

UNOFFICIAL COPY



Doc#: 0617818033 Fee: \$106.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/27/2006 12:12 PM Pg: 1 of 42

CT 8343639 DBM 10f2

RECIPROCAL EASEMENT AGREEMENT

1521 N. Milwaukee
Chicago, Illinois 60602

Property of Cook County Clerk's Office

This document prepared by: Alan S. Levin, 29 S. LaSalle, Suite 300, Chicago, Illinois 60603

Box 334

UNOFFICIAL COPY

EXHIBIT F

This document prepared by and after recording return to:
Alan S. Levin
29 South LaSalle, Suite 300
Chicago, Illinois 60603

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 1st day of May, 2006 by Hood Development Limited Liability Company, an Illinois limited liability company (the "Declarant").

RECITALS

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

B. The "Total Parcel" is situated in Chicago, Cook County, Illinois, and legally described on Exhibit A attached hereto. The Total Parcel is presently improved with a three (3) story building commonly known as 1521 N. Milwaukee Avenue, Chicago, Illinois ("Building"), improved with three (3) residential condominium units on the third floor ("Residential Property") and one (1) commercial space at the first floor and second floor and basement levels ("Commercial Property").

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

D. The Declarant desires by this Declaration to specifically provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Total Property, and to protect the respective Property, by providing for, declaring and creating (i) certain easements, covenants and restrictions against and affecting the Residential Property which will be binding upon each present and future owner of the Residential Property, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein including any portion thereof or interest or estate therein including leasehold interests, to the extent provided herein, and (ii) certain easements, covenants and restrictions against and affecting the Commercial Property, which will be binding upon each present and future Owner of the Commercial Property, or of any portion thereof or interest or estate therein, and which will

UNOFFICIAL COPY

inure to the benefit of each present and future Owner of the Residential Property, or of any portion thereof or interest or estate or Unit therein, to the extent provided herein.

NOW, THEREFORE, the Declarant hereby declares that the Total Property and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Agreement (or "Declaration"). Declarant does hereby further declare and agree that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of, or interest or estate or leasehold interests in, the Total Property and each of the foregoing shall run with the land and be subject to this Declaration.

ARTICLE I

INCORPORATION OF RECITALS

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

ARTICLE II

DEFINITIONS

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

2.2 "Building" means that certain building commonly known as 1521 N. Milwaukee Avenue, Chicago, Illinois

2.3 "Commercial Improvements" means all improvements constructed now or hereafter within and upon the Commercial Parcel.

2.4 "Commercial Parcel" shall mean the real property legally described as the Commercial Parcel on Exhibit B attached hereto.

2.5 "Commercial Property" shall mean the Commercial Parcel and the Commercial Improvements, which Commercial Property contains approximately 10,600 square feet on the first floor and second floor and the basement level of the Building, but excluding any facilities expressly serving the Residential Property.

2.6 "Common Elements" means all portions of the Residential Property submitted from time to time to a Condominium Declaration except the Units.

2.7 "Common Expenses" means expenses to be paid by the Owners in relation to their Proportionate Share, including, but not limited to, common element insurance (unless the premiums increase due to a special use); tuckpointing; acid-washing; sandblasting; repair;

UNOFFICIAL COPY

maintenance and replacement of structural components of the Building (excluding roofs); and any common utilities not separately metered.

2.8 "Condominium Association" means an unincorporated association formed, or to be formed, for the purpose of administering the Residential Property pursuant to the Act.

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

2.10 "Condominium Improvements" means all improvements constructed within and upon the Condominium Parcel.

2.11 "Condominium Parcel" shall mean the real property legally described as the Condominium Parcel or Exhibit A attached hereto.

2.12 "Condominium Property" (or Residential Property) shall mean the Condominium Parcel and the Condominium Improvements which shall be submitted to the Act.

2.13 "Creditor Owner", except where otherwise defined hereunder in a specific context, means an Owner to which a payment of money or other duty or obligation is owed under this Declaration by another Owner which has failed to make such payment or to perform such duty or obligation as and when required hereunder.

2.14 "Declarant" means Hood Development Limited Liability Company, an Illinois limited liability company, its successors and assigns.

2.15 "Default Rate" means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Article X hereof.

2.16 "Defaulting Owner", except where otherwise defined hereunder in a specific context, means an Owner which has failed to make a payment of money owed under this Declaration to another Owner or to perform any of its duties or obligations as and when required hereunder.

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

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

2.19 "Facilities" means all components, and any replacements or substitutions therefor, of the mechanical, plumbing, electrical, heating, air conditioning, alarm, television, telephone

UNOFFICIAL COPY

and other utility systems forming a part of the Improvements and designed or utilized to furnish utility or other services to any portion of the Improvements, including without limitation: annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment, fans, fixtures, generators, hangers, heat tracers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, shafts, starters, switches, switchboards, systems, tanks, transformers, valves, wiring and the like.

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

2.21 "Maintenance" means and includes operation, maintenance, repair, reconditioning, refurbishing, reconfirmation, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of Facilities or of such other portions of the Improvements and includes the right of access to and the right to remove from the Improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

2.22 "Non-Condominium Property" means any portion of the Total Property, from time to time, not submitted to the Act.

2.23 "Owner" means either the Owner of the Residential Property or the Owner of the Commercial Property, as the context requires. "Owners" means the Owner of the Residential Property and the Owner of the Commercial Property, as the context may require.

2.24 "Owner of the Commercial Property" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Commercial Property. If at any time the Commercial Property is submitted to the provisions of the Act, the Owner of the Commercial Property shall mean all of the fee simple owners of Units therein collectively and not individually.

2.25 "Owner of the Residential Property" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Condominium Property. If and so long as the Condominium Property has been submitted to the provisions of the Act, the Owner of the Condominium Property shall mean collectively all of its Unit Owners in and to the Condominium Property and not individually.

2.26 "Proportionate Share" means the percentage of ownership of the Total Property, to wit, the Owner of the Commercial Property owns sixty-three and 20/100 percent (63.20%) of the Total Property and the Owners of the Condominium Property own thirty-six and 80/100 percent (36.80%) of the Total Property, for purposes of the payment of Common Expenses and as otherwise used herein.

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

UNOFFICIAL COPY

2.28 "Secured Property Lenders" mean the holder of any mortgage or trust deed in the nature of a mortgage (as the same may be amended and/or replaced from time to time) on any portion of the Total Property, excluding, however, any mortgage or trust deed in the nature of a mortgage securing a loan to any Unit Owner.

2.29 "Total Parcel" means the parcels of real estate legally described on Exhibit A and Exhibit B attached hereto.

2.30 "Total Property" means the Residential Property and the Commercial Property.

2.31 "Unavoidable Delay" means those events described in Article XII hereof which excuse the timely performance of any obligation created hereunder.

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

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

2.34 "Unit Ownership" means a part of any portion of the Total Property submitted to the Act consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

ARTICLE III

EASEMENTS IN FAVOR OF CONDOMINIUM PROPERTY

3.1 The following perpetual (except as otherwise provided) easements in, to under, over, upon, through and about portions of the Commercial Property, as the case may be, are hereby granted, in favor of the Condominium Property:

(A) A non-exclusive easement in and to all structural members, columns and beams, footings, caissons and foundations, common walls, ceilings and floors, and any other supporting components located in or constituting a part of the Commercial Property for the support of (i) the Condominium Improvements and (ii) any Facilities located in the Commercial Property with respect to which the Owner of the Condominium Property is granted an easement under this Declaration.

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

(C) An exclusive easement maintaining encroachments to the extent that, by reason of the original construction or any reconstruction or replacement authorized by the terms of this Declaration of the Improvements or the subsequent settlement or shifting of any part of the

UNOFFICIAL COPY

Improvements, any part of the Condominium Improvements encroaches or shall hereafter encroach upon any part of the Commercial Property. No such encroachment shall be placed or enlarged deliberately. Such easement permitting encroachments shall exist only as long as the encroaching portion of the Improvements continues to exist; provided, however, that in no event shall an easement for any encroachment be created in favor of the Condominium Property if such encroachment unreasonably interferes with the reasonable use and enjoyment of or materially lessens the available light and air of the Commercial Property by the respective Owners thereof.

(D) An exclusive easement for use in common with the Owner of the Commercial Property of those areas located in the Commercial Property that are intended for the common use of the Owners of the Total Parcel, including but not limited to trash receptors, trash rooms, loading areas and mail or package delivery areas.

(E) A non-exclusive easement for ingress and egress (and, where reasonably necessary, use) by persons, material and equipment over, on, across and through the Commercial Property to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of the Condominium Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article V hereof.

(F) A non-exclusive easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, across and through the Commercial Property.

3.2 Each Easement created under this Article III which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property, shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Commercial Property and any tenant of all or substantially all of the Commercial Property may, from time to time after consultation with the Owner of the Condominium Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Commercial Property and in order to assure the reasonable security of the Commercial Property.

3.3 Easements provided for, declared or created under this Article III shall be binding upon the Commercial Property and the Owner of the Commercial Property, shall run in favor of and inure to the benefit of, shall be appurtenant to the Condominium Property, and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.

ARTICLE IV

EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

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

UNOFFICIAL COPY

(A) A non-exclusive easement in and to all structural members, columns and beams, footings, foundations, common walls, ceilings, and floors, and any other supporting components located in or constituting a part of the Condominium Property for the support of (i) the Commercial Improvements and (ii) any Facilities located in the Condominium Property with respect to which the Owner of the Commercial Property is granted an easement under this Declaration.

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

(C) An exclusive easement maintaining encroachments in the event and to the extent that, by reason of the original construction or any reconstruction or replacement authorized by the terms of this Declaration or the subsequent settlement or shifting of any part of the Improvements, any part of the Commercial Improvements encroaches or shall hereafter encroach upon any part of the Condominium Property. No such encroachment shall be placed or enlarged deliberately. Such easement permitting encroachments shall exist only as long as the encroaching portion of the Improvements continues to exist; 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 or materially lessens the available light and air of the Condominium Property by the respective Owners thereof.

(D) An exclusive easement for use in common with the Owner of the Condominium Property of those areas located in the Condominium Property that are intended for the common use of the Owners of the Total Parcel, including but not limited to trash receptors, trash rooms, loading areas and mail or package delivery areas.

(E) A non-exclusive easement for ingress and egress (and, where reasonably necessary, use) for persons, material and equipment over, on, across and through the Condominium Property to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of the Commercial Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article V hereof.

4.2 Each Easement created under this Article IV which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Condominium Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Condominium Property may, from time to time after consultation with the Owner of the Commercial Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the Condominium Property.

UNOFFICIAL COPY

4.3 Easements provided for, declared or created under this Article IV shall be binding upon the Condominium Property and the Owner of the Condominium Property, shall run in favor of and inure to the benefit of and shall be appurtenant to the Commercial Property.

4.4 With regard to any portion of the Total Property over which easements have been granted pursuant to Articles III and IV hereof, the Owner of that portion of the Total Property burdened by such easement shall have the right (at such Owner's sole cost and expense) to relocate any such easements in the event alternative means can be substituted to insure the continuation of the benefit granted so long as it does not interfere with the other Owners of Total Property's use and enjoyment.

4.5 With regard to any portion of the Total Property over which easements have been granted pursuant to Articles III and IV hereof for pedestrian ingress and egress in an Emergency Situation, such easements shall not be deemed to include any portion of a dwelling unit or a commercial space.

ARTICLE V

STRUCTURAL SUPPORT

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

5.2 Except in the case in which Article IX is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the Improvements is endangered, then the following provisions shall apply:

(A) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, (such determination to be made by the Architect, as defined in Article XIV), then the Architect shall determine the apportionment of the cost for all Owners and in such proportions determined by the Architect, the Owners shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article XIX would not require such approval) the Owner or Owners of the portion of the Total Property affected thereby, the Architect and Secured Property Lenders with respect to any portions of the Total Property affected thereby and, subject to the provisions of Article IX hereof, shall pay all costs and expenses, including any architect's and other fees, in connection with construction of substitute or additional support.

(B) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except as otherwise provided in Article XIX hereof) the Owners of the portions of the Total Property affected thereby, the Architect and Secured Property Lenders with respect to the portion of the Total Property affected thereby and, subject to the

UNOFFICIAL COPY

provisions of Article IX hereof, shall pay all costs and expenses, including any architects' or other fees, in connection with construction of substitute or additional support.

5.3 The responsible Owner or Owners shall commence, within thirty (30) days after notice from any other Owner, or in the event the matter is submitted to the Architect, within thirty (30) days after the Architect's determination, the construction of such substitute or additional support within a reasonable time under the circumstances free of all mechanic's lien claims and having commenced such construction shall proceed diligently to cause the completion of such construction.

5.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners in accordance with Section 5.2 shall be determined as responsible for such construction, any Owner shall, upon not less than thirty (30) days' advance written notice to the other Owners (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever may be required, or any Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all actual and reasonable costs and expenses incurred as a result of any Owner's provision of any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of the other portion of the Total Property during any period of reconstruction unless such responsible Owner was grossly negligent or purposeful in compromising the structural integrity of any portion of the Total Property.

ARTICLE VI

COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

6.1 The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Total Property or any portion thereof, if noncompliance by it with respect to its portion of the Total Property or any part thereof would subject any other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to any other Owner's right to occupy or utilize beneficially its portion of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of any other Owner or would increase costs of insurance of any other Owner or would impose any threat or danger to any person or property.

If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the Defaulting Owner has failed to comply and if upon expiration of

UNOFFICIAL COPY

thirty (30) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs incurred in connection with causing any such compliance to occur, together with interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner.

6.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on any other Owner's portion of the Total Property, or on its portion of the Total Property, arising by reason of its act or any work or materials which it has ordered, but only where such lien includes the other Owner's portion of the Total Property. However, if a lien is recorded against one Owner's portion of the Total Property but adversely affects any easement or service to be performed or furnished to the other Owner, then such other Owner shall have the right to remove such lien in accordance herewith. Notice of the filing of any such lien shall be served upon the Secured Property Lenders. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien plus interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Secured Property Lenders; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner, and to the Secured Property Lenders if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the Creditor Owner or, if loan documents so provide, to the Secured Property Lenders, either: (1) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner and the Secured Property Lenders, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or to establish a title indemnity with a title company with sufficient funds, if at all, as required by the title company to endorse over such lien claim or (2) other security reasonably acceptable to the Creditor Owner and the Secured Property Lenders, if applicable. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the document securing the Secured Property Lenders, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within five (5) days after the occurrence of any of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time to

UNOFFICIAL COPY

- remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

6.3 Each Owner (hereinafter in this Section 6.3, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners (hereinafter in this Section 6.3, the "Indemnitee") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee (assuming such claim, action or proceeding does not exceed insurance limits). Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.

6.4 Without limiting the provision of Section 19.1(A), neither the Owner of the Condominium Property nor the Owner of the Commercial Property shall make any Alterations (as that term is herein below defined in Section 19.1) or allow any use of their respective portions of the Total Property or to take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance, as said ordinance may be amended from time to time or any similar or successor ordinance in effect from time to hereafter and applicable to the Total Property or any portions thereof. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning Ordinance as applicable to any portions of the Total Property without the written consent of the other Owner.

ARTICLE VII

REAL ESTATE TAXES

7.1 The Owners shall make good faith efforts and cooperate with each other such that the Condominium Property and the Commercial 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 of Cook County, Illinois ("Assessor"). The Owner of the Commercial Property shall pay the real estate taxes levied upon the Commercial Property, and the Owner of the Condominium Property shall pay the real estate taxes levied upon the Condominium Property.

7.2 Until the Commercial Property and Condominium Property are separately assessed and taxed, each Owner shall pay prior to the due date its respective portion of such real estate taxes and special assessments in accordance with their Proportionate Share. Therefore, the

UNOFFICIAL COPY

Owner of the Commercial Property shall pay its Proportionate Share of the real estate taxes and special assessments levied and due on the Total Property and the Owner of the Condominium Property shall pay its Proportionate Share of the real estate taxes and special assessments levied and due on the Total Property.

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

7.4 Except to the extent prohibited or restricted by any covenant, condition or restriction of record, any Owner may, if it shall so desire, endeavor at any time or times, to obtain a lowering of the assessed valuation upon the Total Property for the purpose of reducing taxes thereon ("Protesting Owner"). In the event such protest shall be made by a Protesting Owner prior to the time that the Condominium Property and Commercial Property are separately assessed and taxed, the Protesting Owner shall be required to serve written notice to the other Owners informing them of such protest, and the other Owners may elect, by delivering notice to the Protecting Owner within ten (10) days after receipt of the notice described above to join the Protesting Owner in effecting such a reduction. In the event any other Owners fail to join the Protesting Owner in obtaining the reduction, the Protesting Owner shall be authorized to collect any tax refund payable as a result of any proceeding Protesting Owner may institute for that purpose and any such tax relief shall be the property of Protesting Owner. Notwithstanding the above, if any other Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes, the Owners who have protested shall apportion the tax refund in accordance with their respective portions of the real estate taxes. Nothing in this Section 7.4 shall affect any Owner's or each Owner's right to protest taxes or special assessments to such extent as it affects only such Owner's portion of the Total Property.

ARTICLE VIII

INSURANCE

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

(A) The Owner of the Condominium Property and the Owner of the Commercial Property shall keep the Improvements (specifically excluding, however, any equipment, trade fixtures, or items of personal property located within the Improvements) insured under a single casualty insurance policy (the "Casualty Policy") providing "all risk" or "special form" coverage in an amount not less than one hundred percent (100%) of the insurable replacement value

UNOFFICIAL COPY

thereof. Such policy shall not be endorsed with a replacement coverage endorsement and an agreed amount clause, and no coinsurance penalty shall be applicable. The Owner of the Commercial Property shall pay its Proportionate Share of the premiums, fees and charges incurred in connection with the Casualty Policy, and the Owner of the Condominium Property shall pay its Proportionate Share of the premiums, fees and charges incurred in connection with the Casualty Policy.

If any Owner shall fail to pay its share of any such premiums, fees or charges, then any other Owner may, without prior notice to the other Owner, pay such Defaulting Owner's share thereof, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment with interest at the Default Rate from the date such payment was made until the date repaid, and shall also have a lien against the portion of the Total Property owned by the Defaulting Owner in accordance with Article X hereof.

(B) The Owner of the Condominium Property and the Owner of the Commercial Property shall each maintain Comprehensive General Liability Insurance with Broad Form Extensions covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective portions of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class buildings in the City of Chicago, but in all events for limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit for personal and bodily injury or property damage.

8.2 Each policy described in Section 8.1 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall, with respect only to the casualty policy described in Section 8.1(A), insure as named insureds the Owner of the Condominium Property and the Owner of the Commercial Property and as additional insureds the Secured Property Lenders; (iii) shall provide, except for liability insurance described in Section 8.1 (B), by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsements or provision pays such increase; (iv) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder including the Secured Property Lenders, unless such cancellation is for non-payment of premium, in which case only ten (10) days' advance written notice shall be sufficient.

Nothing contained in this Section 8.2 shall prevent the naming of any persons (in addition to those mentioned in clause (ii) herein above), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of standard mortgage endorsement for Secured Property Lenders.

UNOFFICIAL COPY

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

8.4 Copies of all original insurance policies and all renewal insurance policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner and to the Secured Property Lenders, at least twenty (20) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Should an Owner fail to provide and maintain any policy of insurance required under this Article VIII or pay its share of the premiums or other costs, for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment of the Creditor Owner to the date of reimbursement to the Creditor Owner.

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

ARTICLE IX

MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

9.1 Except for the maintenance, repair and replacement of windows of the Total Property, the exterior of the Total Property shall be maintained, repaired and replaced by the Owners, and the cost thereof shall be Common Expenses paid by the Owners in accordance with their Proportionate Shares. The windows located on the Condominium Property shall be maintained, repaired and replaced by the Owner of the Condominium Property, at its sole cost and expense. The windows located on the Commercial Property shall be maintained, repaired and replaced by the Owner of the Commercial Property, at its sole cost and expense.

9.2 Except as expressly provided hereinafter in this Article IX in the event of fire or other casualty, the Owner of the Condominium Property shall keep the Condominium Property in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, or structural or non-structural components thereof, or

UNOFFICIAL COPY

involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Condominium Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Further, the Owner of the Condominium Property shall maintain the exterior of the Condominium Property using its present scheme or a similar scheme for all painted surfaces, shall keep the brick properly tuckpointed, cleaned and maintained and shall not paint the exterior brick.

9.3 Except as expressly provided hereinafter in this Article IX in the event of fire or other casualty, the Owner of the Commercial Property shall keep the Commercial Property in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Property shall also maintain the sidewalks located along the Building in a clean and uncluttered manner. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Further, the Owner of the Commercial Property shall maintain the exterior of the Commercial Property using its present scheme or a similar scheme for all painted surfaces, shall keep the brick properly tuckpointed, cleaned and maintained and shall not paint the exterior brick.

9.4 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Condominium Improvements only or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements only, then any such damage shall be repaired and restored by the Owner of the portion of the Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall be entitled to any insurance proceeds by reason of any such damage for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished to any other Owner, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall be entitled to any insurance proceeds as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds plus interest at the Default

UNOFFICIAL COPY

Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner.

9.5 If the Improvements are damaged by fire or other casualty and if the provisions of Section 9.4 are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clause (a) or (b) of Section 9.4, then the repair and restoration of such damage shall be the joint responsibility of the Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners which are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Secured Property Lenders, if required. In the event such Owners, and the Secured Property Lenders, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article XI hereof. The plans and specifications for such repair and reconstruction shall provide for the improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Secured Property Lenders, if required.

9.6 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in Section 9.5 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owner's Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.

9.7 In any instance of repair or restoration pursuant to Sections 9.4 or 9.5 hereof, any Owner may require that an estimate of the cost of expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner pay the amount of such excess cost and expense attributable to each Owner pursuant to this Article IX. If any Owner shall fail to pay such Owner's share of the cost and expenses (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 9.7, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

9.8 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and

UNOFFICIAL COPY

attributable to a particular portion of the Total Property shall be refunded to the respective Owner or, if applicable, to the holder of a mortgage encumbering the Owner's respective portion of the Total Property in accordance with the terms of such encumbrance, to the extent that such sum exceeds the actual repair or restoration of such Owner's Improvements. Such funds which are paid to each respective Owner or, if applicable, to the afore described mortgage holder, shall be payable only from each Owner's respective insurance proceeds.

9.9 If the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Secured Property Lenders, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's Improvements other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner pursuant to the terms and the amounts stated in each Owner's policy, subject to the rights of the Secured Party Lenders. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 9.4, 9.5, 9.6, 9.7 and 9.8 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such a manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any violations of applicable ordinances of the City of Chicago caused by the other party's failure to rebuild. In the event all Owners of the Total Property agree not to rebuild where the Improvements are totally destroyed, the land underlying the Improvements shall be deemed to be owned by the Owners in accordance with the value of the improvements of each respective Owner as Tenants in Common. Any Owner shall have the right to sue for partition (but for purposes of such partition the land shall be deemed not susceptible of division).

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

ARTICLE X

LIENS, RIGHTS AND REMEDIES

10.1 Each Owner shall pay its Proportionate Share of Common Expenses within Thirty (30) days after being billed therefor by the other Owner or by any third party entitled to payment thereof. If, at any time, any Owner fails within thirty (30) days after notice or demand to pay its Proportionate Share of Common Expenses or any other sum of money due another Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (a) a lien against the portion of the Total Property owned by the Defaulting Owner, in the amount due from the Defaulting Owner to the Creditor Owner plus all interest due the Creditor Owner with respect to such amounts, and (b) for a default under Articles IX or XIII, a lien against any condemnation award or insurance proceeds payable to a Defaulting Owner for loss or damage to

UNOFFICIAL COPY

such portion of the Total Property or otherwise under insurance policies carried pursuant to Article VIII hereof to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article X. All liens under this Section 10.1 shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in law or in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. 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. The liens provided for in this Section 10.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on the portion of the Total Property owned by the Defaulting Owner, other than a bona fide mortgage or trust deed which is a first mortgage or trust deed against such portion of the Total Property at the time of the recording of the notice of lien.

10.2 To the fullest extent permitted by law, the provisions of Article X of this Declaration shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligation of the Unit Owners to repair or restore the Condominium Property or any portions thereof or (ii) the use of the insurance proceeds for repair and restoration of the Condominium Property or any portions thereof. In the event of fire or other casualty or act of God or force majeure causing damage to any portions of the Condominium Property subject to the Act which would entitle any Owner, under the Act, to withdraw all or any part of the Condominium Property from the Act and not to repair and restore the Condominium Property as required by this Declaration, notwithstanding the foregoing sentence, then the other Owners shall have a lien on the Condominium Property and on any insurance proceeds payable for loss or damage to such portion of the Total Property under insurance policies carried pursuant to Article VIII hereof and on any condemnation award pursuant to Article XIII, in an amount necessary so that the other Owners shall have sufficient proceeds to demolish or repair and restore the Improvements to a condition so as adequately to assure:

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

The lien created by this Section 10.2 shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on the Condominium Property other than a bona fide mortgage or trust deed which is a first mortgage or trust deed against the Condominium Property. Such lien shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder following the occurrence of a fire or other casualty or act of God or force majeure stating that it is a lien created by this Section 10.2 of this Declaration.

UNOFFICIAL COPY

Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid the other Owners, or the Owner of the Condominium Property shall have discharged its obligation for such repair and restoration as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

10.3 Without limiting any equitable remedies to which the other Owners may be entitled, so long as any portion of the Total Property remains subject to the provisions of the Act, each Unit Owner shall be liable only for such portions of any claim against the Owner of such portions of the Total Property equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owners' Unit as set forth in the applicable Condominium Declaration. Upon payment of such amount for which a Unit Owner is liable, (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the Creditor Owner who has recorded notice of such lien shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several.

10.4 No conveyance or other divestiture of title (other than foreclosure of a lien or a deed in lieu of foreclosure which shall then be and remain superior) shall in any way affect or diminish any lien arising pursuant to this Article X, and any lien which would have arisen against any property pursuant to this Article X had there been no conveyance or divestiture of title (other than foreclosure of a lien or a deed in lieu of foreclosure which shall then be and remain superior) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

10.5 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner under this Declaration, and shall be payable from the date any such sum is first due hereunder until paid in full, at a rate of interest equal to the greater of: (a) the floating rate which is equal to four percent (4%) per annum in excess of the annual rate of interest from time to time announced by LaSalle National Bank, N.A. at Chicago, Illinois or other major bank in the City of Chicago if LaSalle National Bank, N.A. ceases to exist, as its "prime rate" of interest or a reasonably equivalent substitute thereof in the event a prime rate is no longer announced, or (b) twelve percent (12%) per annum.

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

UNOFFICIAL COPY

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

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

10.9 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs shall be added to the amount of any applicable lien created under this Article X.

10.10 In the event a Creditor Owner consists of one or more Unit Owners, then the Condominium Association of which the Creditor Owner is a member shall have this sole and exclusive right to act for, bind, sue for, defend and represent, in accordance with Article XVIII hereof, the Creditor Owner in any proceeding arising out of this Article X, together with full power and authority to compromise any claims arising out of the terms of this Article X and to grant releases.

ARTICLE XI

ARBITRATION

All questions, differences, disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$50,000, which amount shall increase by twenty percent (20%) every five (5) years from the date of this Declaration, or involving either of the following matters: (1) selection of an insurance company and (2) appointment of an architect or a contractor or contractors pursuant to Sections 9.5, 13.4 or 14.1 hereof which shall be not resolved within sixty (60) days after same shall arise, except where otherwise expressly provided herein, shall be submitted for arbitration to a panel of three (3) arbitrators at the Chicago, Illinois office of the American Arbitration Association in accordance with its then existing Commercial Arbitration Rules. Such arbitration may be initiated at the request of any Owner. The fees and costs of such arbitration (filing fees, arbitrators' fees and expenses, court reporter's fees and transcript fees, but exclusive of witness fees and attorneys' fees) shall be borne in equal shares by the Owners which are parties to such arbitration. The Owner requesting arbitration shall notify the Secured Property Lenders of its request to arbitrate within five (5) days thereafter. Any award of the arbitrators shall be final and binding upon the Owners and judgment thereon shall be entered by any court exercising jurisdiction over the Total Property or the Owners.

UNOFFICIAL COPY

ARTICLE XII

UNAVOIDABLE DELAYS

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

ARTICLE XIII

CONDEMNATION

13.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any condemning authority any restoration of the Improvements shall be performed in accordance with the requirements of this Article XIII and the provisions of this Article XIII shall at all times be subject to and subordinate to the rights of the Secured Property Lenders.

13.2 All awards resulting from the 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, (hereinafter in this Article XIII, the "Award") other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Secured Property Lenders and disbursed as hereinafter provided, subject to the rights of the Secured Property Lenders.

13.3 In the event of (a) a taking (other than a temporary taking) of a part of the Condominium Property only, or (b) a taking (other than a temporary taking) of a part of the Commercial Property only, then subject to the provisions of Section 13.6 hereof, the Owner of the portion of the Total Property in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Secured Property Lenders by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article

UNOFFICIAL COPY

- XVI hereof and to retain any excess not required for such repair and restoration, subject to the rights of the Secured Property Lenders.

13.4 In the event of a taking other than (a) a temporary taking described in Section 13.2 hereof, (b) a taking described in Section 13.3 hereof, or (c) a taking of all or substantially all of the Total Property, then, subject to the provisions of Section 13.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners affected by such taking and the Secured Property Lenders. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and/or restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the Improvements as shall be required by reason of such taking. Such repair and restoration as practicable under the circumstances and the costs of such work shall be paid by those Owners whose portions of the Total Property were the subject of the taking in such shares as such Owners may agree among themselves and shall be subject to the approval of the Secured Property Lenders, if required. In the event such Owners, and the Secured Property Lenders, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration pursuant to Article XI hereof. If such repair and restoration is to be performed solely in the portion of the Total Property owned by one of the Owners then, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined, the approval of the Owners of, and any Secured Property Lender with respect to, the other portion of the Total Property shall not be required with respect to the plans and specifications therefor, nor shall the consent of the Owners of, and any Secured Property Lender with respect to, the other portion of the Total Property be required with respect to selection of a contractor therefor. If as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Article III and IV hereof.

13.5 The Award for any taking described in Section 13.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 13.6 hereof) of the Improvements. The award shall be allocated to each portion of the Total Property to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Property over the cost of repair and restoration to that portion of the Total Property shall then be allocated to the respective Owners of that portion of the Total Property, or, if applicable, to the holder of a mortgage encumbering such Owners' respective portions of the Total Property in accordance with the terms of such encumbrance.

13.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 13.7 hereof), any Owner reasonably determines that the portion of the Total Property owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the Improvements owned by it as may be required by Sections 13.3 and 13.4 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Property, but only if all the Owners of the other portions of the

UNOFFICIAL COPY

Total Property affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of the Total Property owned by it and shall restore his portion of the Total Property to a sightly and safe condition and in such a manner as to safeguard the other portions of the Total Property, and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Paragraph 13.4 hereof are applicable.

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

13.8 To the fullest extent permitted by law, the provisions of this Article XIII shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (1) the obligation of the Unit Owners to repair or restore any portion of the Total Property subject to the Act in the event of a taking or (2) the use of the Award as provided in this Article XIII.

ARTICLE XIV

ARCHITECT

14.1 The appointment of an architect in accordance with this Article XIV shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Total Property. The Owners shall jointly appoint a firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). In the event the Owners cannot agree upon the appointment of the Architect, the matter shall be submitted to arbitration in accordance with the provisions of Article XI. The Architect shall, upon its appointment, execute an agreement with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA document B141, 1977 Edition, entitled "Standard Form Agreement between Owner and Architect."

14.2 In any instance when the Architect serving pursuant to Section 14.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and the Secured Property Lenders. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner and the Secured Property Lenders, an opportunity to furnish information or data or to present such party's views.

14.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their proportionate share of such fees. In any instance when the

UNOFFICIAL COPY

Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications for the supervision of repair, restoration or demolition of the Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration.

If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefore from the Architect, then any other Owner may pay the same and the Owner failing to pay shall, within ten (10) days after written demand for reimbursement, reimburse the other Owner for any such payment plus interest at the Default Rate from the date of payment by the Owner to the date of reimbursement to such Owner.

ARTICLE XV

Intentionally Omitted.

ARTICLE XVI

Intentionally Omitted.

ARTICLE XVII

ESTOPPEL CERTIFICATES

17.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner or Secured Property Lender execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate ("Estoppel Certificate") stating:

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

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

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

UNOFFICIAL COPY

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

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

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

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

(H) the nature of any arbitration proceeding or finding under Article XI, made within the ninety (90) days preceding the date of such Estoppel Certificate;

(I) the current address or addresses to which notices given to the Owner executing such Estoppel Certificate are required to be mailed under Article XX hereof; and

(J) such other facts or conclusions as may be reasonably requested.

17.2 The Owner of any portion of the Total Property which is not subject to the Act, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may charge the requesting Owner a fee not more than Ten Dollars (\$10.00) for preparing, executing and delivering such Estoppel Certificate and may, in its sole discretion, limit to items (B) through (F) described above the statements made in the Estoppel Certificate .

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

UNOFFICIAL COPY

ARTICLE XVIII

CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

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

ARTICLE XIX

ALTERATIONS

19.1 (A) Any Owner (hereinafter in this Article XIX, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article XIX, "Alterations") to the part of the Improvements within such Altering Owner's portion of the Total Property, provided that such Alterations comply with the balance of this Section 19.1 and all of the other provisions of this Article XIX. Any plans and specifications for any restoration of the Improvements which contain substantially the same architectural features as the Improvements which existed prior to the necessity of restoration shall not be deemed to be Alterations with the meaning of this Article XIX. Prohibitions and restrictions on Alterations by the Owner of the Condominium Property shall also apply to individual owners of the Units.

UNOFFICIAL COPY

(B) Unless otherwise provided in Section 19.1 (A) and this Section 19.1 (B), Alterations shall not be made without the prior written consent of the Owners if such Alterations will:

- (1) unreasonably diminish the benefits afforded to such other Owners by any Easements or unreasonably interrupt such other Owners use or enjoyment of any Easement,
- (2) materially alter the facade of the Improvements except exterior signs for commercial tenants which are commercially reasonable,
- (3) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Property,
- (4) affect Facilities benefiting other Owners other than minimally or incidentally, or
- (5) materially change the expected pedestrian and vehicular traffic patterns of ingress and egress.

Subject to the foregoing provisions, the Owner of the Commercial Property and the Owner of the Condominium Property shall have the right and each is hereby granted the necessary easements to: (a) reconfigure any portion of the Commercial Property or Condominium Property, respectively; and (b) undertake such changes in the Commercial Property or Condominium Property, respectively as it reasonably desires to make.

(C) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of the other Owners or the Secured Property Lenders, if applicable, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the other Owners and the applicable Secured Property Lenders, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 19.1. If such other Owners and the applicable Secured Property Lenders consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Secured Property Lenders whose consents are requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the other Owners' consent to the proposed Alterations, and if, in the good faith opinion of the other Owners or the applicable Secured Property Lenders, the Altering Owner has violated or will violate the provisions of Section 19.1 (A) or (B), such Owners or Secured Property Lenders (the "Objecting Party"), believing a violation exists shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 19.1(A) or (B) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 19.1(A) or (B), the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any of the legal or

UNOFFICIAL COPY

equitable rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this Section 19.1 the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(D) If any matter arises between the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 19.1 (A) or (B), then any Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 19.1 (A) or (B) hereof.

(E) The Owners, in making Alterations, shall (1) perform all work in a good and workmanlike manner and in accordance with good construction practices, (2) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code, and (3) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Total Property in such a manner as to minimize any noise, vibration, particles and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the other portion of the Total Property, but such disturbance.

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

19.3 An Altering Owner performing any work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor (1) recognizes the separate ownership of the various parcels which comprise the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics' Liens Act shall only be enforceable against the portion of the Total Property owned by the Altering Owner, or (2) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of Section 21 of the Mechanics' Lien Act in connection with giving notice of such "no lien" provision.

19.4 Nothing contained in this Article XIX shall give any Owner or Owners the right to construct any additional structures which may interfere with light, air or access to property of the other Owner or interfere with any Owner's right to derive the benefits of this Declaration.

UNOFFICIAL COPY

ARTICLE XX

SERVICES TO OWNER OF THE COMMERCIAL PROPERTY

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

- (A) Facade. Maintenance of the Improvements exterior.
- (B) Exterior Lighting. Maintenance of all exterior lighting of the Improvements which specifically benefit the Commercial Property.
- (C) Snow Removal. Removal of snow from sidewalks leading to all street level entrances to the Improvements.
- (D) Landscaping. Maintenance of exterior landscaping along the perimeter of the Improvements.
- (E) Municipal Water Supply System. To the extent such systems are shared, hot and cold municipal water reasonably required by the Owner of the Commercial Property from municipal mains through the water supply systems located in the Condominium Property and Maintenance of all water lines entering the Condominium Property from the municipal mains and water supply system.
- (F) Municipal Sewer System. To the extent such systems are shared, municipal sewer services reasonably required by the Owner of the Commercial Property from municipal mains through the sewer supply systems located in the Condominium Property and Maintenance of all sewer lines entering the Condominium Property from the municipal mains.
- (G) Roof. Maintenance of the roof of the Improvements.
- (H) Loading Dock and Garbage Areas. Maintenance of the loading areas, truck receptors, and garbage areas located in the Improvements. Provision of refuse pick-up and removal services.
- (I) Telephone, Electrical, Data and Television. Maintenance of the Facilities located in the Condominium Property and serving the Commercial Property with telephone, electrical, data and television service.
- (J) Detector and Alarm. Maintenance of the detector and alarm system.

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

UNOFFICIAL COPY

20.3 The submission of statements for services rendered pursuant to this Article 20, provisions for payment thereof, and provisions for additional payments incurred in connection with such services and the operation, Maintenance of shared Facilities shall be made as follows:

(A) Allocation of Costs. Owner of the Commercial Property and the Owner of the Condominium Property shall bear their respective Proportionate Share of the total cost of the services to be furnished, or caused to be furnished, by the Owner of the Condominium Property as described in Section 20.1 of this Agreement.

(B) Submission and Payment of Statements. Owner of the Condominium Property shall submit statements on or about the first day of the month to the Owner of the Commercial Property for services rendered pursuant to Paragraph 20.1 of this Declaration, and said statements shall be paid by the Owner of the Commercial Property within thirty (30) days. All payments not paid when due shall bear interest at the Default Rate and if non-payment continues for a period of sixty (60) days after its due date, the Owner of the Condominium Property shall have the right to lien the Commercial Property and to discontinue furnishing the services for which payment has not been received until said sum of money is paid.

20.4 If the Owner of the Condominium Property shall fail to render the services described in Section 20.1 above to the Owner of the Commercial Property (except when such failure is caused by the Owner of the Commercial Property or Unavoidable Delay) and such failure shall continue for a period of ten (10) days after written notice thereof to the Owner of the Condominium Property, the Owner of the Commercial Property shall have the right to undertake the performance of such services on its own. Such notice shall not be required in an Emergency Situation resulting from such failure.

20.5 The Owner of the Commercial Property shall submit a statement on the first day of the month following performing any of the services set forth in paragraph 20.4 above to the Owner of the Condominium Property, and said statement shall be paid by the Owner of the Condominium Property within thirty (30) days. All payments not paid when due shall bear interest at the Default Rate if non-payment continues for a period of sixty (60) days after its due date, the Owner of the Commercial Property shall have the right to lien the Condominium Property and to discontinue furnishing the services for which payment has not been received until said sum of money is paid.

20.6 In addition to the foregoing provisions of this Article 20, the Owner of the Commercial Property shall be solely responsible for all of the cost of the Maintenance of the exterior lighting, awnings, doors, and windows, adjacent to and serving exclusively the Commercial Property, as well as a separate Commercial Property management fee, or other costs directly attributable to the Commercial Property.

20.7 If either Owner (hereinafter in this Section 20.7, the "Protesting Owner") in good faith believes that the cost of any service or item of Maintenance under Article XX hereof is not reasonably allocated between the Owner of the Commercial Property and the Owner of the Condominium Property, whether as a result of (a) obsolescence of any Facilities and their replacement by more technologically advanced Facilities, (b) replacement of labor by Facilities,

UNOFFICIAL COPY

(c) any permanent substantial decrease or increase in use of Facilities by either Owner, (d) substantial alteration of the Improvements as a result of rebuilding following casualty or condemnation or (e) any other similar circumstance or set of circumstances substantially changing the assumptions forming the basis of the cost allocations set forth in Article XX hereof, or otherwise, then the Protesting Owner, between April 1 and June 1 of any calendar year, may give to the other Owner written notice of objection to any such allocation. Such notice shall specify the cost allocation to which the Protesting Owner objects, the reason or reasons why the Protesting Owner believes that such cost is not reasonably allocated under Article XX and the Protesting Owner's proposed revision. If within thirty (30) days after receipt of such notice, the Owner of the Commercial Property and the Owner of the Condominium Property shall not have agreed upon the allocation or reallocation of any such cost or costs, and the Protesting Owner has not withdrawn its objection to the allocation, then, at the request of either Owner, the Protesting Owner's objection shall be referred to (i) the Architect, if such objection relates to any Article XX matter in which the Architect is expert, or (ii) other generally recognized experts, if such objection relates to other Article XX matters. If the Architect or other expert finds that the Protesting Owner has clearly and convincingly proved that such cost is not reasonably allocated under the provisions of Article XX, then the Architect or expert shall advise what would be the most reasonable allocation of such cost and shall set forth such finding in writing. The Architect or expert shall advise whether, and if so, 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 in which the Protesting Owner shall have given written notice of objection to the prior allocation. If the parties agree to such new cost-sharing allocation and agree that such new allocation is to be made retroactive under the provisions of the immediately preceding sentence, then appropriate reimbursement shall be made between the Owner of the Condominium Property and the Owner of the Commercial Property to give retroactive effect to such finding of the Architect or expert with respect to retroactivity; provided, however, that such reimbursement may be made, at the option of the paying Owner, in equal monthly installments, over a period of time equal to the length of time for which the new allocation is made retroactive. In determining whether allocation of a cost is reasonable or whether the cost should be the subject of an allocation formula, certain expenses which are minor or relatively minor, except on a cumulative basis, shall be disregarded, it being understood that certain expenses which would otherwise be borne by one Owner benefiting from a service or Facility should, for the purpose of administrative simplicity and avoidance of additional metering, labor, accounting or attorneys' fees and costs, be absorbed by the other Owner without reimbursement so long as an unfair result is not caused to such other Owner. If, pursuant to this Section 20.6, the Owners agree that allocation of any cost shall be revised, then the Owner of the Commercial Property and the Owner of the Condominium Property shall both execute, acknowledge and deliver to each other an instrument, in recordable form, modifying this Declaration to conform to any such revision. Notwithstanding anything herein contained to the contrary, the approval or consent of the holder of the First Mortgage shall be required if any agreement between the Owners would result in any material change in the allocation or reallocation of any such cost or costs.

UNOFFICIAL COPY

ARTICLE XXI

NOTICES

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

For Notices to the Declarant	Hood Development Limited Liability Company
Owner of the Condominium	2319 W. Chicago Avenue
Property and the Owner of the	Suite B
Commercial Property:	Chicago, Illinois 60622

The foregoing, notwithstanding, at such time as any portion of the Total Property is submitted to the Act, notice to the Owner of such portion of the Total Property shall be delivered or mailed, as aforesaid, to any officer, director or mailing agent of the applicable Condominium Association at such address as may appear in any public record instead of the address set forth above. Such change of address shall be effective, however, only upon the giving of notice thereof to the other Owners in accordance with the provisions of Section 20.4 hereof.

21.2 Concurrently with the giving of any notification required hereunder to be given, or which any other party hereto may desire to give to the Owner of the Commercial Property or the Owner of the Condominium Property, a duplicate original of such notification shall be given to the Secured Property Lenders affected thereby at the address for the giving of notice set forth in the mortgage or trust deed securing indebtedness to such Secured Property Lenders. Any first lien Secured Property Lender shall have the right to cure any default by an Owner or Owners and such right to cure shall continue for thirty (30) days following the receipt by such Secured Property Lender of the notice of such default.

21.3 So long as any portion of the Total Property remains subject to the Act, (1) the Owner of the other portions of the Total Property may, but shall not be obligated to, give personal notice to any Unit Owner, notice to the Condominium Association hereby being deemed sufficient and effective notice to all Unit Owners of such portions of the Total Property subject to the Act and (2) the Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners with respect to the applicable portion of the Total Property under this Declaration, which notice shall be binding on such Unit Owners.

21.4 Any Notice delivered as aforesaid shall be deemed received when delivered and receipted for and any Notice mailed as aforesaid shall be deemed received three (3) business days after deposit in the United States mail, or upon actual receipt, whichever is earlier. Addresses for service of Notice may be changed by written notice served as herein above provided at least thirty (30) days prior to the effective date of such address change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

UNOFFICIAL COPY

ARTICLE XXII

LIMITATION OF LIABILITY

22.1 Each Owner of a portion of the Total Property shall use reasonable diligence in performing the services required of such Owner, 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 other than in the case of gross negligence or willful misconduct. Each Owner obligated to furnish services hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repairs or in case of an Emergency Situation.

22.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Total Property: (1) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself freed and relieved therefrom as herein above provided in this Section, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.

22.3 The enforcement of any rights or obligations contained in this Declaration against an Owner or 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 XXIII

GENERAL

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

UNOFFICIAL COPY

company to furnish utility services as required by such Owner, provided that the Secured Property Lenders which hold any mortgage on the portions of the Total Property on which such easement is granted have first consented in writing to such easements.

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

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

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

(B) Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Total Property, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this section shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Property.

23.5 Except for the perpetual Easements provided for under this Declaration, the covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law, for successive periods of ten (10) years, subject to amendment or termination as herein above set forth in Section 23.4 provided, however, that this Declaration, and all easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or.. (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which

UNOFFICIAL COPY

such covenants may be valid, then the provision concerned shall continue and endure only until such time as would be lawful and not in violation of such rule, statute or common law.

23.6 The provisions of this Declaration shall be construed to the end that the Total Property shall remain a first-class mixed-use property.

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

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

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

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

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

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

ARTICLE XXIV

RESTRICTION ON USE OF COMMERCIAL PROPERTY

24.1 The Owner of the Commercial Property shall be restricted from leasing all or any portion of the Commercial Property to a tenant whose use of the Commercial Property may be considered a private or public nuisance by a court of local jurisdiction.

24.2 Notwithstanding the zoning which applies to the Commercial Property and except as otherwise provided below, the Commercial Property may not be open to the general public during the hours of 1:00 a.m. and 7:00 a.m., however, nothing herein shall prohibit the Owner of the Commercial Property or its tenants from using or occupying the Commercial Property during

UNOFFICIAL COPY

such hours provided the premises are not open to the general public and that such use of the Commercial Property does not create an unreasonable disturbance to the Condominium Property. In addition, the Commercial Property is strictly prohibited from being used as follows:


- (A) Manufacturing
- (B) Sale of liquor
- (C) Undertaking establishment
- (D) Crematories and mausoleums
- (E) Taverns
- (F) Pawn Shops
- (G) Adult book stores
- (H) Adult theaters (live performances or motion pictures)
- (I) Restaurants (for consumption on or off the premises)
- (J) Dry cleaning plant (provided a dry cleaners without a plant on premises shall be permitted)

[signatures on following page]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Declarant has executed and delivered this Declaration as of the date first above written.

Hood Development Limited Liability Company, an Illinois limited liability company

By: 
Its: Manager

By: _____
Name: _____
Its: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS, COOK COUNTY SS:

I, M. Curtin in and for said County and State, do hereby certify that **Lyle Feinerman** personally known to me to be the same person whose name subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the purposes and therein set forth.

Given under my hand and official seal, this 3 day of June, 2006

Michelle A Curtin
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A Legal Description of Condominium Parcel

LOTS 35 AND 38 IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION PART OF NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM:

UNIT C (BASEMENT LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 8.10 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 14.85 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 38 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION OF PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET, THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 73.00 FEET TO THE MOST WESTERLY CORNER OF SAID TRACT, THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 1.41 FEET, THENCE SOUTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 23 MINUTES 28 SECONDS MEASURED CLOCKWISE, NORTHEASTERLY TO SOUTHEASTERLY, FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 1.47 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1521-1523 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHEASTERLY, A DISTANCE OF 84.40 FEET; SOUTHEASTERLY, A DISTANCE OF 22.16 FEET; SOUTHWESTERLY, A DISTANCE OF 84.40 FEET; NORTHWESTERLY, A DISTANCE OF 22.16 FEET TO THE POINT OF BEGINNING;

AND

(BASEMENT LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 8.10 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 15.00 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 38 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION OF PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET, THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 2.33 FEET, THENCE NORTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 02 MINUTES 28 SECONDS MEASURED CLOCKWISE, NORTHWESTERLY TO NORTHEASTERLY, FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 1.28 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1521-1523 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHWESTERLY, A DISTANCE OF 87.28 FEET; SOUTHEASTERLY, A DISTANCE OF 4.78 FEET; NORTHEASTERLY, A DISTANCE OF 10.98 FEET; NORTHWESTERLY, A DISTANCE OF 0.73 FEET; NORTHEASTERLY, A DISTANCE OF 13.00 FEET; NORTHWESTERLY, A DISTANCE OF 4.33 FEET; SOUTHWESTERLY, A DISTANCE OF 1.00 FEET; SOUTHEASTERLY, A DISTANCE OF 13.98 FEET; SOUTHWESTERLY, A DISTANCE OF 7.02 FEET; NORTHWESTERLY, A DISTANCE OF 9.00 FEET; SOUTHWESTERLY, A DISTANCE OF 10.30 FEET; SOUTHEASTERLY, A DISTANCE OF 2.80 FEET; SOUTHWESTERLY, A DISTANCE OF 7.20 FEET; SOUTHEASTERLY, A DISTANCE OF 8.20 FEET; SOUTHWESTERLY, A DISTANCE OF 84.13 FEET TO THE POINT OF BEGINNING.

AND

(FIRST LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 18.48 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 30.78 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 38 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION OF PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET, THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 80.00 FEET TO THE MOST WESTERLY CORNER OF SAID TRACT, THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 3.15 FEET, THENCE SOUTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 23 MINUTES 28 SECONDS MEASURED CLOCKWISE, NORTHEASTERLY TO SOUTHEASTERLY, FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 0.80 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1521-1523 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHEASTERLY, A DISTANCE OF 42.75 FEET; SOUTHEASTERLY, A DISTANCE OF 1.20 FEET; NORTHWESTERLY, A DISTANCE OF 2.30 FEET; NORTHWESTERLY, A DISTANCE OF 88.30 FEET; NORTHEASTERLY, A DISTANCE OF 18.34 FEET; NORTHWESTERLY, A DISTANCE OF 1.00 FEET; NORTHEASTERLY, A DISTANCE OF 1.00 FEET; NORTHWESTERLY, A DISTANCE OF 10.03 FEET; NORTHEASTERLY, A DISTANCE OF 19.03 FEET; SOUTHEASTERLY, A DISTANCE OF 10.70 FEET; NORTHEASTERLY, A DISTANCE OF 10.03 FEET; SOUTHEASTERLY, A DISTANCE OF 24.00 FEET; NORTHEASTERLY, A DISTANCE OF 13.10 FEET; SOUTHWESTERLY, A DISTANCE OF 13.82 FEET; SOUTHWESTERLY, A DISTANCE OF 1.02 FEET; NORTHWESTERLY, A DISTANCE OF 8.23 FEET; SOUTHWESTERLY, A DISTANCE OF 10.40 FEET; SOUTHWESTERLY, A DISTANCE OF 8.32 FEET; SOUTHWESTERLY, A DISTANCE OF 88.70 FEET; NORTHWESTERLY, A DISTANCE OF 4.77 FEET; SOUTHWESTERLY, A DISTANCE OF 2.58 FEET; NORTHWESTERLY, A DISTANCE OF 43.15 FEET TO THE POINT OF BEGINNING.

(SECOND LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 31.32 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 42.85 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 38 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION OF PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET, THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 1.71 FEET, THENCE NORTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 02 MINUTES 28 SECONDS MEASURED CLOCKWISE, NORTHWESTERLY TO NORTHEASTERLY, FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 0.88 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1521-1523 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHWESTERLY, A DISTANCE OF 23.48 FEET; NORTHEASTERLY, A DISTANCE OF 1.00 FEET; NORTHWESTERLY, A DISTANCE OF 1.05 FEET; NORTHWESTERLY, A DISTANCE OF 23.00 FEET; NORTHEASTERLY, A DISTANCE OF 89.86 FEET; NORTHWESTERLY, A DISTANCE OF 0.82 FEET; NORTHEASTERLY, A DISTANCE OF 19.00 FEET; SOUTHEASTERLY, A DISTANCE OF 4.44 FEET; NORTHEASTERLY, A DISTANCE OF 30.10 FEET; SOUTHEASTERLY, A DISTANCE OF 44.20 FEET; SOUTHWESTERLY, A DISTANCE OF 13.88 FEET; NORTHWESTERLY, A DISTANCE OF 8.70 FEET; NORTHEASTERLY, A DISTANCE OF 2.88 FEET; NORTHWESTERLY, A DISTANCE OF 10.30 FEET; SOUTHWESTERLY, A DISTANCE OF 9.20 FEET; NORTHWESTERLY, A DISTANCE OF 3.08 FEET; SOUTHWESTERLY, A DISTANCE OF 7.89 FEET; NORTHWESTERLY, A DISTANCE OF 0.35 FEET; SOUTHWESTERLY, A DISTANCE OF 0.75 FEET; NORTHWESTERLY, A DISTANCE OF 3.10 FEET; SOUTHWESTERLY, A DISTANCE OF 1.10 FEET; SOUTHEASTERLY, A DISTANCE OF 0.70 FEET; SOUTHWESTERLY, A DISTANCE OF 2.25 FEET; SOUTHEASTERLY, A DISTANCE OF 2.48 FEET; SOUTHWESTERLY, A DISTANCE OF 1.25 FEET; SOUTHEASTERLY, A DISTANCE OF 1.10 FEET; NORTHWESTERLY, A DISTANCE OF 4.27 FEET; SOUTHEASTERLY, A DISTANCE OF 23.82 FEET; SOUTHWESTERLY, A DISTANCE OF 44.50 FEET; NORTHWESTERLY, A DISTANCE OF 4.42 FEET; SOUTHWESTERLY, A DISTANCE OF 2.75 FEET; NORTHWESTERLY, A DISTANCE OF 3.80 FEET; SOUTHWESTERLY, A DISTANCE OF 9.44 FEET; SOUTHEASTERLY, A DISTANCE OF 3.00 FEET; SOUTHWESTERLY, A DISTANCE OF 12.74 FEET; SOUTHWESTERLY, A DISTANCE OF 3.18 FEET; SOUTHWESTERLY, A DISTANCE OF 17.42 FEET TO THE POINT OF BEGINNING.

RAN 17-05-314-053

UNOFFICIAL COPY

Exhibit B Legal Description of Commercial Parcel

The following in:

LOTS 35 AND 36 IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION PART OF NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNIT C (BASEMENT LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 10 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 14.88 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 36 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 40.00 FEET TO THE MOST WESTERLY CORNER OF SAID TRACT; THENCE NORTHWESTERLY ALONG THE NORTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 1.41 FEET; THENCE SOUTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 23 MINUTES 25 SECONDS MEASURED CLOCKWISE, NORTHWESTERLY TO SOUTHEASTERLY FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 1.47 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1921-1923 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHWESTERLY, A DISTANCE OF 84.40 FEET; SOUTHEASTERLY, A DISTANCE OF 22.16 FEET; SOUTHWESTERLY, A DISTANCE OF 84.40 FEET; NORTHWESTERLY, A DISTANCE OF 22.16 FEET TO THE POINT OF BEGINNING;

AND

(BASEMENT LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 8.10 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 15.80 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 36 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 2.33 FEET; THENCE NORTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 02 MINUTES 28 SECONDS MEASURED CLOCKWISE, NORTHWESTERLY TO NORTHEASTERLY FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 1.28 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1921-1923 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHWESTERLY, A DISTANCE OF 2.54 FEET; NORTHWESTERLY, A DISTANCE OF 87.28 FEET; SOUTHEASTERLY, A DISTANCE OF 1.70 FEET; NORTHWESTERLY, A DISTANCE OF 10.98 FEET; NORTHWESTERLY, A DISTANCE OF 0.75 FEET; NORTHWESTERLY, A DISTANCE OF 12.00 FEET; SOUTHEASTERLY, A DISTANCE OF 1.00 FEET; SOUTHWESTERLY, A DISTANCE OF 1.50 FEET; SOUTHEASTERLY, A DISTANCE OF 1.50 FEET; NORTHWESTERLY, A DISTANCE OF 7.02 FEET; NORTHWESTERLY, A DISTANCE OF 9.00 FEET; SOUTHWESTERLY, A DISTANCE OF 10.38 FEET; SOUTHEASTERLY, A DISTANCE OF 2.90 FEET; SOUTHWESTERLY, A DISTANCE OF 7.20 FEET; SOUTHEASTERLY, A DISTANCE OF 8.20 FEET; SOUTHWESTERLY, A DISTANCE OF 84.13 FEET TO THE POINT OF BEGINNING.

AND

(FIRST LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 18.48 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 30.78 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 36 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 50.00 FEET TO THE MOST WESTERLY CORNER OF SAID TRACT; THENCE NORTHWESTERLY ALONG THE NORTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 3.19 FEET; THENCE SOUTHEASTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 23 MINUTES 25 SECONDS MEASURED CLOCKWISE, NORTHWESTERLY TO SOUTHEASTERLY FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 0.80 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1921-1923 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHWESTERLY, A DISTANCE OF 43.75 FEET; NORTHWESTERLY, A DISTANCE OF 1.20 FEET; NORTHWESTERLY, A DISTANCE OF 2.30 FEET; NORTHWESTERLY, A DISTANCE OF 0.53 FEET; NORTHWESTERLY, A DISTANCE OF 1.54 FEET; NORTHWESTERLY, A DISTANCE OF 1.00 FEET; NORTHWESTERLY, A DISTANCE OF 1.00 FEET; NORTHWESTERLY, A DISTANCE OF 0.35 FEET; NORTHWESTERLY, A DISTANCE OF 10.03 FEET; SOUTHEASTERLY, A DISTANCE OF 10.70 FEET; NORTHWESTERLY, A DISTANCE OF 10.03 FEET; SOUTHEASTERLY, A DISTANCE OF 24.00 FEET; NORTHWESTERLY, A DISTANCE OF 13.10 FEET; SOUTHEASTERLY, A DISTANCE OF 13.82 FEET; SOUTHWESTERLY, A DISTANCE OF 7.02 FEET; NORTHWESTERLY, A DISTANCE OF 9.33 FEET; SOUTHWESTERLY, A DISTANCE OF 10.40 FEET; SOUTHEASTERLY, A DISTANCE OF 9.33 FEET; SOUTHWESTERLY, A DISTANCE OF 88.70 FEET; NORTHWESTERLY, A DISTANCE OF 4.77 FEET; SOUTHWESTERLY, A DISTANCE OF 23.00 FEET; NORTHWESTERLY, A DISTANCE OF 43.15 FEET TO THE POINT OF BEGINNING.

(SECOND LEVEL)

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 31.82 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 42.88 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 35 AND 36 TAKEN AS A TRACT, IN BLOCK 3 IN PICKETT'S SECOND ADDITION TO CHICAGO BEING LOT 4 IN ASSESSOR'S DIVISION PART OF THE NORTH 1/2 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID TRACT, BEING A POINT ON THE NORTHEASTERLY LINE OF MILWAUKEE AVENUE DISTANT 200.00 FEET NORTHWESTERLY OF THE WESTERLY LINE OF HONORE STREET; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID TRACT, A DISTANCE OF 1.71 FEET; THENCE NORTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 02 MINUTES 28 SECONDS MEASURED CLOCKWISE, COURSE EXTENDED, A DISTANCE OF 0.88 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A THREE STORY BRICK BUILDING COMMONLY KNOWN AS 1921-1923 NORTH MILWAUKEE AVENUE IN CHICAGO, BEING ALSO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES: ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE: NORTHWESTERLY, A DISTANCE OF 23.45 FEET; NORTHWESTERLY, A DISTANCE OF 1.05 FEET; NORTHWESTERLY, A DISTANCE OF 1.05 FEET; NORTHWESTERLY, A DISTANCE OF 23.00 FEET; NORTHWESTERLY, A DISTANCE OF 85.98 FEET; NORTHWESTERLY, A DISTANCE OF 0.82 FEET; NORTHWESTERLY, A DISTANCE OF 19.00 FEET; SOUTHEASTERLY, A DISTANCE OF 4.44 FEET; NORTHWESTERLY, A DISTANCE OF 36.10 FEET; SOUTHEASTERLY, A DISTANCE OF 44.20 FEET; SOUTHWESTERLY, A DISTANCE OF 13.89 FEET; NORTHWESTERLY, A DISTANCE OF 8.70 FEET; NORTHWESTERLY, A DISTANCE OF 10.50 FEET; SOUTHWESTERLY, A DISTANCE OF 9.20 FEET; NORTHWESTERLY, A DISTANCE OF 7.85 FEET; SOUTHWESTERLY, A DISTANCE OF 0.35 FEET; SOUTHWESTERLY, A DISTANCE OF 0.75 FEET; NORTHWESTERLY, A DISTANCE OF 3.10 FEET; SOUTHWESTERLY, A DISTANCE OF 0.70 FEET; SOUTHWESTERLY, A DISTANCE OF 2.23 FEET; SOUTHEASTERLY, A DISTANCE OF 2.43 FEET; SOUTHWESTERLY, A DISTANCE OF 1.25 FEET; SOUTHEASTERLY, A DISTANCE OF 1.10 FEET; NORTHWESTERLY, A DISTANCE OF 4.27 FEET; SOUTHWESTERLY, A DISTANCE OF 23.82 FEET; SOUTHWESTERLY, A DISTANCE OF 44.50 FEET; NORTHWESTERLY, A DISTANCE OF 4.42 FEET; SOUTHWESTERLY, A DISTANCE OF 2.75 FEET; NORTHWESTERLY, A DISTANCE OF 3.60 FEET; SOUTHWESTERLY, A DISTANCE OF 9.44 FEET; SOUTHWESTERLY, A DISTANCE OF 3.00 FEET; SOUTHWESTERLY, A DISTANCE OF 12.74 FEET; SOUTHWESTERLY, A DISTANCE OF 3.18 FEET; SOUTHWESTERLY, A DISTANCE OF 17.42 FEET TO THE POINT OF BEGINNING.

PDN 17-06-200-016

UNOFFICIAL COPY

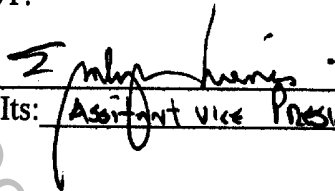
CONSENT OF MORTGAGEE

Banco Popular North America, holder of a note secured by a mortgage on the Property dated January 28, 2003 and recorded with the Recorder of Deeds of Cook County, Illinois, as Document No. 0030193907 hereby consents to the execution of and recording of the above and foregoing Declaration, and hereby subordinates said mortgage to the provisions of the foregoing Declaration.

IN WITNESS WHEREOF, the said Bank has caused this instrument to be signed by its duly authorized officers on its behalf on this 23rd day of June, 2006.

By: 
Its: VICE PRESIDENT

ATTEST:

By: 
Its: Assistant Vice President

Property of Cook County Clerk's Office