, on or after April 1 and before June 1 of any calendar year, may give to the Creditor Owner written notice of objection to such allocation. Such notice shall specify the cost allocation to which the Debtor Owner objects, the reason or reasons why the Debtor Owner believes that such cost is not reasonably allocated under Article VI and the Debtor Owner's suggested revision of Article VI which would fairly allocate such cost. If within thirty (30) days after the serving of such notice, the Owners shall not have agreed upon the allocation of such cost, then their dispute shall be settled by the Architect. In such event, if the Architect finds the Debtor Owner has clearly and convincingly proved that such cost is not reasonably allocated under the provisions of Article VI, the Architect shall decide what would be the most reasonable allocation of such cost and shall set forth such finding and decision in writing, in which event Article VI shall be deemed revised in accordance with such determination of the Architect. The Architect shall decide whether, and to what extent, the new cost-sharing allocation shall be retroactive, provided, however, that said new cost-sharing allocation shall not be made retroactive to a date prior to the first day of January of the calendar year immediately preceding the calendar year in which the Debtor Owner shall have given written notice of objection to the prior allocation. If such new allocation is made retroactive under the provisions of the immediately preceding sentence, then appropriate reimbursement (the "Reimbursement Allocation") shall be made between the Owners to give effect to such decision of the Architect with respect to retroactivity. The Reimbursement Allocation may be paid, at the option of the Debtor Owner, over a period of time equal to the length of time that the new allocation is made retroactive, provided that interest as provided in Section 11.7 hereto is also paid for the period of time from the date of the Architect's decision to and including the date paid.

If, pursuant to the immediately preceding paragraph, the allocation of any cost shall be revised, then the Owners shall both execute, acknowledge and deliver to each other an instrument in recordable form modifying this Declaration to conform to such revision. The failure of any Owner to execute such modification shall not affect the force or effect of any such revision made in accordance with this Section and in such event the other Owner shall be authorized to execute the modification on behalf of the Owners who have failed to execute such modification and to record said modification in the office of the Recorder of Deeds of Will County, Illinois.

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## ARTICLE VII

### COMPLIANCE WITH LAWS; REMOVAL OF LIENS

7.1. The Owners of the Commercial Property and the Owners of the Residential Property:

(A) shall comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, the Village and any other municipality or agency now or hereafter having jurisdiction over the respective properties and applicable to it or its portion of the Total Property, if noncompliance would subject the other Owner to civil or criminal liability, would jeopardize the full force or effect of any certificate of occupancy issued to such other Owner or for the Building itself, or would result in the imposition of a lien against the property of the other Owner; and

(B) shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Total Property or any portion thereof, if such noncompliance would increase the rate of premiums of any policy of insurance maintained by the other Owner or any policy of insurance maintained by both the Owner of the Commercial Property and the Owner of the Residential Property.

7.2. The Owner of the Commercial Property or the Owner of the Residential Property shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on its portion of the Total Property or the other Owner's portion of the Total Property arising by reason of any work or materials ordered or any act taken, suffered, or omitted by such Owner if the effect of such lien might adversely affect the other Owner's property. In the event an Owner fails to remove any lien within the thirty (30) day period above, the other Owner may take such action as it may deem necessary to remove such lien, including payment to a third party to cause the release and removal of, or insurance over the lien, in which case the paying Owner shall become a Creditor Owner. The Creditor Owner shall be entitled to reimbursement from the Debtor Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove the lien, or insuring over the lien, and shall have a lien against the portion of the Total Property owned by the Debtor Owner to secure the repayment of any such costs or expenses as provided in Article XI hereof. However, the Debtor Owner shall not be required to remove any lien within thirty (30) days after the filing thereof, so long as within the thirty (30) day period the Debtor Owner: (i) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner of its intention to contest the validity or amount of such lien; and (ii) shall deliver to the Creditor Owner either: (a) cash or a surety bond of a responsible surety company acceptable to the Creditor Owner in an amount equal to at least One Hundred Fifty (150%) Percent of the lien claim and all interest and penalties thereon or such other amount as reasonably required by the Creditor Owner, or (b) other security reasonably acceptable to the Creditor Owner.

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## ARTICLE VIII

### REAL ESTATE TAXES

8.1. The Owner of the Commercial Property and the Owner of the Residential Property shall make good faith efforts and cooperate with each other so that the Commercial Property and the 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. From and after submission of the Residential Property and Commercial Property to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each individual Unit in the Residential Condominium Property and Commercial Condominium Property. The Owner of the Commercial Property shall pay the real estate taxes levied upon the Commercial Property, and the Owner of the Residential Property shall pay the real estate taxes levied upon the Residential Property. Upon the sale of any Residential or Commercial Condominium Unit, the Declarant may, but shall not be obligated to, collect funds from each Unit Purchaser representing an estimate of such Unit's portion of the real estate taxes that may be due and owing for the year in which the sale takes place. Any such funds so collected will be deposited into an escrow account by Declarant pursuant to a written agreement between Declarant and any Purchaser.

8.2. Until the Commercial Property and Residential Property are separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes and special assessments. The Owners of the Residential Property shall pay Seventy-Five (75%) Percent of the total real estate taxes and special assessments for the Total Property (including improvements) and the Owners of the Commercial Property shall pay Twenty-Five (25%) Percent of the total real estate taxes and special assessments for the Total Property (including improvements).

The Owner of the Residential Property shall pay the combined tax bill or bills for the Total Property prior to their due date. The Owner of the Commercial Property shall be responsible for and shall pay or reimburse the Owner of the Residential Property (within five (5) days after the demand by the Owner of the Residential Property therefor) for its share of the total real estate taxes levied in the combined tax bill or bills for the Total Property as set forth in this Section 8.2.

8.3. If an Owner shall fail to pay any tax or other charge, or share thereof, which is due and owing and that the Owner is obligated to pay pursuant to this Article VIII, then the other Owner may, after at least five (5) days written notice to the non-paying Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon and the non-paying Owner shall, upon demand, reimburse the other 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 non-paying Owner in accordance with Article XI hereof.



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8.4. The Owner of the Residential Property or the Owner of the Commercial Property may, if it shall so desire, endeavor at any time or times to seek to lower the assessed valuation upon the Property for the purpose of reducing taxes thereon. In the event such protest shall be made by an Owner prior to the time that the Commercial Property and Residential Property are separately assessed and taxed, the Owner seeking to reduce taxes ("Protesting Owner") shall be required to serve written notice to the other Owner ("Non-Protesting Owner") at least ten (10) days prior to the filing of the objection. The 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 the Non-Protesting Owner fails to join the Protesting Owner in obtaining the reduction, the Protesting Owner shall be authorized to collect any tax refund payable as a result of any proceedings Protesting Owner may institute for that purpose and any such tax refund shall be the property of the Protesting Owner. Notwithstanding the above, if the Non-Protesting Owner joins the Protesting Owner in seeking to lower the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes, the Owners shall apportion the tax refund in accordance with their respective portions of the real estate taxes. Notwithstanding anything else contained herein, until such time as separate tax bills are issued by the Cook County Collector, the Declarant may be the only Protesting Owner.

## ARTICLE IX

### INSURANCE

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

(A) The Owner of the Residential Property shall keep its property and the Common Elements insured for no less than "all risk" or "special form" coverage on real property and broad form named perils on the personal property for an amount not less than Eighty (80%) Percent of the full insurable replacement cost value thereof. The Owner of the Commercial Property shall keep its property and the Common Elements 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 Eighty (80%) Percent of the full insurable replacement cost value thereof. The Total Parcel and Building shall be appraised from time to time by an independent appraiser, at intervals agreed to by the Owner of the Commercial Property and the Owner of the Residential Property, and the policies shall be endorsed with an agreed amount clause in accordance with the appraisals. So long as the Residential Property and the Commercial Property remain 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 Residential and Commercial Condominium Declarations as being responsible for insuring additions, alterations, improvements and betterments. The Owner of the Residential Property shall obtain demolition insurance with a limit of not less than \$1,000,000, and the Owner of the

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Commercial Property shall obtain demolition insurance with a limit of not less than \$1,000,000.

(B) The Owner of the Commercial Property and the Owner of the Residential Property shall maintain comprehensive General Liability Insurance with Broad Form Extensions covering claims for personal injury or property damage occurring in or upon their respective properties, or as a result of operations thereon, for limits of not less than \$1,000,000 combined single limit for bodily injury or property damage with an additional \$5,000,000 umbrella coverage.

(C) The Owner of the Commercial Property shall insure its boiler and machinery risks, if any, on a comprehensive blanket basis covering all Building equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment and their appurtenant equipment on a repair or replacement basis for not less than \$500,000 limit each accident. The Owner of the Residential Property shall insure its boiler and machinery risks, if any, on a comprehensive blanket basis covering all Building equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment and their appurtenant equipment on a repair or replacement basis for not less than \$500,000 limit each accident for equipment located on the Residential Property.

(D) The Owner of the Commercial Property and the Owner of the Residential Property shall insure their respective plate or other type of glass risk.

9.2. The insurance policies required in Sections 9.1(A), 9.1(B), and 9.1(C) hereof shall be issued by the same insurance company. Such policies may be issued in combination covering one or several items and covering jointly the interests of each Owner, in which case the insurance company shall apportion the premium on an equitable basis. Such policies may also be issued separately with respect to each Owner's interest in the Total Property, but such policies must be issued by the same insurance company. In the event the Owner of the Residential Property and the Owner of the Commercial Property cannot agree upon the insurance company or agency to provide the insurance required under Sections 9.1(A), 9.1(B) and 9.1(C), the question of selection of an insurance company or agency shall be submitted to arbitration as provided in Article XII hereunder. Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois.

9.3. Each policy described in Section 9.1 hereof: (i) shall provide that the acts 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 name as insured parties the Owner of the Commercial Property and the Owner of the Residential Property and, at the request of each respective Owner, any mortgagees of all or any portion of the Commercial Property or the mortgagees of all or any portion of the Residential Property,

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as their interests may appear, and each policy described in Section 9.1(B) shall also name as an insured party the managing agent for the Owner of the Commercial Property and the Owner of the Residential Property; (iii) shall be endorsed with a clause which reads substantially as follows; "This insurance shall not be invalidated should any of the insureds hereunder waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property described herein"; (iv) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event this Declaration requires that the property insured thereunder is not restored; (v) shall provide that all losses payable thereunder shall be paid to the Depositary provided for in Article XVII hereof; and (vi) shall provide for a minimum of sixty (60) days advance written notice of cancellation to all insureds thereunder, unless such cancellation is for non-payment of premium, in which case thirty (30) days advance written notice shall be sufficient.

9.4. Limits of liability or types of insurance specified in this Article IX shall be reviewed no less often than annually at least thirty (30) days before the date of expiration of each policy to determine if such limits 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 and types of insurance comply with the requirements of any applicable rules, regulations or laws. Such limits shall be increased, or types of insurance shall be modified, if justified, based upon said annual review and upon any such modification or increase the Owners shall execute an instrument evidencing such increase or modification.

9.5. Copies of all renewal insurance policies or other bona fide evidence of insurance required hereunder shall be delivered by each Owner to the other Owner and to any mortgagee named as additional insured in any expiring policies at least thirty (30) days prior to the expiration date of any such expiring insurance policy.

9.6. Should an Owner fail to provide and maintain the required policies of insurance in this Article VIII ("Non- Insuring Owner"), as above provided, then the other Owner may, at its election, purchase such policy(ies) ("Insuring Owner") and the costs thereof shall be due and owing from the Non-Insuring Owner upon written demand and the payment of any such costs shall be secured by a lien against the portion of the total Property owned by the Non-Insuring Owner in accordance with Article XI hereof and against any insurance proceeds payable under such policies without any further act or deed by the Insuring Owner.

## ARTICLE X

### MAINTENANCE AND REPAIR; DAMAGE TO THE BUILDING

10.1. The Owner of the Residential Property shall, at its sole cost and expense, keep the Residential Property (other than the Commercial Easement Facilities) and Residential Easement Facilities in good and safe order and condition and, except as provided in Article VI, make all repairs therein and thereon, interior and exterior, structural and non-structural,



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and ordinary and extraordinary, necessary to keep the same in good and safe first class order and condition, howsoever the necessity and desirability thereof may occur, and whether necessitated by wear, tear, obsolescence, or defects (latent or otherwise) and further agrees that it shall not suffer or commit and shall use all reasonable precaution to prevent waste to such property.

10.2. The Owner of the Commercial Property shall, at its sole cost and expense, keep the Commercial Property (other than Residential Easement Facilities) and Commercial Easement Facilities in good and safe order and condition, except as provided in Article VI, and make all repairs therein and thereon, interior and exterior, structural and non-structural, and ordinary and extraordinary, necessary to keep the same in good and safe first class order and condition, howsoever the necessity or desirability thereof may occur, and whether necessitated by wear, tear, obsolescence, or defects (latent or otherwise) and further agrees that it shall not suffer or commit and shall use all reasonable precaution to prevent waste to such property.

10.3. If the Building is damaged by fire or other casualty and if such damage occurs in, on or about the Commercial Property only and does not affect Residential Easement Facilities, or if such damage occurs in, on, or about the Residential Property only and does not affect Commercial Easement Facilities, then any such damage shall be repaired and restored by the Owner of the portion of the Building (or the Owner of the Residential Property in the case of the structures containing the Parking Spaces) in which any such damage occurs and such Owner shall, in accordance with the provisions of Article XVIII hereof, be entitled to withdraw any insurance proceeds held by the Depository by reason of such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time an Owner shall not proceed diligently with any of the work or repair and restoration affecting an Easement in favor of the other Owner for which it is solely responsible as herein provided, then the other Owner (i) may give written notice to the Owner failing to perform the work or repair and restoration specifying the respect or respects in which the work, repair, or restoration is not proceeding diligently and, if, upon expiration of ten (10) days after providing written notice, any such work, repair, or restoration is still not proceeding diligently, then the other Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation may immediately perform such repair and restoration and may take all appropriate steps to carry out the same. The Owner performing such repair and restoration shall, in accordance with Article XVIII hereof, be entitled to withdraw any insurance proceeds and any other moneys held by the Depository by reason of any such damage, for application to the cost and expense of any such repair and restoration and shall also be entitled to reimbursement from the Owner responsible to perform the work, or the Debtor Owner, for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds.

10.4. If the Building is damaged by fire or other casualty and if the provisions of Section 10.3 are not applicable, then the repair and restoration of such damage shall be the joint responsibility of both the Owner of the Commercial Property and the Owner of the

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Residential Property, shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed by a contractor or contractors on behalf of both the Owner of the Commercial Property and the Owner of the Residential Property. The plans and specifications for the repair and restoration shall be prepared by the Architect, unless the Owner of the Commercial Property and the Owner of the Residential Property agree otherwise. The plans and specifications shall provide for the Building to be rebuilt as nearly as commercially practicable to the Building as constructed prior to damage, unless prohibited by law or unless the Owner of the Commercial Property and the Owner of the Residential Property agree otherwise. After preparing plans and specifications for the repair and restoration, the Architect shall furnish each Owner with a set of plans and specifications for their joint review. Unless the Owner of the Commercial Property and the Owner of the Residential Property agree otherwise, any contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized, empowered and directed to instruct the Depository, from time to time, as such repair and restoration progresses, to disburse in accordance with Article XVIII hereof, the insurance proceeds held by the Depository and any other moneys deposited with the Depository pursuant to Section 10.5 hereof, for application against the costs and expense of any such repair and restoration.

10.5. If the cost and expense of performing any repair or restoration provided for in Section 10.4 hereof shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage being repaired and restored, then such excess cost and expense (or the entire amount of such cost and expense, if no insurance proceeds are otherwise available) shall be borne by the Owners in proportion to the cost and expense of repairing and restoring (to its former condition) their respective portions of the Building. For the purpose of determining such proportions, the cost and expense of repairing and restoring any Commercial Easement Facilities or Residential Easement Facilities, the cost of replacement of which such Facilities under Sections 10.1 and 10.2 and Article VI hereof is to be borne in whole or in part by the Owner of the other portion of the Total Property, shall be allocated to the respective Owners in the same proportion in which the Owners are obligated to bear the cost of replacement of such Facilities.

10.6. In any instance of repair or restoration pursuant to Section 10.4 hereof or in any instance of repair or restoration by an Owner pursuant to Section 10.5 hereof, either Owner may request 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 (if a fixed cost construction contract shall not have been executed providing for the performance of such repair or restoration) and if the estimate or fixed cost exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then either Owner may at any time give notice to the other Owner demanding that each Owner deposit with the Depository the amount of excess cost and expense attributable to each Owner pursuant to this Article X. In lieu of depositing a lump sum excess amount, either Owner may deliver the Depository security for payment of excess amount acceptable to the other Owner, including, but without limitation, an irrevocable and unconditional letter of credit in favor of the Depository or an irrevocable commitment from a lender financing the Owner who has not deposited the lump sum excess amount provided for above to disburse funds to the Depository as the repair and

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restoration progresses in proportion to its share of the costs and expenses of the repair and restoration. If either Owner shall fail to pay, or, as the case may be, deposit, its 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 above within ten (10) days after the other Owner's demand therefor, then the other Owner may pay or deposit the non-paying or Debtor Owner's share of the cost and expense (or estimate thereof) and the Debtor Owner shall, upon written demand, reimburse the other Owner as Creditor Owner for the deposit amount. The Creditor Owner shall have a lien for any unpaid amount against the Debtor Owner's portion of the Total Property in accordance with Article XI hereof.

10.7 Upon completion of the repair or restoration of any damage to the Building, any insurance proceeds paid by reason of such damage in excess of the cost or expense of performing such repair or restoration shall be refunded to the Owners in the same proportion in which the Owners shared the cost of the most recently purchased insurance policy or policies which paid such excess proceeds.

## ARTICLE XI

### LIENS, DEBTS, INTEREST AND REMEDIES

11.1. If, at any time, a Debtor Owner shall fail within ten (10) days after demand therefor to pay to a Creditor Owner any sum of money due the Creditor Owner under or pursuant to the provisions of this Declaration, then, in addition to any rights of subrogation the Creditor Owner may have by operation of law or otherwise, the Creditor Owner shall have a lien against the portion of the Total Property owned by the Debtor Owner and a lien against any insurance proceeds payable to Debtor Owner to secure the repayment of such sum of money and all interest accruing pursuant to the provisions of this Article XI.

11.2. The liens imposed in this Article XI shall take precedence over any mortgage or other encumbrance constituting a lien on the portion of the Total Property owned by Debtor Owner other than a bona fide mortgage or trust deed which is a first and prior lien against such portion of the Total Property at the time of the recording of the notice of lien as hereinafter provided. 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. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner in the Office of the Recorder of Deeds of Cook County, Illinois and may be enforced by a proceeding in equity or by any other remedy available at law or in equity.

11.3. So long as the Residential and Commercial Property each remain subject to the provisions of the Act: (i) no Unit Owner shall be liable for all or any part of any claim against the Owner of the Residential Property or the Owner of the Commercial Property, as the case may be, in excess of an amount equal to the amount of the claim multiplied by the percentage of ownership interest in the Common Elements (as defined and set forth in the

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Residential Condominium Declaration and Commercial Condominium Declaration, as the case may be) allocated to such Unit Owner's Unit; and (ii) enforcement of any such liability shall be subject to the terms and provisions of the Act and of Sections 15.2 and 15.3 of this Declaration. Upon payment of the amount for which a Unit Owner may be liable, any lien arising against such Unit Owner's interest in the Residential Property or Commercial Property, as the case may be, on account of such claim shall be deemed released against such Unit Owner's interest in the Residential Property or Commercial Property without further act or deed by the Unit Owner, and, further, upon the written request of a Unit Owner, the Owner that has recorded notice of a lien shall deliver to the Unit Owner a written release of the lien. In the event that the Owner filing its lien fails, within ten (10) days after receipt of a written request, to deliver a release of its lien, the Owner filing its lien shall be liable to the aggrieved Unit Owner in the amount of One Hundred Dollars (\$100.00) per day until the date the release is delivered to the Unit Owner.

11.4. When a Unit 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.

11.5. No conveyance or other divestiture of title shall in any way affect or diminish any lien arising pursuant to this Article XI and any lien which would have arisen against any property pursuant to this Article XI, had there been no conveyance or divestiture of title, shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

11.6. A mortgagee of all or any portion of the Commercial Property or of all or any portion of the Residential Property shall have the right to an assignment of any lien affecting the property secured by its mortgage upon payment of the amount secured by such lien and shall, in the event of pay-off or satisfaction, be subrogated to such other lien and any additional security held by the holder thereof. Such mortgagee may at any time give to the holder of the lien a written notice of its election to pay such amount. On a date not less than ten (10) days and not more than thirty (30) days thereafter, the mortgagee shall pay the full amount of such lien and the holder of the lien shall deliver to the mortgagee an instrument in recordable form assigning the lien together with the debt secured thereby.

11.7. Whenever the Owner of the Commercial Property or the Owner of the Residential Property is obligated to pay a sum of money to the other Owner, interest shall accrue on such sum and shall be payable thereon at a rate of interest equal to the lesser of: (i) three (3) percentage points above the corporate base rate of interest announced from time to time by JP Morgan Chase, Chicago, Illinois (or any successor bank), as the rate to be charged at Chicago, Illinois to its corporate customers of the highest rating on ninety (90) day unsecured borrowings; or (ii) the maximum lawful rate of interest then in effect in Illinois, from the date any such sum first became due hereunder until paid in full.



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11.8. Subject to the limitations set forth in Article XV hereof, the rights and remedies of an Owner provided for in this Article XI or elsewhere in this Declaration with respect to any Owner to whom a sum of money or performance of any obligation under this Declaration is owed are cumulative and not intended to be exclusive of any other remedies to which an Owner may be entitled at law or in equity. The exercise by an Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other such right or remedy.

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

## ARTICLE XII

### ARBITRATION

All questions, differences, disputes or controversies arising hereunder, except those to be settled by the Architect or where otherwise provided herein, shall be settled by arbitration in accordance with the then existing rules of the American Arbitration Association ("AAA"). Such arbitration shall be conducted at the request of either Owner before three arbitrators (unless the Owners agree to use one arbitrator) designated as follows. The Owner requesting, the arbitration shall designate in writing, within fifteen (15) days after the date of its request, the name of an arbitrator who is a member of the AAA and knowledgeable in the issues being arbitrated and the other Owner shall make a similar arbitrator designation within the same fifteen (15) day period.

Within twenty (20) days after the selection of the two arbitrators designated above, the two arbitrators selected by the parties shall select and designate a third arbitrator. In the event the two arbitrators chosen by the parties are unable to agree upon a third arbitrator, then the third arbitrator shall be designated by the AAA within ten (10) days after the expiration of the twenty (20) day selection period. The arbitrators designated and acting under this Declaration shall make their award in strict conformity with AAA's rules and shall have no power to depart from or change any of the provisions thereof. Any such award shall be binding upon the Owner of the Commercial Property and the Owner of the Residential Property and shall be enforceable by any court exercising jurisdiction over the Total Property and both the Owner of the Commercial Property and the Owner of the Residential Property. Each Owner shall bear one-half of the expense of arbitration proceedings conducted hereunder (other than witness fees and attorneys fees). Notwithstanding the foregoing, should the arbitrators determine that the claim of the Owner requesting the arbitration is spurious and without merit, the Owner filing the spurious and meritless claim shall pay the entire cost of the arbitration proceedings. All arbitration proceedings hereunder shall be conducted at the AAA offices located in Cook County or, if none, then the City of Chicago, Illinois.

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## ARTICLE XIII

### UNAVOIDABLE DELAYS

Neither the Owner of the Commercial Property nor the Owner of the Residential Property 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 directly 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 pre-emptions, acts of God, energy shortages, or similar causes beyond the reasonable control of such Owner ("Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the period of such Unavoidable Delay, provided, however, that the Owner unable to perform (the "Non-Performing Owner") shall notify the other Owner in writing, within ten (10) days after such other Owner has notified the Non-Performing Owner pursuant to this Declaration of its failure to perform, with the existence and nature of any Unavoidable Delay. Thereafter the Non-Performing Owner shall, from time to time upon written request to the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning the Unavoidable Delay and its non-performance.

## ARTICLE XIV

### CONDEMNATION

14.1. In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any competent authority for any public or quasi-public use, the award resulting from any such taking shall be allocated and disbursed and any repair and restoration of the Building shall be performed in accordance with this Article XIV.

14.2. Any award for damages (direct, indirect or consequential) resulting from the taking of all or any part of the Total Property, other than a temporary taking, shall be paid to the Depositary. In the event of a taking of the temporary use of any space, the respective Owners shall be entitled to receive directly from the taking authority any awards for such taking of space within their respective portion of the Total Property according to the law then applicable.

14.3. In the event of a taking (other than a temporary taking) of a part of the Commercial Property only (not including any Residential Easement Facilities or affecting Facilities or services described in Section 6.2 hereof) or a taking of a part of the Residential Property only (not including any Commercial Easement Facilities or affecting Facilities or services described in Section 6.1 hereof), then, subject to the provisions of Section 14.9 hereof, the Owner of the portion of the Total Property in which the taking occurred shall

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repair and restore the remainder of its portion of the Building or area containing the Parking Spaces. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be at the sole cost and expense of the Owner of the portion of the Total Property in which the taking occurred. Such Owner shall be entitled to withdraw any award paid to the Depositary by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article XVIII hereof.

14.4. In the event of a taking other than a temporary taking or taking described in Section 14.3 hereof, subject to the provisions of Section 14.9 hereof, the Owner of the Commercial Property and the Owner of the Residential Property shall cooperate to repair and restore the remainder of the Building in accordance with plans and specifications approved by the Owners as hereinafter described. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed by a contractor or contractors on behalf of both the Owner of the Commercial Property and the Owner of the Residential Property. The cost and expense of repair and restoration shall be borne by the Owners in accordance with Section 14.5 hereof. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the owners shall agree otherwise, and the plans and specifications shall provide any changes in the Building required by reason of the taking for easements of access, ingress and egress and use of Facilities and for furnishing Building services comparable to easements created under Articles II, III and IV hereof and furnishing services under Article VI hereof. The Architect, after preparing such plans and specifications, will furnish a set of plans and specifications to the Owner of the Commercial Property and the Owner of the Residential Property for their approval. Unless the Owner of the Commercial Property and the Owner of the Residential Property agree otherwise, the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized, empowered and directed to instruct the Depositary, from time to time, as repair and restoration progresses, to disburse any award paid to the Depositary for application to the cost and expense of such repair and restoration, in accordance with Article XVIII hereof.

14.5. The cost and expense of performing the repair and restoration provided for in Section 14.4 above shall be borne by the Owners in the proportion which the cost and expense of repairing and restoring the portion of the Total Property owned by each Owner, shall bear to the entire cost and expense of such repair and restoration, provided that the cost and expense of repairing and restoring any Facilities located within one portion of the Total Property or the cost of replacement of which Facilities, pursuant to Sections 10.1 or 10.2 or Article VI hereof, is to be borne in whole or in part by the other Owner, shall be allocated to the Owners (including, with respect to Lot 6, the Owner of the Other Residential Property) in the same proportion in which the Owners are so obligated to bear the cost of replacement. An estimate of and allocation of costs and expenses hereunder shall be made by a reputable independent construction cost estimating firm selected by the Owner of the Commercial Property and the Owner of the Residential Property.



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14.6. If the amount of the award resulting from the taking of part or all of the portion of the Total Property owned by the Owner of the Commercial Property and part or all of the portion of the Total Property owned by the Owner of the Residential Property shall be determined separately by a court of law or equity or taking authority, then such determination shall be conclusive. If such a determination has not been made, the total award shall be allocated to each Owner in the same proportion as the cost and expense of repair and restoration is allocated pursuant to Section 14.5 hereof.

14.7. If the independent construction cost estimating firm's estimate of an Owner's portion of the cost and expense of performing repair and restoration pursuant to Section 14.4 hereof (or, if a fixed cost construction contract shall have been executed providing for the performance of such repair and restoration, then the amount of such contract attributable to an Owner's portion of the Total Property) exceeds the amount of the award allocated to an Owner pursuant to Section 14.6 hereof, then such Owner shall, within ten (10) days after receipt of written demand from the other Owner, deposit with Depository a sum of money equal to the amount of such excess. If that portion of the cost and expense actually incurred in performing such repair and restoration which is allocated to either Owner exceeds the amount of the award allocated to such Owner pursuant to Section 14.6 hereof, then such Owner shall, within ten (10) days after receipt of written demand from the other Owner, pay said excess cost or expense or deposit with Depository a sum of money equal to the amount of such excess. If an Owner shall fail to pay or deposit its share of the cost and expense (or estimated cost and expense) of performing any repair or restoration, as required hereunder, then the other Owner may pay or deposit the amount of the other Owner's share, as Debtor Owner, and the Debtor Owner shall, upon written demand, reimburse the Creditor Owner for such payment or deposit.

14.8. Upon completion and payment of the entire cost of repair and restoration pursuant to Section 14.3 or 14.4, any remaining award resulting from the taking then held by the Depository shall be paid out to the Owners in accordance with the allocations set forth in Sections 14.3 and 14.6 hereof.

14.9. In the event of a taking described in Section 14.3 or 14.4 hereof and if by reason of such a taking, it is not feasible to repair and restore either the Commercial Property or the Residential Property, or both, so that such portion or portions of the Total Property can be operated on an economically feasible basis, then such repair and restoration of the Building required by Sections 14.3 and 14.4 hereof shall not be performed and the condemnation award or awards paid for such taking shall be distributed in accordance with the provisions of Sections 14.3 and 14.6 hereof. However, in such event, the improvements made within such portion of the Total Property shall be demolished, or repaired and restored, as the Owner of the other portion of the Total Property shall direct, to such extent, if any, as may be necessary to comply with all laws, rules, orders, ordinances, regulations and requirements of any government or municipality or any agency thereof having jurisdiction or to provide essential services or structural support to the other portion of the Total Property. Such demolition,

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repair or restoration shall be deemed to be a repair or restoration to which the provisions of Paragraph 14.4 hereof are applicable.

14.10. In the event of a taking of all of the Total Property, the condemnation award or awards paid for such taking shall be distributed in accordance with the provisions of Section 14.6 hereof.

## ARTICLE XV

### LIMITATION OF LIABILITY

15.1. Each owner of a portion of the Total Property shall use reasonable diligence in performing the services required of such Owner as set forth in Article VI of this Declaration, but shall not be liable for interruption or inadequacy of service, loss, or damage to property or injury (including death) to any person for any reason. Each Owner obligated to furnish services hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs, or in case of an Emergency Situation.

15.2. In the event of a conveyance or divestiture of title to any portion of or interest in the Commercial Property or the Residential Property: (i) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder, but only with respect to any such portion or interest conveyed or divested; and (ii) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the 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 shall thereafter be so bound.

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

## ARTICLE XVI

### ARCHITECT

16.1. The Architect appointed to serve under and pursuant to the terms and provisions of this Agreement shall be a firm consisting of architects and engineers experienced in the design and operation of structures similar to the Building. The firm of Areté 3 Ltd. is hereby appointed as the Architect to serve hereunder. The Owner of the Residential Property may at any time dismiss the Architect and appoint another architectural firm experienced in design of

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structures similar to the Building as Architect by giving written notice of such removal and appointment to the Owner of the Commercial Property. The Owner of the Commercial Property may cause the Architect to be replaced if it demonstrates that the Architect has failed to perform its duties hereunder diligently or faithfully. In such event, the Owner of the Commercial Property shall serve notice upon the Owner of the Residential Property requesting the removal of the Architect, which notice shall set forth in detail the basis upon which the Architect has so failed to perform diligently or faithfully. If, in the opinion of the Owner of the Residential Property, the Owner of the Commercial Property is not entitled to remove and appoint a new Architect pursuant to this Section 16.1, the Owner of the Residential Property may object to the appointment of a new Architect by notifying the Owner of the Commercial Property of its objection in writing within fifteen (15) days after receipt of such notice from the Owner of the Commercial Property. If, within ten (10) days after the receipt of such objection by the Owner of the Residential Property, the Owners do not resolve their differences, then the dispute shall be settled by arbitration pursuant to Article XII hereof. The Architect sought to be replaced may give evidence or otherwise participate in the arbitration proceeding, but said proceeding shall not be binding upon the Architect for any purpose other than the purpose of determining whether said Architect shall continue to serve hereunder. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days prior written notice to both the Owner of the Commercial Property and the Owner of the Residential Property.

16.2. The Architect shall receive a reasonable fee for any service rendered hereunder, together with reasonable and necessary expenses incurred in connection therewith, and the Owner of the Residential Property and the Owner of the Commercial Property shall each pay its equitable share of the Architect's 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, the fees and expenses of the Architect shall be considered as costs and expenses of repair, restoration, or demolition 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, then the other Owner may pay the same and the Owner failing to pay shall, upon written demand, reimburse the other Owner for such payment.

## ARTICLE XVII

### DEPOSITARY

17.1. The Depositary required hereunder shall be the holder of the first mortgage on the Commercial Property prior to the sale of the first unit in the Commercial Condominium or, if a first mortgagee does not then exist or if such first mortgagee is not permitted by law to act as Depositary, or is unwilling to so act, then the Depositary shall be selected by the Owner of the Commercial Property and shall be one of the fifty (50) largest banks or trust companies

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(measured in terms of capital funds) with, its principal office in the City of Chicago, Illinois. The Depository shall be entitled to receive from the Owner of the Commercial Property and the Owner of the Residential Property that Owner's equitable share of the Depository's reasonable fees and expenses for acting as Depository and may retain its reasonable fees and expenses, free of trust, from moneys held by it.

17.2. The Depository shall not be liable or accountable for any action taken in good faith by the Depository, except that arising from its own negligence, or for any disbursement of monies made in good faith by the Depository. The Depository's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The 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 Owner of the Commercial Property and the Owner of the Residential Property, provided that, if only one Owner claims said insurance proceeds or condemnation award, then said Owner alone may authorize the Depository to so proceed to do so. In addition, the Depository may rely conclusively on any Architect's certificate furnished to the Depository in accordance with the provisions of Section 17.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in good faith reliance upon such certificate or authorization.

17.3. In consideration of the services rendered by the Depository, the Owners of the Commercial Property and Residential Property jointly and severally agree to indemnify and hold the Depository harmless from any and all damage, liability, or expense of any kind whatsoever, including, without limitation, reasonable legal expenses, incurred in the course of the Depository's duties hereunder or in the defense of any claim or claims made against the Depository by reason of its appointment hereunder, except when due to the Depository's negligence or actions not taken in good faith.

17.4. The Depository may resign by serving written notice on both Owners. Within thirty (30) days after receipt of such notice, the Owner of the Commercial Property shall appoint a substitute who qualifies under Section 17.1 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 Owner of the Commercial Property shall fail to appoint a substitute within thirty (30) days, the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company with its principal offices in the City of Chicago, Illinois, who qualifies under Section 17.1 hereof.



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## ARTICLE XVIII

### DISBURSEMENT OF FUNDS BY DEPOSITARY

18.1. Each request by the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, condemnation award, or other funds for application to the cost of repair, restoration, or demolition shall be accompanied by a certificate of the Architect, dated not more than ten (10) days prior to the request for disbursement, setting forth the following:

(A) That the sum requested has either: (i) been paid by or on behalf of the Owner of the Commercial Property or the Owner of the Residential Property (in which event the certificate shall name such Owner) or both Owners (in which event the certificate shall specify the amount paid by each respective Owner); or (ii) is justly due to contractors, subcontractors, materialmen, engineers, architects, or other persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof and 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 of the State of Illinois and any title insurer affording coverage against mechanics' liens;

(B) That the sum requested, plus all sums previously disbursed, does not exceed the cost of the work actually accomplished as of the date of such certificate; and

(C) That no part of the cost of the services and materials described in the certificate has been previously requested or is the basis of any previous or pending request for funds.

Upon compliance with the provisions of the preceding paragraph of this Section 18.1 and upon receipt of contractor's and subcontractor's sworn statements required under the Mechanics' Lien Act of the State of Illinois accompanied by partial or final waivers of lien, as appropriate, from the persons named in the sworn statement, the Depositary shall, out of the moneys so held by the Depositary, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them.

18.2. No contractor, subcontractor, materialman, engineer, architect, or any other person, other than the Owner of the Commercial Property and the Owner of the Residential Property and any mortgagee to whom an Owner's rights shall have been assigned as permitted hereunder shall have any interest in or right to or lien upon any funds held by the Depositary. The Owners and any such mortgagees, by agreement among themselves, may at

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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 and such mortgagees, if any, shall jointly instruct the Depository 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 XIX

### ESTOPPEL CERTIFICATES

19.1. The Owner of the Residential Property or the Owner of the Commercial Property shall, from time to time, within ten (10) days after receipt of written request from the other Owner, execute, acknowledge and deliver to the other Owner or to any existing or prospective purchaser, mortgagee, or lessee designated by the other Owner, a certificate stating:

(A) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying the modification agreements;

(B) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the other Owner and, if so, specifying the nature and extent thereof;

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

(D) whether the Owner executing such certificate has performed or is performing work other than service pursuant to Article VI hereof, the cost of which such Owner is or will be entitled to charge in whole or in part to the other Owner under the provisions hereof, but has not yet charged to such other Owner, and if there be any such work, specifying the nature and extent thereof;

(E) the nature and extent of any set-offs, claims or defenses then being asserted or otherwise known by the Owner against the enforcement of the other Owner's obligations hereunder;

(F) the total amount of all liens being asserted by the Owner executing such certificate under the provisions of this Declaration;

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(G) whether the Owner executing such certificate has given any notice making a demand or claim hereunder upon the other Owner which has not been discharged, released, or otherwise resolved and, if so, a copy of any such notice or notices shall be delivered with the certificate; and

(H) such other matters as may be reasonably requested.

19.2. So long as the Residential Property and/or the Commercial Property remain subject to the provisions of the Act, the certificate to be issued under this Article by the Owner of the Residential Property and/or the Owner of the Commercial Property may be issued on behalf of the Unit Owners by the Board of Managers or an authorized officer of the Residential Association and/or Commercial Association, as the case may be.

## ARTICLE XX

### EFFECT OF SUBMISSION OF THE RESIDENTIAL PROPERTY AND COMMERCIAL PROPERTY TO THE CONDOMINIUM PROPERTY ACT

Upon submission of the Residential Property and Commercial Property to the provisions of the Act, all rights and obligations, easements, burdens and benefits under this Declaration shall be appurtenant to the Residential Condominium Property and Commercial Condominium Property and shall be exercised or performed by the Unit Owners or the Board of Managers of the Residential Association and/or Commercial Association in accordance with the Residential Condominium Declaration and/or Commercial Condominium Declaration and this Declaration provided that, so long as the Residential Property and Commercial Property are submitted to the Act, any action to enforce any provisions of this Declaration on behalf of the Unit Owners or any notice permitted or required to be given by the Unit Owners shall be taken or given solely by each respective Association on behalf of all Unit Owners and further provided that any obligation hereunder shall be deemed to be the obligation jointly and severally of both the respective Association and the Unit Owners, subject to the provisions of Sections 11.3, 15.2 and 15.3 hereof. Each Unit Owner in its respective Association shall make a good faith effort to cause its respective Association to perform any and all obligations of the Owner of the Residential Property and the Owner of the Commercial Property hereunder respectively. Any notices permitted or required hereunder to be given to the Unit Owners shall be given in accordance with Article XXII of this Declaration.



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## ARTICLE XXI

### ALTERATIONS; ZONING

21.1. The following provisions apply to alterations:

(A) Either Owner may at any time, at such Owner's sole cost and expense, make alterations (including reconstruction and additions) to the part of the Building within Owner's portion of the Total Property, including the relocation of any Easements benefiting the other Owner, provided that such alterations comply with all of the provisions of this Article XXI and further provided that no alterations shall be made without the other Owner's written consent, which: (i) diminish the benefits afforded to such other Owner by any Easement; (ii) unreasonably interrupt the other Owner's use or enjoyment of any Easement; (iii) increase the costs and expenses for which the other Owner would be responsible pursuant to Article VI hereof; or (iv) alter the facade of the Building. The Owner of the Commercial Property shall not, without the written consent of the Owner of the Residential Property, make any alterations which will affect the Residential Easement Facilities. The Owner of the Residential Property shall not, without the written consent of the Owner of the Commercial Property, make any alterations which will affect the Commercial Easement Facilities.

(B) If at any time either the Owner of the Commercial Property or the Owner of the Residential Property proposes to make any alterations requiring the consent of the other Owner, then, before commencing such alterations, the Owner proposing to make the alterations shall give to the other Owner a copy of the plans and specifications showing the proposed alterations. If the other Owner consents in writing to the performance of the alterations or fails to respond within thirty (30) days of receipt of plans and specifications as provided in this Section 21.1(B), the Owner proposing to make the alterations may proceed to make its alterations in accordance with the plans and specifications. If in the opinion of either Owner, an Owner has violated the provisions of Sections 21.1(A) or 21.1(B), the Owner believing a violation exists shall provide the alleged violating Owner with written notification that the alterations or proposed alterations violate or will violate the provisions of Sections 21.1(A) or 21.1(B) hereof and specifying the respect or respects in which the provisions of the sections herein that are or will be violated. If an Owner gives a written notice to another Owner asserting a violation of Section 21.1(A) or 21.1(B) and if the Owners do not resolve their differences within thirty (30) days after the given asserting the violation, then the Owner who is making or proposes to make such alterations shall not commence or proceed with the alterations until the dispute has been resolved by the Architect pursuant to Section 21.1(C) hereof.

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(C) If any dispute arises between the Owner of the Commercial Property and the Owner of the Residential Property with respect to whether any alterations or proposed alterations violate the provisions of Section 21.1(A) or 21.1(B), then such dispute shall be submitted to the Architect and the Architect shall decide whether the alterations or proposed alterations violate the provisions of such Section. Neither Owner shall commence or proceed with any alterations upon the determination by the Architect that such alterations violate or would violate the provisions of Sections 21.1(A) or 21.1(B) hereof.

(D) The Owner of the Commercial Property and the Owner of the Residential Property, in making alterations, shall: (i) perform all work in a first-class manner and in accordance with good construction practices, (ii) comply with all applicable federal, state and local statutes, ordinances, rules and regulations, and (iii) comply with the 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 or vibration which would disturb an occupant or occupants of the other portion of the Total Property and, except in an Emergency Situation, no alterations shall be made by the Owner of the Commercial Property after 7:00 P.M. of any day and before 8:00 A.M. of the following day, prevailing time, or on Saturday or Sunday if such alterations would to any degree create noise or vibrations which would disturb occupants of the Residential Property.

21.2. The following provisions apply to zoning:

(A) Neither the Owner of the Residential Property nor the Owner of the Commercial Property shall make any alterations, allow any use of, or undertake any other action relating to their respective portions of the Total Property which would violate the provisions of the zoning and/or building ordinances for the Village applicable to the Total Parcel as said ordinance may be amended from time to time.

(B) The Residential Parcel and Commercial Parcel are now and shall continue to be one zoning lot under single control as defined in and required by the zoning ordinance for the Village. This Declaration controls use and development of the Total Property regardless of the number of Owners.

(C) Applications for building permits to make alterations which comply with the provisions of Sections 21.1 and 21.2(A) of this Declaration may be filed and processed solely by the Owner of the portion of the Total Property directly affected by said alteration, unless the Village or other government agency having jurisdiction requires joinder of the other Owner. If joinder by the other Owner not making alterations is required, said other Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit so long as the Owner does not incur liability by reason thereof. If an Owner not performing alterations fails to execute any application or instruments when required hereunder to do so, the altering

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Owner shall be authorized to execute any application or instruments as attorney-in-fact on behalf of the other Owner not performing alterations.

## ARTICLE XXII

### NOTICES

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

For Notices to Owner of the  
Commercial Property:

Nugent Square at Glenwood Commercial  
Condominium  
c/o Bruti Associates Ltd.

21146 Washington Parkway

Frankfort, Illinois 60423

For Notices to the Owner of the  
Residential Property:

Nugent Square at Glenwood Residential  
Condominium  
c/o Bruti Associates Ltd.

21146 Washington Parkway

Frankfort, Illinois 60423

As long as the Residential Property and Commercial Property remain subject to the Act, the Owner of the other Property, as the case may be, shall not be obligated to give personal notice to any Unit Owner or mortgagees of any Unit Owner's interest in the other Property, notice to the Residential Condominium Association or Commercial Condominium Association hereby being deemed sufficient. Any notice, demand, election, or other instrument delivered in person as aforesaid shall be deemed received when delivered and any notice, demand, election, or other instrument mailed as aforesaid shall be deemed received two (2) business days after deposit in the United States mail. Addresses for service of notice may be changed by written notice served at least ten (10) days prior to the effective date of any such change.

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## ARTICLE XXIII

### GENERAL

23.1. In fulfilling the obligations and exercising rights under this Declaration, each Owner shall use its best efforts to keep interference with that portion of the Total Property owned by the other Owner and the operations of the other Owner to a minimum and, to that end, except in an Emergency Situation, will give to the other Owner reasonable advance written notice, but not less than ten (10) days, of work which may so interfere and will arrange with the other Owner for reasonable and definite times and conditions under which any such work shall be done.

23.2. The invalidity of any covenant, restriction, condition, limitation, or any other part or provisions of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration.

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

23.4. The term of this Declaration shall be for a period of ninety-nine (99) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, all Owners of the Commercial Property and all Owners of the Residential Property, together with all Lienholders enter into an agreement terminating this Declaration, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect. The term "Lienholder" shall mean any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on any portion of the Total Parcel.

23.5. Articles II, III and IV of this Declaration may only be amended, modified, or terminated by a written instrument signed by all of the then Owners of the Residential Property, all of the then Owners of the Commercial Property and all Lienholders. Upon submission of the Residential Property and Commercial Property to the provisions of the Act, this Declaration (except for the articles and sections described in the previous sentence) may be amended or modified only in the manner and as required for amendment of the Condominium Instruments as set forth in Article XIV of the Commercial Condominium Declaration and Article XIV of the Residential Condominium Declaration.

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23.6. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of: (i) the rule against perpetuities; (ii) the rule restricting restraints on alienation; or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision in question shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of George Walker Bush, the current President of the United States, living at the date of this Declaration.

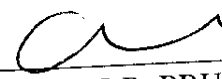
23.7. All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Total Property and their grantees, 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. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in any such documents.

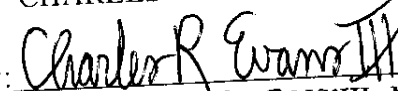
23.8. Each grantee of any portion of or interest in the Total Property and each mortgagee which succeeds to the fee simple ownership of any portion of the Total Property, shall be deemed, by the acceptance of a deed or mortgage or trust deed, to agree to perform each and every undertaking created hereunder attributable to that portion of the Total Property in which such grantee or mortgagee has acquired an interest.


23.9. The provisions of this Declaration shall be liberally construed to the end that the Total Property and Building shall remain first-class residential and commercial/office/retail property.

IN WITNESS WHEREOF, Nugent Square LLC, an Illinois limited liability company, has caused its corporate seal to be affixed hereunto and has caused its name to be signed to these presents by its President and attested by its Secretary, this 2<sup>nd</sup> day of November, 2005.

NUGENT SQUARE LLC

By:   
CHARLES P. BRUTI, Manager

By:   
CHARLES R. EVANS III, Manager

By:   
CHARLES E. SMITH, Manager



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
   )  
 COUNTY OF WILL         )        SS.

I, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that CHARLES P. BRUTI, CHARLES R. EVANS III and CHARLES E. SMITH, Managers of NUGENT SQUARE LLC, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Managers, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of NUGENT SQUARE LLC for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 2<sup>nd</sup> day of November, 2005.

Denise A Kondrat  
 Notary Public

My Commission Expires:  
11/16/05

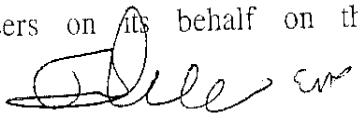


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## CONSENT OF MORTGAGEE

First National Bank, holder of a mortgage on the Property dated January 18, 2005, and Recorded January 20, 2005, as Document No. 0502047136, hereby consents to the execution and Recording of the within Declaration of Covenants, Conditions, Restrictions and Easements for Nugent Square at Glenwood Residential Condominium and Nugent Square at Glenwood Commercial Condominium and agrees that said mortgage is subject to the provisions of said Declaration.

IN WITNESS WHEREOF, the said First National Bank, has caused this instrument to be signed by its duly authorized officers on its behalf on this 7th day of November, 2005

  
By: First National Bank  
Name: Brent Franke  
Its: Executive Vice President

ATTEST:

By: First National Bank  
Name: Patricia Galt  
Its: VICE PRESIDENT

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### PLAT OF SURVEY (INCLUDING LEGAL DESCRIPTIONS OF PROPERTY)

See Attached

Property of Cook County Clerk's Office

**UNOFFICIAL COPY**

0536345144

Doc#: 0536345144 Fee: \$112.50  
Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 12/29/2005 04:25 PM Pg: 1 of 45

**OVERSIZE**

**EXHIBIT  
FORWARD  
TO BASEMENT  
FOR  
SCANNING**

Property of Cook County Clerk's Office

RECORDED DATE \_\_\_\_\_

4431

CASHIER # / NAME \_\_\_\_\_

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