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This Instrument Prepared by  
and after recording return to:

Carmel K. York, Esq.  
Krawitz & Associates, Ltd.  
2 North LaSalle  
Suite 1776  
Chicago, Illinois 60602



Doc#: 0617939029 Fee: \$274.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 06/28/2008 10:51 AM Pg: 1 of 59

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## OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("Agreement") is made and entered into as of the 2nd day of January, 2006, by Lakeview Station, LLC, an Illinois limited liability company ("Lakeview Station").

### RECITALS:

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

B. By virtue of a subdivision plat, a certain parcel of real estate located in the City of Chicago, County of Cook, State of Illinois and legally described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Parcel**") contains a retail portion and a condominium portion hereinafter referred to, respectively, as the "**Condominium Property**" and the "**Retail Property**."

C. Lakeview Station is the record holder of legal title to the Parcel.

D. The Condominium Property and the Retail Property are structurally and/or functionally dependent on the other and may depend upon the other, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and components necessary for the operation and use of the Condominium Property and Retail Property.

E. Lakeview Station, as the Owner of the Parcel, desires by the execution of this Agreement to provide for the efficient operation of the Condominium Property and Retail Property to assure the harmonious relationship of the Owners of each such property, and to protect the respective values of each such property, by providing for, declaring and creating certain easements, covenants and restrictions benefiting and burdening the Condominium Property and Retail Property.

**NOW, THEREFORE**, Lakeview Station, as the Owner of the Parcel hereby agrees and

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declares that the Property and any part thereof, is and shall be owned, held, mortgaged, transferred, assigned, sold, conveyed and accepted subject to this Agreement, and further agrees and declares that this Agreement and each of the provisions, easements, covenants, conditions, restrictions, burdens, uses, privileges and charges set forth herein or created hereunder shall exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of, all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property and each of the foregoing shall run with the land subjected to this Agreement.

## ARTICLE I Definitions

The floor numbers used in this Article I and elsewhere in this Agreement refer to the actual chronological order of the floors, with the ground floor being the first floor.

- 1.1 "AAA" means the American Arbitration Association.
- 1.2 "Agreement" means this Operation and Reciprocal Easement Agreement, including all exhibits, schedules, appendices, amendments and supplements thereto.
- 1.3 "Alterations" means additions, improvements or alterations.
- 1.4 "Altering Owner" means an Owner who makes Alterations pursuant to Article XXI hereof.
- 1.5 "Arbitration" means the arbitration proceeding for the Matters as set forth in Section 12.1 hereof.
- 1.6 "Architect" means a reputable firm consisting of both architects and civil engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of mixed-use structures similar to the Building selected by the Owners pursuant to Article XVI hereof.
- 1.7 "Assessor" means the Assessor of Cook County, Illinois.
- 1.8 "Award" means the award, damages or just compensation resulting from any taking of all or any part of the Property as set forth in Section 14.1 hereof.
- 1.9 "Base Building Completion" means the substantial completion of the construction (in accordance with the Plans) of the core and shell of, and installation of the Facilities within, the last of the Condominium Building and the Retail Building as set forth in Section 3.1 hereof.
- 1.10 "Building" means all improvements, including, but not limited to, the footings, foundations, columns, piles, buildings, improvements, fixtures, equipment, machinery, Facilities, sidewalks, walkways, parking lots, driveways and landscaping now or hereafter located in, on, under, within or upon the Parcel, including all alterations, rebuildings, replacements and additions thereto. The Building is composed of the Condominium Building and the Retail Building.

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at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of, all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property and each of the foregoing shall run with the land subjected to this Agreement.

## ARTICLE I

### Definitions

The floor numbers used in this Article I and elsewhere in this Agreement refer to the actual chronological order of the floors, with the ground floor being the first floor.

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- 1.6 "Architect" means a reputable firm consisting of both architects and civil engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of mixed-use structures similar to the Building selected by the Owners pursuant to Article XVI hereof.
- 1.7 "Assessor" means the Assessor of Cook County, Illinois.
- 1.8 "Award" means the award, damages or just compensation resulting from any taking of all or any part of the Property as set forth in Section 14.1 hereof.
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- 1.10 "Building" means all improvements, including, but not limited to, the footings, foundations, columns, piles, buildings, improvements, fixtures, equipment, machinery, Facilities, sidewalks, walkways, parking lots, driveways and landscaping now or hereafter located in, on, under, within or upon the Parcel, including all alterations, rebuildings, replacements and additions thereto. The Building is composed of the Condominium Building and the Retail Building.

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1.11 **"Building Insurance Policy"** means a policy (or policies) of commercial property insurance on those terms set forth in **Section 9.1** hereof.

1.12 **"Common Elements"** means all portions of the Condominium Property other than the Units.

1.13 **"Comparable Projects"** means those multi-use buildings of similar size and class as the Building within the same geographic area as the Building.

1.14 **"Condominium Act"** means the Condominium Property Act of the State of Illinois in effect at the time, if any, that the Owner of the Condominium Property submits the Condominium Property to the provisions thereof.

1.15 **"Condominium Association"** means the not-for-profit corporation or association formed for the purpose of administering the Condominium Property pursuant to the terms of the Condominium Declaration.

1.16 **"Condominium Building"** means the portion of the Building located within the Condominium Parcel.

1.17 **"Condominium Building Elevators"** means the elevators and related equipment located within the elevator shafts of the Condominium Building.

1.18 **"Condominium Declaration"** means any Declaration of Condominium pursuant to which the Owner of the Condominium Property may submit the Condominium Property to the provisions of the Condominium Act, as the same may be amended from time to time.

1.19 **"Condominium Easement Facilities"** means facilities located in the Retail Property which are owned by the Owner of the Condominium Property and primarily benefit the Condominium Property or the Owner of the Condominium Property.

1.20 **"Condominium Parcel"** means that portion of the Parcel generally consisting of: (a) the entire subsurface of the Parcel located within and outside of the exterior walls of the Building lying below a horizontal plane at the height of the underside of the ground floor of the Building; (b) the surface, subsurface and air rights within which the elevator shaft and elevator lobby of the Condominium Building Elevator is located; (c) the surface and air rights from the height of the underside of the ground floor of the Building to the height of the underside of the second (2<sup>nd</sup>) floor of the Building except that portion that is delineated as the Retail Parcel as set forth on Exhibit B; (d) the surface and air rights from the height of the underside of the ground floor of the Building to the height of the upper roof; and (e) the air rights of the Parcel above a horizontal plane located at the height of the underside of the second (2<sup>nd</sup>) floor of the Building within which is located, among other things, the condominium units, stairwells, shafts, and the Upper Roof; such Condominium Parcel being legally described on **Exhibit B** attached hereto.

1.21 **"Condominium Parking Property"** means that portion of the Condominium Property in which the Condominium Parking Spaces are located.

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**1.22 "Condominium Parking Spaces"** means those parking spaces (and appurtenant driveways and ramps) located on the Condominium Property.

**1.23 "Condominium Property"** means the Condominium Parcel improved with the Condominium Building.

**1.24 "Construction Manager"** means a reputable person or entity experienced in the management of construction projects involving mixed-use structures similar to the Building selected by the Owners pursuant to Article XVI hereof.

**1.25 "Consumer Price Index"** mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, City of Chicago, All Items (Base Year 1967 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

**1.26 "Creditor Owner"** means, except where otherwise defined hereunder in a specific context, an Owner to whom a payment of money or other duty or obligation is owed under this Agreement by any other Owner who has failed to make such payment or to perform such duty or obligation as and when required hereunder.

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

**1.28 "Deficient Structural Support"** means the reduction of the structural support for any portion of the Building below the support required to maintain the structural safety or integrity of the Building.

**1.29 "Depositary"** means the depositary appointed in the manner specified in Section 17.1 hereof to receive and disburse insurance proceeds and condemnation awards.

**1.30 "Easement"** means any one or more of the easements provided for, granted, declared or created pursuant to or in accordance with the terms and provisions of this Agreement.

**1.31 "Emergency Situation"** means (a) a situation impairing or imminently likely to impair structural support or any Facilities critical to the operation of the Building as a whole or to the operation of any component part thereof; or (b) a situation causing or imminently likely to cause bodily injury to persons or material physical damage to all or any portion of the Building or any property within or about the Building; or (c) a situation which materially interferes with the beneficial use of any Owner of its respective portion of the Building. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

**1.32 "Environmental Laws"** means any and all federal, state and local laws, statutes, codes, ordinances, regulations, rules or other requirements (including, but not limited to consent decrees and judicial or administrative orders), relating to public or worker health or safety or to the

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environment, including, but not limited to, those applicable to the storage, treatment, disposal, handling and release of any Hazardous Substances, all as amended or modified from time-to-time. By way of example only and not for the purpose of excluding other such authority, the following statutes and all rules and regulations relating thereto are a part of the Environmental Laws: the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or the Federal Superfund Act) as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. 9601-9675); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") (42 U.S.C. § 6901, et seq.); the Clean Water Act, as amended (33 U.S.C. § 1251, et seq.); the Clean Air Act, as amended (42 U.S.C. § 7401, et seq.); the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA") (7 U.S.C. § 136, et seq.); The Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.); the Occupational Safety and Health Act (29 U.S.C. 651, et seq.); and any and all equivalent or similar state or local statutes, laws, codes, ordinances, regulations or rules.

**1.33 "Environmental Liabilities"** means either or both of: (a) any claim or demand pursuant to, or cost of complying with, any Environmental Laws made in connection with the Property or any portion thereof after the date of this Agreement, including, without limitation, any matters pertaining to the Shared Facilities or the Shared Facilities Easement Area; or (b) the existence of Hazardous Substances in, on or under the Property or any portion thereof in violation of any Environmental Laws.

**1.34 "Estoppel Certificate"** means a certificate from an Owner stating those matters set forth in Section 19.1 hereof.

**1.35 "Facilities"** means all systems, and the component parts thereof, and any replacements or substitutions therefor, forming a part of the Building and designated or utilized to furnish support, enclosure, utility or any other services to any portion of the Building, including without limitation: chilled and condenser water, central air handling and fan, temperature control, domestic water, fire suppression, sanitary waste, storm water, electrical, emergency generator, gas, fire detector and alarm, security systems, master satellite antenna, emergency power, telephone, elevator, stairwells, lightning protection, kitchen waste and any other systems, together with any and all equipment and component parts thereto (including, without limitation, annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, control centers, cooling towers, couplers, devices, ducts, elevator cars and related equipment, equipment, fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, shafts, starters, switches, switchboards, tanks, transformers, valves, wiring, davits and pegs).

**1.36 "First Mortgage"** means the first mortgage or first trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, granted by one Owner as a lien and encumbrance upon such Owner's title to its respective portion of the Property; provided, however, with respect to any Submitted Property, the term "First Mortgage" shall not apply to any mortgage granted by a Unit Owner with respect to its Unit.

**1.37 "Full Insurable Value"** means actual replacement cost of the Building and all Facilities and improvements therein, exclusive of: (i) betterments and improvements made to the standard-grade Units initially offered for sale by Lakeview Station; and (ii) tenant improvements

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made to the Retail Property.

**1.38 "Gross Square Footage"** shall mean, as applicable, the gross floor area of the Condominium Building or Retail Building, as adjusted by the allocations described below relating to the Shared Facilities Easement Area.

**1.39 "Hazardous Substances"** means any dangerous, toxic or hazardous pollutant, contaminant, chemical, waste, material or substance as defined in or governed by any Environmental Law, and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos or asbestos containing materials, nuclear or radioactive fuel or waste, radon, explosives, known carcinogens, petroleum, petroleum products, or any other waste, material, substance, pollutant or contaminant to which liability or standards of conduct may be imposed under any applicable Environmental Law.

**1.40 "Indemnifying Owner"** means an Owner who is obligated to indemnify and hold harmless the Indemnitees pursuant to **Section 7.4** hereof.

**1.41 "Indemnitees"** means the other Owner(s) and their respective shareholders, partners, members, officers, directors, managers and employees to be indemnified pursuant to **Section 7.4** hereof.

**1.42 "Junior Mortgage"** means any second or subsequent mortgage or trust deed in the nature of a mortgage, and all amendments, supplements and extensions thereto, granted by any one Owner as a lien and encumbrance upon such Owner's title to its respective portion of the Property; provided, however, with respect to any Submitted Property, the term "Junior Mortgage" shall not apply to any mortgage granted by a Unit Owner with respect to its Unit.

**1.43 "Losses"** means losses, liabilities (civil or criminal), damages, judgments, costs and expenses, including but not limited to reasonable attorneys' fees.

**1.44 "Lakeview Station "** means the record holder of legal title to the Parcel.

**1.45 "Lakeview Station Parties"** means Lakeview Station . For purposes of **Section 4.1** hereof, the Condominium Association shall in no event be deemed a successor or assign of Lakeview Station 's rights thereunder.

**1.46 "Lakeview Station Equipment"** means communications antennae, satellite dishes and similar income-producing equipment, including all component parts thereof.

**1.47 "Maintenance"** means and includes operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation and replacement when necessary or desirable of the relevant portion of the Property, the Facilities or the Shared Facility Easement Area (except repair and restoration required by **Sections 10.2, 10.3, 14.3 and 14.4** hereof) and, subject to any limitations set forth elsewhere in this Agreement, includes: (i) the right of access to such Facilities and Shared Facilities Easement Area located on the other Owner's portion of the Property; and (ii) the right to remove from the Building portions of such Facilities and Shared Facilities Easement Area for any of the above purposes.

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1.48 **"Matter"** means those disputes, claims, controversies or matters submitted to Arbitration pursuant to Section 12.1 hereof.

1.49 **"Non-Owner Flaw"** means an Unavoidable Delay or faulty construction or faulty design related to the initial construction of the Building.

1.50 **"Non-Performing Owner"** means an Owner who is unable to perform its obligations under this Agreement.

1.51 **"Objecting Party"** means any Owner who, in good faith, believes that the Altering Owner has violated or will violate the provisions of Section 21.1(A) or (B) hereof.

1.52 **"Owner of the Condominium Property"** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Condominium Property. In the event that any portion of the Condominium Property becomes Submitted Property, the Owner of the Condominium Property for the Submitted Property shall mean the Condominium Association, which shall be the sole entity entitled to act on behalf of all of the Unit Owners collectively, and no individual Unit Owner or Unit Owners shall have any right to take any action hereunder except through the Condominium Association.

1.53 **"Owner of the Retail Property"** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of the Retail Property.

1.54 **"Owner"** means the Owner of the Condominium Property or the Owner of the Retail Property, as the context requires. **"Owners"** means the Owner of the Condominium Property and the Owner of the Retail Property collectively.

1.55 **"Ownership Majority"** means, with respect to any matter for which consent, approval, or agreement of the Owners hereunder is required to be obtained, the consent, approval or agreement of all of the Owners.

1.56 **"Plans"** means those architectural and engineering drawings and specifications used for the original construction of the Building. The initial Plans are not "as-built" plans and may be changed or supplemented in accordance with the terms hereof. The Owners acknowledge that, during the construction of the Building, the Owners may find it necessary or mutually beneficial to change the location, size or use of any portion of the Parcel or the Easement rights contained herein. If, upon substantial completion of the Building, the Owners cause as-built plans to be prepared, such as-built plans shall replace the initial Plans; provided, however, the Owners shall not be obligated hereunder to prepare as-built plans.

1.57 **"Recorder"** means the Office of the Recorder of Deeds of Cook County, Illinois.

1.58 **"Reserved Easement Area"** means the entire Upper Roof except for those areas in which any Facilities required by the Plans are to be installed in the initial construction of the



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Building.

**1.59 "Responsible Owner" or "Responsible Owners"** means that Owner or those Owners responsible for the Deficient Structural Support pursuant to **Section 5.2** hereof.

**1.60 "Retail Building"** means the portion of the Building located within the Retail Parcel.

**1.61 "Retail Easement Facilities"** means Facilities located in the Condominium Property which are owned by the Owner of the Retail Property and primarily benefit the Retail Property or the Owner of the Retail Property.

**1.65 "Retail Parcel"** means that portion of the Parcel generally comprised of the surface and air rights from the height of the underside of the ground floor of the Building to the height of the underside of the second (2<sup>nd</sup>) floor of the Building within which is located the retail spaces as more fully set forth on **Exhibit B** attached hereto.

**1.66 "Retail Property"** means the Retail Parcel improved with the Retail Building.

**1.67 "Shared Facilities"** means those Facilities located wholly or partially within the Shared Facilities Easement Area or within the Condominium Building or the Retail Building that are intended to be utilized on a non-exclusive basis by more than one Owner or provide a service or function to more than one portion of the Building.

**1.68 "Shared Facilities Easement Area"** means (a) that portion of the Building consisting of the mechanical rooms, telephone room, the transformer vault room, trash room, service corridor, loading dock, ramp servicing parking garage, water room, roof, façade, storm drains and parapets, waste system, sanitary waste system, those areas utilized to furnish support to the Building, elevators, elevator shafts, elevator corridor and stairwells; (b) that portion of the Parcel lying outside of the Building's exterior walls to the property line of the Parcel from street level to a height at the underside of the second (2<sup>nd</sup>) floor of the Building, within which area certain sidewalks, driveways and landscaping improvements are located, and (c) the entire subsurface of the Property.

**1.69 "Shared Property"** mean the Shared Facilities and the Shared Facilities Easement Area, or any portion thereof.

**1.70 "Structural Engineer"** means a reputable firm of structural engineers experienced in the design of structural components of mixed-use structures similar to the Building selected by the Owners pursuant to **Article XVI** hereof.

**1.71 "Submitted Property"** means that portion of the Condominium Property submitted to the provisions of the Condominium Act.

**1.72 "Support"** means lines, conduits, wiring, cable and other equipment (including, without limitation, a utility meter and standby power generator) supporting or otherwise serving the Lakeview Station Equipment.

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**1.73 "Temporary Construction Easement"** means a temporary non-exclusive Easement for ingress and egress to, from and among each of the Condominium Parcel and the Retail Parcel for persons, vehicles and construction materials and equipment as set forth in Section 3.1 hereof.

**1.74 "2004 equivalent dollars"** means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 2004. The 2004 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the difference between (x) the monthly Consumer Price Index last published prior to the date of such determination, and (y) the Consumer Price Index for December, 2004, and the denominator of which is the Consumer Price Index for December, 2004.

**1.75 "Unavoidable Delay"** means a 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 an Owner.

**1.76 "Unit"** means any condominium unit within the Property, and includes the percentage interest of such unit in the Common Elements thereof.

**1.77 "Unit Owner"** means the person or persons or entity or entities whose estates or interests, individually or collectively, aggregate, at any point in time, to fee simple ownership of any Unit.

**1.78 "Upper Roof"** means the roof above the fourth (4<sup>th</sup>) floor of the Building.

## ARTICLE II

### Grants of Easements

**2.1 Easements Burdening the Retail Property.** The Owner of the Retail Property hereby grants, declares and creates the following perpetual Easements burdening the Retail Property, and all such Easements shall be for the benefit of the Condominium Property and the Owner of the Condominium Property (and, to the extent applicable, its tenants, contractors, agents, invitees and guests):

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of the Retail Property for the support, whether direct or indirect, of (i) the Condominium Building, and (ii) any Facilities located within the Retail Property with respect to which the Owner of the Condominium Property is granted an Easement under this Agreement.

(B) A non-exclusive Easement (i) for the use for their intended purposes of all Facilities at any time located in the Retail Property and connected to Facilities at any time located in the Condominium Property (and any replacements thereof) which provide or shall be necessary to provide any of the Condominium Property with any utilities or other services or

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which may otherwise be necessary to the operation thereof, and (ii) permitting the exercise of the rights granted to the Owner of the Condominium Property pursuant to **Article VI** hereof during any period in which said rights may be exercised.

(C) An exclusive Easement for the Maintenance of the Condominium Easement Facilities, if any, located within the Retail Property.

(D) A non-exclusive Easement over, on, across and through the Retail Property to the extent reasonably necessary (i) to permit the completion of the initial construction, fixturing and furnishing of the interior of the Condominium Building subsequent to the termination of the Temporary Construction Easement, (ii) to permit the Maintenance of the Condominium Property and Condominium Easement Facilities as required or permitted pursuant to this Agreement, (iii) to exercise the Easements set forth in this **Section 2.1**, (iv) for ingress and egress by persons, materials and equipment during an Emergency Situation, or (v) to construct and maintain substitute or additional structural support required by **Article V** hereof.

(E) A non-exclusive Easement for the right to maintain and for the use and enjoyment of, any Shared Facilities located wholly or partially within the Retail Property, including, without limitation, the right of ingress and egress by persons, materials and equipment on, over and across the Retail Property to the extent reasonably necessary to exercise the foregoing easement rights.

(F) A non-exclusive Easement in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within the Retail Property, for the right to use and enjoy said portion of the Shared Facilities Easement Area, including, without limitation, for ingress and egress by persons over, on, across and through the various sidewalks and driveways located within any portion of the Retail Parcel situated outside of the exterior walls of the Retail Building.

(G) A non-exclusive Easement for the benefit of the Condominium Property for ingress and egress by persons, material and equipment over, on and across the exterior of the Retail Building (and sidewalks adjacent thereto) for the purpose of Maintaining the exterior windows, and façade of the Condominium Building, provided that such rights shall be exercised at such times so as not to interfere with the operation by the Owner of the Retail Property.

(H) Each Easement created under this Article II which provide or require for its enjoyment, ingress and egress on, over, across or through the Retail Property shall be (except in an Emergency Situation) subject to such reasonable limitations as the Retail Property Owner may impose as to prevent any unreasonable interference with the use and operation of the applicable portion of the Retail Property and in order to assure the reasonable security of the applicable portion of the Retail Property; provided, however, that any such limitations shall not preclude or unreasonably restrict the exercise of the Easement.

**2.2 Easements Burdening the Condominium Property.** The Owner of the Condominium Property hereby grants, declares and creates the following perpetual Easements burdening the Condominium Property, and all such Easements shall be for the benefit of the Retail Property and the Owner of the Retail Property (and, to the extent applicable, its tenants,

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contractors, agents, invitees and guests):

(A) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of the Condominium Property for the support, whether direct or indirect, of (i) the Retail Building, and (ii) any Facilities located within the Condominium Property with respect to which the Owner of the Retail Property is granted an Easement under this Agreement.

(B) A non-exclusive Easement (i) for the use for their intended purposes of all Facilities at any time located in the Condominium Property and connected to Facilities at any time located in the Retail Property (and any replacements thereof) which provide or shall be necessary to provide the Retail Property with any utilities or other services or which may otherwise be necessary to the operation of thereof, and (ii) permitting the exercise of the rights granted to the Owner of the Retail Property pursuant to **Article VI** hereof during any period in which said rights may be exercised.

(C) An exclusive Easement for the benefit of the Retail Property for the Maintenance of Retail Easement Facilities, if any, located within the Condominium Property.

(D) A non-exclusive Easement over, on, across and through the Condominium Property (including use of the Condominium Building Elevators to the extent reasonably necessary (i) to permit the completion of the initial construction, fixturing and furnishing of the interior of the Retail Building subsequent to the termination of the Temporary Construction Easement, (ii) to permit the Maintenance of the Retail Property and Retail Easement Facilities as required or permitted pursuant to this Agreement, (iii) to exercise the Easements set forth in this **Section 2.2**, (iv) for ingress and egress by persons, materials and equipment during an Emergency Situation, or (v) to construct and maintain substitute or additional structural support required by **Article V** hereof.

(E) A non-exclusive Easement for the right to maintain (in the locations provided for in the Plans), and for the use and enjoyment of, any Shared Facilities located wholly or partially within the Condominium Property, including, without limitation, the right of ingress and egress by persons, materials and equipment on, over and across the Condominium Property to the extent reasonably necessary to exercise the foregoing easement rights.

(F) A non-exclusive Easement in, to, on, over, across and through that portion of the Shared Facilities Easement Area located within the Condominium Property, for the right to use and enjoy said portion of the Shared Facilities Easement Area, including, without limitation:

(i) for ingress and egress by persons, material and equipment over, on, across and through the Shared Facilities Easement Area located within the basement and ground floor of the Condominium Property for the Maintenance of those Shared Facilities located wholly or partially within said Shared Facilities Easement Area;

(ii) for ingress and egress by persons over, on, across and through the various sidewalks and driveways located within that portion of the Shared

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Facilities Easement Area located in any portion of the Condominium Property situated outside of the exterior walls of the Condominium Building;

(iii) for installation and Maintenance of additional Facilities in the mechanical room;

(G) A non-exclusive Easement to the extent reasonably necessary to use the Condominium Building Elevators and stairwells located in the Condominium Building, and to gain access thereto over the Condominium Property, for the purpose of ingress and egress by persons, material and equipment from and to: (i) the Shared Facilities Easement Area located in the basement of the Condominium Property; and (ii) the Retail Easement Facilities located on the Condominium Property, including, without limitation, the Upper Roof.

(H) A non-exclusive Easement to the extent reasonably necessary to use the ramp and driveways located in or otherwise serving the Condominium Parking Property, for the purpose of vehicular ingress and egress from and to the Shared Facilities Easement Area and Retail Easement Facilities located within the basement of the Condominium Property.

(I) An exclusive easement for the benefit of the Retail Property to: (i) install and Maintain utility lines constituting Retail Easement Facilities in certain shafts located within the Condominium Property (the "Shared Shafts"), provided however that the Owner of the Condominium Property reserves the right to Maintain those utility lines located in the Shared Shafts which were installed as part of the initial construction of the Building and, subject to the written approval of the Owner of the Retail Property in its sole discretion, to add electrical lines in the Shared Shafts; (ii) install and Maintain signage on the roof; (iii) install an automatic teller machine (ATM) machine on the ground floor of the Condominium Property (the "ATM Area") and, regardless of whether the Owner of the Retail Property exercises such right, the Owner of the Condominium Property shall be prohibited from installing and maintaining an ATM machine anywhere on the Condominium Property without the prior written consent of the Owner of the Retail Property, which may be withheld in its sole discretion; and (iv) install and Maintain structural connections for support of the signage located on the Retail Property within a portion of the exterior walls of the Condominium Building.

2.3 Each Easement created under this Article II for the benefit of the Condominium Property and Retail Property shall be exercised (except in an Emergency Situation) in a reasonable manner by the Owner of the Condominium Property and the Owner of the Retail Property, respectively, by using such paths of ingress and egress, and exercising each Easement during such hours of the day or days of the week, to prevent any unreasonable interference with the use and operation of the Retail Property and Condominium Property, respectively; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement. Notwithstanding anything to the contrary contained herein, if the exercise of any Easement by the Owner of the Condominium Property and the Owner of the Retail Property would involve entering any leased space in the Retail Building or any Unit in the Condominium Building, respectively (the "Occupied Space"): (i) the exercising Owner shall, except in an Emergency Situation, provide not less than forty-eight (48) hours prior notice to the other Owner of its desire to exercise its rights under the relevant Easement and gain access to the Occupied Space (other than secure areas specified by the other Owner), and such access shall

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occur at a reasonable time of day to be agreed upon by the Owners, provided that any entry into secure areas of Occupied Space shall be done under the supervision of the other Owner (or its representative); and (ii) if the exercising Owner is the Owner of the Condominium Property, the Owner of the Condominium Property shall, to the extent instructed by the Owner of the Retail Property, use its commercially reasonable efforts to comply with any lease obligations of the Owner of the Retail Property when exercising its rights under the relevant Easement, provided that said instructions do not unduly burden the Owner of the Condominium Property in its exercise of such rights or otherwise conflict with the rights granted to the Owner of the Condominium Property in this Section.

2. Subject to the provisions of Article XX, the Easements provided for, granted, declared or created under Section 2.1 and Section 2.2 hereof shall run in favor of and inure to the benefit of and be appurtenant to the Condominium Property and the Retail Property, respectively.

## ARTICLE III

### Temporary Construction Easements

3.1 **General Construction Easements.** Each Owner grants to the other Owner (and their respective contractors and subcontractors) a Temporary Construction Easement on, over, across and through the portion of the Parcel owned by each Owner from the date hereof through the date of Base Building Completion, at which time the Temporary Construction Easement shall terminate and expire. The Temporary Construction Easements herein granted shall include an easement for the purpose of marshalling and staging of construction vehicles, equipment, contractors, subcontractors and supplies in connection with the construction of the Building and the various components thereof within the Condominium Parcel and Retail Parcel as may be reasonably necessary and desirable during the course of construction as performed by the general contractor responsible for the construction work under Construction Manager's supervision through Base Building Completion.

3.2 **Construction Standards.** Each Owner, in exercising its rights under the Temporary Construction Easements granted pursuant to this Article III, shall (a) perform all work in accordance with the Plans and in a good and workmanlike manner and in accordance with good construction practices, (b) conduct its activities on or in the other Owner's portion of the Property so as not to (i) cause any increase in the cost of construction of the other Owner's portion of the Building which is not reasonably necessary, (ii) unreasonably interfere with any construction work being performed on the other Owner's portion of the Property, and (iii) unreasonably interfere with the use, occupancy or enjoyment of the other Owner's portions of the Property by such Owner or its tenants or invitees, (c) 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 the zoning ordinances and approvals of the City of Chicago applicable to the Parcel and its development with the Building, (d) comply with all applicable provisions of this Agreement, and (e) take all such actions as may be reasonably necessary or desirable to ensure the protection and safety of the Owners, their employees, agents, contractors, subcontractors, materialmen, suppliers and other persons and property at the site of the work. Except as otherwise provided in this Agreement, the foregoing construction standards (to the extent applicable) shall apply at all times to any Owner's exercise of its easement rights

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relating to the Maintenance of its portion of the Parcel or its Easement Facilities, as required or permitted pursuant to this Agreement.

**3.3 Coordination.** Each Owner, with respect to its respective construction activities and the use of the Temporary Construction Easements herein granted, acknowledges and agrees that it shall permit the Construction Manager to coordinate the utilization of the various Temporary Construction Easements among the contractors and architects of the Owners involved in the construction of the Building and any parts thereof, and each Owner shall use its commercially reasonable efforts to cause any contractors, agents, architects and others engaged by it in connection with the construction of its respective portion of the Building to cooperate with and coordinate its construction activities with and through the Construction Manager to achieve the objective of a harmonious and efficient construction process for the Building's erection.

## ARTICLE IV

### Use Restrictions and Certain Agreements among Owners

**4.1 No Expansion of Building.** The Owners agree that no Owner shall have any right to increase the height of its portion of the Building, or to expand the floor area of its Building outside of the original Building perimeter without the prior written consent of the other Owner and all the holders of the First Mortgages and Junior Mortgages. Without limiting the generality of the foregoing, the Owners acknowledge and agree that, except for any Facilities required by the Plans to be installed in the initial construction of the Building, and any Retail Easement Facilities to be installed as part of the initial occupancy of the Retail Building, on any roof area of the Building (including, without limitation, the Upper Roof) (collectively, the "**Original Facilities**"), and any replacements of such Facilities, no Facilities of any kind, including, without limitation, communications antennae, satellite dishes or like equipment, shall be installed on: (i) any roof (other than the Upper Roof) without the prior written consent of all Owners; and (ii) the Reserved Easement Area without the prior written consent of the Lakeview Station Parties only, which may be withheld in the Lakeview Station Parties' sole discretion. No consent of the Owners shall be required with respect to the installation by the Lakeview Station Parties of any Lakeview Station Equipment and Support on the Reserved Easement Area pursuant to Lakeview Station's reservation of easement hereinafter stated. Notwithstanding anything to the contrary contained in this Agreement, Lakeview Station hereby reserves for the Lakeview Station Parties (and its contractors and licensees) the following perpetual easements: (i) an exclusive easement to install, construct and maintain the Lakeview Station Equipment on the Reserved Easement Area; (ii) a non-exclusive easement to install and maintain the Support on, through and over the Property which are reasonably necessary for the operation of the Lakeview Station Equipment, provided that the location thereof does not unreasonably interfere with the operations of that portion of the Building in which the Support is located; (iii) a non-exclusive easement to use and connect to those Facilities (including, without limitation, utilities servicing the Building) which are reasonably necessary for the operation of the Lakeview Station Equipment, provided that the Lakeview Station Parties shall be obligated to pay its equitable share of the cost relating to its use of such Facilities as reasonably determined by the affected Owner and the Lakeview Station Parties; and (iv) a non-exclusive easement for ingress and egress over the Property (including, without limitation, the Condominium Building Elevators and

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the stairwells) by persons, material and equipment to the extent reasonably necessary to permit access to the Reserved Easement Area and to permit the construction, installation, inspection, maintenance, repair, replacement or removal of the Lakeview Station Equipment and the Support, wherever located on the Property. In connection with the construction and installation of the Lakeview Station Equipment and Support, all such work shall be performed at the Lakeview Station Parties' sole cost and expense and in a good and workmanlike manner. The Lakeview Station Parties shall operate the Lakeview Station Equipment in a manner that will not cause interference to the Original Facilities or any then-existing equipment installed on the Property by the Owners. The Lakeview Station Equipment, including the Support, shall at all times be owned by the Lakeview Station Parties (or its contractors or licensees), and shall be personal property and not fixtures. Upon removal of the Lakeview Station Equipment and Support from the Reserved Easement Area and the Property, the Lakeview Station Parties shall place those portions of the Reserved Easement Area and Property on or in which the Lakeview Station Equipment and Support is located to the condition in which those portions existed at the time of installation thereof, subject to reasonable wear and tear, loss by casualty, or other causes beyond the control of the Lakeview Station Parties; provided, however, that the removal of the Lakeview Station Equipment and Support shall in no way extinguish the rights reserved by Lakeview Station hereunder. The Lakeview Station Parties shall be responsible for any damage caused to the Upper Roof, or any other portion of the Property, resulting from: (i) the construction, installation, inspection, maintenance, repair, replacement or removal of the Lakeview Station Equipment or the Support; and (ii) the gross negligence of the Lakeview Station Parties (or its contractors or licensees). Except as provided in the preceding sentence, the Lakeview Station Parties shall not be obligated to make or pay for any repairs or replacements to any portion of the Property, including, but not limited to, the Upper Roof. For any period in which the Lakeview Station Parties maintain Lakeview Station Equipment on the Reserved Easement Area, the Lakeview Station Parties shall, at its sole cost and expense, procure and maintain bodily injury and property damage insurance with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of the Lakeview Station Parties, its employees, contractors and licensees arising out of or in connection with the Lakeview Station Parties' use of the Reserved Easement Area and the Property as provided herein. The Owners agree to: (i) cooperate with the Lakeview Station Parties, at no cost to the Owners, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for the Lakeview Station Parties' intended use of the Reserved Easement Area and the Property; and (ii) sign such documents or grant such easements, at no cost to the Lakeview Station Parties, as may be reasonably required by any utility companies providing service to the Lakeview Station Equipment and Support, provided that the location of any such easements shall be approved by the affected Owners, such approval not to be unreasonably withheld or delayed. Subsequent to the installation of the Lakeview Station Equipment and Support by the Lakeview Station Parties, the Owners shall not install new equipment on the Property, or permit any other person or entity to do so, if such equipment would be likely to cause interference with the operation of the then-existing Lakeview Station Equipment and Support. In the event interference occurs, the interfering Owner shall diligently pursue all action necessary to eliminate such interference. The Lakeview Station Parties shall be entitled to recover from any breaching Owner any and all costs and expenses, including reasonable attorneys' fees, incurred by the Lakeview Station Parties in successfully enforcing or defending the easements and rights granted to the Lakeview Station Parties (and its contractors and licensees) in this subparagraph.



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**4.2 Restrictions on Uses.** Each Owner covenants and agrees to maintain and operate its portion of the Building in a first-class manner, commensurate with the operation of similar uses in Comparable Projects. In furtherance of this covenant, each Owner agrees, respectively, as follows:

(A) the Owner of the Retail Property agrees to operate and maintain the Retail Property as a first-class retail property commensurate with such a first-class operation and similar to that found in Comparable Projects. In addition, the Owner of the Retail Property shall have the exclusive right to place signage in the public way immediately adjacent to the Property.

(B) the Owner of the Condominium Property agrees to operate and maintain the Condominium Property as a first-class residential apartment/condominium operation and similar to that found in Comparable Projects; provided, however, the Owner of the Condominium Property hereby expressly reserves the right, without the necessity of joinder or consent of the Owner of the Retail Property or any holder of any First Mortgage or Junior Mortgage (or other encumbrance) on any portion of the Property (other than the holder, if any, of the First Mortgage and the Junior Mortgage encumbering the Condominium Property) to submit any portion of the Condominium Property to the provisions of the Condominium Act, to sell Units therein in accordance with the Condominium Act and all laws applicable thereto and to establish the Condominium Association to administer said portion of the Condominium Property. With respect to any Submitted Property, the Condominium Association shall be the only party with the right to act on behalf of all Unit Owners, although each Unit Owner is subject to the provisions of this Agreement.

**4.3 Building Name and Identification of Uses Therewith.** The Owners have agreed and do hereby agree that the Building shall be named the "Lakeview Station", and that, in the interest of promoting the Building as a whole, the Condominium Building and Retail Building shall each contain in its name a clear and distinct reference to "Lakeview Station". No Owner shall have the right to adopt the name "Lakeview Station" solely as the name for its portion of the Building or as a reference to its use only.

## ARTICLE V

### Structural Support

**5.1 Prohibition.** No Owner shall take any action which would adversely affect the structural safety or integrity of the Building.

**5.2 Deficient Structural Support.** If any Owner in good faith believes or suspects Deficient Structural Support for any reason, the Structural Engineer appointed in accordance with Section 16.1 shall review, at the request of such Owner, the extent of any such reduction and the need for or adequacy of any such substitute or additional structural support; provided, however, that if the Structural Engineer does not find Deficient Structural Support, the requesting Owner shall bear the entire costs relating to the retention of the Structural Engineer for such review. The Structural Engineer shall: (a) estimate, if possible, the time reasonably necessary to provide adequate substitute or additional structural support; and (b) attempt in good faith to determine (i)

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any Responsible Owner(s), and if multiple Responsible Owners are found, their relative liability for same, or (ii) that such reduction is not the result of any action or omissions of any particular Owner or Owners but rather the result of a Non-Owner Flaw. Each element of the findings of the Structural Engineer (i.e. the finding of reduced support, the determination of Responsible Owner(s) (and, in the case of Responsible Owners, the assignment of relative liability therefor) or the finding of a Non-Owner Flaw, shall be subject to the approval of an Ownership Majority; provided, however, if the determination by the Ownership Majority is contrary to any recommendation or finding of the Structural Engineer, then any Owner disagreeing with the conclusion of the Ownership Majority may submit the issue to resolution by Arbitration pursuant to **Article XII** hereof.

**5.3 Cost of Substitute or Additional Support.** If the Structural Engineer shall determine that substitute or additional structural support is required in a portion of the Building in which the structural support shall have been reduced, then the Construction Manager shall be engaged to commence the construction of such substitute or additional support within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction in accordance with plans and specifications prepared by or approved by the Structural Engineer and approved by an Ownership Majority. The Responsible Owner(s) in proportion to their relative liabilities as determined pursuant to this Section (or, if a Non-Owner Flaw, all Owners pro-rata in accordance with their respective Gross Square Footage allocations) shall pay all costs and expenses in connection with construction of the substitute or additional support, including, without limitation, the fees of the Construction Manager, the Structural Engineer and any other engineering fees. All amounts required to make the payment of the foregoing costs of providing substitute or additional structural support shall be payable by the Responsible Owner(s) or, in the case of a Non-Owner Flaw, by all Owners, and the failure of any Owner to make timely payment thereof shall give rise to the same rights and remedies of any Creditor Owner against such Defaulting Owner under said **Article VI**.

**5.4 Non-Owner Flaw.** If the reduction in structural support is determined to have been caused by a Non-Owner Flaw, then the Owners shall cooperate with each other to jointly seek recourse against the parties, if any, responsible for the reduction in an effort to recover all amounts necessary to cause the construction of substitute or additional support to be promptly made at such other parties' expense. If an Ownership Majority determines it necessary to construct the substitute or additional support prior to recovery from any third party (or if such recovery is insufficient to pay the cost thereof in full), the cost (or excess cost, if any) of the construction of substitute or additional support shall be paid for by the Owners pro-rata in accordance with their respective Gross Square Footage allocations, and the Owners shall be reimbursed from, and to the extent of, any recovery against a responsible third party when the same is actually received. In such circumstances, the selection of counsel and method of proceeding against such third parties shall be subject to the approval of an Ownership Majority.

**5.5 Emergency Situation.** If the Owner of that portion of the Building that is affected by the reduction in support in good faith believes delay in constructing substitute or additional support may give rise to an Emergency Situation, then, without regard to whether the cause thereof was the result of a Non-Owner Flaw or, if not, without regard to which Owner or Owners shall be determined responsible for the reduction, the Owner of the portion of the

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Building in which the reduction shall have occurred or is then occurring shall, upon not less than ten (10) days advance written notice to the other Owner (except that such advance written notice shall not be required in an actual Emergency Situation), provide substitute or additional structural support as and wherever may be required, and the costs thereof shall initially be paid for by the Owners pro-rata in accordance with their respective Gross Square Footage allocations pursuant to **Section 5.3** above, subject to final reallocation of the costs thereof between the Owners when responsibility for such costs are finally determined in accordance with **Section 5.2** above. The foregoing shall not be deemed to limit any rights that any Owner may have against third parties or any Responsible Owner with respect to reduction of support caused by Non-Owner Flaws or otherwise.

## ARTICLE VI

### Maintenance of Shared Facilities Easement Area and Shared Facilities; Utilities; Performance of Services

**6.1 Shared Facilities Easement Area.** The Owner of the Condominium Property shall be responsible for the care and Maintenance of the Shared Facilities Easement Area. The Owner of the Condominium Property shall maintain the Shared Facilities Easement Area in good condition and repair. Except for the Limited Charges, as defined in paragraph 6.3 of this Agreement, the Owner of the Retail Property shall pay 5% and the Owner of the Condominium Property shall pay 95% of the total expenses attributable to the Operation and Maintenance of the Shared Facilities Easement Area.

**6.2 Payment for Expenses.** The Owner of the Condominium Property shall submit statements quarterly to the Owner of the Retail Property for costs due and owing under Paragraph 6.1 of this Agreement and said statements shall be paid by the Owner of the Retail Property within fifteen (15) days. The quarterly statements submitted by the Owner of the Condominium Property during a given year shall be estimates based upon the prior year's total expenses (less Excluded Charges as defined in Paragraph 6.3).

6.2 (a) Following the end of each calendar year, and within fifteen (15) days of the Owner of the Condominium Property having received its audited financial statements for that calendar year just ended, the Owner of the Condominium Property shall notify the Owner of the Retail Property in writing of the full amount of all such actual expenses for the previous year less Excluded Charges, which shall be itemized, and shall submit to the Owner of the Retail Property a copy of the audited financial statements for that calendar year. In the event that the preceding year's expenses were more than the amount paid by the Owner of the Retail Property based on the quarterly charges then in effect, and should the Owner of the Retail Property elect not to contest such charges pursuant to Subparagraph 6.2(b) hereof, within 45 days after receiving the statement of actual expenses aforesaid, the Owner of the Retail Property shall pay the Owner of the Condominium Property an amount equal to any unpaid charges owing. In the event the preceding year's expenses were less than the amount paid by the Owner of the Retail Property based on the aforesaid estimates, the excess shall be applied as a credit against the next quarterly installment to be paid by the Owner of the Retail Property to the Owner of the Condominium Property in the current calendar year until such excess has been exhausted. The quarterly payments for the remainder of that year shall then be adjusted upward or downward so that the

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total estimated payments for that year equal the actual amount of the costs incurred during the prior year, and so that all remaining quarterly payments are equal. The payment shall remain in effect until the next audited financial statements are issued.

6.2(b) The statements of any amounts due or to be credited described in Subparagraph 6.2(a) hereof may be challenged by the Owner of the Retail Property within fifteen (15) days after such receipt by serving written notice of such challenge to the Owner of the Condominium Property. If such notice is sent, and no resolution is reached between the parties within 14 days of such notice, the parties agree that the decision of the issues raised may be referred to a reputable independent firm of certified public accountants selected by the Owner of the Retail Property and reasonably acceptable to the Owner of the Condominium Property and the decision of that firm shall be conclusively binding to the parties. Any adjustment to any previous payment of the estimated costs of services and expenditures mandated in that decision shall be made within 15 days after such accountants render their decision. The party required to make payment under such adjustment shall pay all fees and expenses involved in the making of such decision except where the payment represents three percent (3%) or less of any adjustments shown on the statements of the Owner of the Condominium Property, in which case the Owner of the Retail Property shall bear all such fees and expenses.

**6.3 Limited Charges.** The Owner of the Retail Property shall pay the lesser of 5% or \$1.00 per occupiable square foot per annum for any payments under Article 6 incurred in connection with the operation, maintenance, repair and replacement of the "Capital Expenditures" (defined hereinafter) related to the following areas or Facilities located in the Building: (i) the Building lobby; (ii) the Building stairwells; (iii) the Building elevator and elevator shafts; (iv) the parking garage; (v) the ramp leading to the parking garage; (vi) the loading dock; (vii) the heating, ventilating and air conditioning components and systems and related Facilities servicing exclusively the Condominium Property; (viii) all ducts and flues and related Facilities; (ix) any roof top additions including rooftop decks; (x) façade, storm drains, mechanical rooms, telephone room, the transformer vault room, waster system, sanitary waste system and parapets and (xi) any roof resurfacing or replacement. For purposes of this Agreement, "Capital Expenditures" shall mean any charges, costs, fees, taxes or assessments outside the normal annual Maintenance and repair of a particular item. For example, cleaning of the carpet in the Building lobby shall be deemed annual Maintenance, whereas replacing the carpet in the Building lobby shall be deemed a Capital Expenditure. The charges identified in this Paragraph 6.3 shall be referred to as "Limited Charges". With the exception of the limitation on reimbursement of expenditures related to the operation, maintenance, repair and replacement of these items as set forth in this Paragraph 6.3, the Owner of the Retail Property shall pay 5% of all expenditures made by the Owner of the Condominium Property in accordance with Paragraph 6.1.

**6.4 Shared Facilities.** The responsible Owner shall Maintain the Shared Facilities in good condition and repair and in accordance with any manufacturer's specifications therefor. Whenever an Owner is obligated pursuant to the terms hereof to replace any Shared Facilities, such Owner shall replace such Shared Facility with a Shared Facility substantially equivalent (or better) and providing substantially the same quality of service (or better).

**6.5 Utilities.** Each Owner shall be solely responsible for the payment of those utility

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costs separately metered and directly billed to such Owner by the applicable utility company.

**6.6 Services Provided by Owners.** With the approval of the Owner of the Condominium Property (such approval not to be unreasonably withheld), the Owner of the Retail Property may utilize the Condominium Personnel (as hereinafter defined) to perform certain services required to be furnished hereunder by the Owner of the Retail Property. If the Owner of the Retail Property utilizes the Condominium Personnel, the Owner of the Retail Property shall contract with the Owner of the Condominium Property to perform the relevant services, provided that the Owner of the Condominium shall be entitled to be paid a reasonable fee for the use of the Condominium Personnel. For purposes of this Section 6.4, "Condominium Personnel" shall mean any personnel employed on a full-time basis by the Owner of the Condominium Property to perform services for the benefit of the Condominium Property. In no event shall the performing Owner be obligated to use more than reasonable diligence in performing the services required of it under this Article VI, be liable for consequential damages for failure to perform hereunder, or be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason, unless caused by the gross negligence or willful misconduct of the performing Owner (or its contractors) or a violation of law by the performing Owner (or its contractors).

**6.7 Payments due to Other Owner.** Any amounts due from an Owner for payments made or services provided by the other Owner pursuant to this Article VI shall be paid by such Owner within twenty-one (21) days after receipt of the invoice therefor, provided that invoices shall not be issued more frequently than quarterly. In the event any Owner fails to timely pay any amount so invoiced, the non-paying Owner shall be deemed a "Defaulting Owner" hereunder and the other Owner shall be deemed a "Creditor Owner" hereunder.

**6.8 Failure of an Owner to Pay Amounts Due to Performing Owner.** If at any time a Defaulting Owner fails to timely pay to a Creditor Owner any sum of money payable to such Creditor Owner for services rendered by such Creditor Owner and such failure continues for a period of ten (10) days after such Creditor Owner gives written notice to the Defaulting Owner demanding payment of said sum of money, then such Creditor Owner may discontinue furnishing to the Defaulting Owner the services for which payment has not been received until said sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes its obligation to pay said sum of money, pays the undisputed portion of said sum and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, or brings an action to determine the respective rights of the parties to such dispute and diligently prosecutes the same, then the Creditor Owner may not discontinue furnishing any such services to the Defaulting Owner unless and until it shall finally be determined by Arbitration in accordance with Article XII hereof or by a final non-appealable order of a court of competent jurisdiction that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid; and further provided, however, that Creditor Owner may not discontinue any such services if such discontinuance would cause an Emergency Situation or hinder steps to remedy or otherwise exacerbate an existing Emergency Situation.

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## ARTICLE VII

### Compliance With Laws; Removal of Liens

**7.1 Compliance with Laws.** Each Owner shall comply in all material respects with all laws, codes, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, City of Chicago and any other governmental or quasi-governmental authority or agency now or hereafter having jurisdiction over the Property or any portion thereof, if noncompliance would subject the other Owner or any of the holders of the First Mortgages or Junior Mortgages to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to such other Owner or for the Building itself or would jeopardize such other Owner's right to occupy or utilize beneficially its portion of the Property or any part thereof, or would result in the imposition of a lien against any portion of the Property of the other Owner.

**7.2 Compliance with Insurance Requirements.** Each Owner shall comply in all material respects with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Property or any portion thereof and the requirements of any insurance policy affecting insurance coverage on the other Owner's portion of the Property, if noncompliance by it with respect to its portion of the Property or any portion thereof would (i) increase the premiums of any policy of insurance maintained by the other Owner or the premiums of any policy of insurance maintained by both Owners, or (ii) render any of the other Owner's portion of the Property uninsurable, or (iii) create a valid defense to the other Owner's rights to collect insurance proceeds under policies insuring such other Owner's portion of the Property; provided, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in the other Owner's portion of the Property, such other Owner shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect the other Owner, then such Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice any such cure of the noncompliance is still not proceeding diligently, then such Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by such Creditor Owner in connection with causing any such compliance to occur. (The provisions of this paragraph shall not apply to any policy of insurance maintained by any individual Unit Owner, but shall apply to the insurance policy maintained by the Condominium Association on behalf of all of the Unit Owners.)

**7.3 Removal of Liens.** Each Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on the other Owner's portion of the Property, or on its portion of the Property if the existence or foreclosure of such lien on its portion of the Property would adversely affect the Shared Facilities or any Easement created hereunder or services to be furnished pursuant to Article VI hereof, arising by reason of any work or materials ordered or any act taken, suffered or omitted by such Owner. In the event the Defaulting Owner fails to remove any such lien within such thirty (30) day period, the Creditor

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Owner may take such action as such 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 such Creditor Owner in removing or attempting to remove such lien. Notwithstanding the foregoing, the Defaulting Owner shall not be required to remove such lien and the other Owner may not take any action so long as, within said thirty (30) day period, such lien cannot be foreclosed and 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 of its intention to contest the validity or amount of such lien, and (B) shall deliver to the Creditor Owner either: (i) cash or a surety bond from a responsible surety company acceptable to such Creditor Owner (and to the holders of the First Mortgage and Junior Mortgage of that portion of the Building owned by the Creditor Owner) in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim, or (ii) such other form of security providing substantially equivalent protection as may be proposed by the Defaulting Owner provided the same is reasonably acceptable to such Creditor Owner (and to the holders of the First Mortgage and Junior Mortgage of that portion of the Building owned by the Creditor Owner).

**7.4 Indemnification.** Each Indemnifying Owner covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the Indemnitees from and against any and all claims against Indemnitees for Losses, and any actions or proceedings arising therefrom, including, but not limited to, any action for injury or harm to persons or property, by or on behalf of any person, firm, corporation or governmental or quasi-governmental authority, other than the Indemnitees, arising from the Indemnifying Owner's (or its employees', contractors', invitees' or licensees') use, possession or management of the Indemnifying Owner's portion of the Property or activities therein or arising out of the Indemnifying Owner's (or its employees, contractors, invitees or licensees) use, exercise or enjoyment of an Easement within the Indemnitee's portion of the Property. Notwithstanding anything to the contrary contained in the preceding sentence, the Indemnifying Owner shall not have any indemnification obligations hereunder with respect to Losses arising from the Indemnitees' gross negligence or willful misconduct. In case any action or proceeding is brought against any of the Indemnitees by reason of any such claim, the Indemnifying Owner, upon notice from any such Indemnitees, covenants to resist or defend such action or proceeding, at the Indemnifying Owner's cost, with attorneys reasonably satisfactory to such Indemnitees. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitees.

## ARTICLE VIII

### Real Estate Taxes

**8.1 Separate Tax Assessment.** To the extent necessary to obtain a tax division of the Property effective no later than the calendar year after the year in which Base Building Completion occurs, the Owners agree to timely file a plat of subdivision, tax division petition or other required documentation with the Assessor to obtain separate real estate tax parcel identification numbers and separate real estate tax bills for their respective portions of the Property, if such a plat or petition has not previously been filed by any Owner (or its predecessor

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in title). Such petition shall be joined in by all the Owners and filed on behalf of all Owners by a single law firm approved by an Ownership Majority. When separate real estate tax bills are received, the Owner of the Retail Property shall pay the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Retail Property, and the Owner of the Condominium Property shall pay the real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon the Condominium Property (provided, however, with respect to any Submitted Property, each Unit Owner shall pay the real estate taxes, special assessments, and any and all other taxes and assessments of every kind and nature levied upon his Unit). Subsequent to a tax division taking effect, each Owner shall be entitled to individually protest the taxes attributable to such Owner's portion of the Property, but in any year when both Owners desire to protest its taxes, the Owners shall make reasonable efforts to agree upon a single law firm to represent them in such protests. If the Owners cannot agree, after making reasonable efforts, in the selection of a single law firm, nothing contained herein shall affect the independent right of each Owner to protest taxes and other charges attributable to such Owner's portion of the Property.

**8.2 Taxes Prior to Tax Division.** At any time that the Retail Property and Condominium Property are not separately assessed and taxed, each Owner shall pay its respective portion of such real estate taxes, special assessments and any and all other taxes and assessments of every kind or nature levied upon or with respect to the Property. Each Owner's portion of such taxes and assessments shall be determined based on the Gross Square Footage allocation. Such taxes and assessments shall be timely paid by the Owners. If, upon approval of an Ownership Majority, the Owners attempt to obtain a lowering of the assessed valuation upon the Property or takes other action for the purpose of reducing taxes thereon with respect to any period prior to the time that the Condominium Property and the Retail Property are separately assessed and taxed, the Owners shall cooperate with each other in such attempt and shall each share in the costs incurred in proportion to its share of the real estate taxes. Any tax refund received as a result of such action shall be apportioned between the Owners in accordance with their respective portions of the real estate taxes.

**8.3 Failure to Pay Proportionate Share of Taxes.** If, prior to the time separate tax bills are obtained, any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Owner is obligated to pay pursuant to this Article VIII, and if such unpaid tax or charge is a lien or encumbrance on the portion of the Property owned by the other Owner, or if any lawful authority would have the right to sell or otherwise foreclose against the portion of the Property owned by the other Owner or extinguish any Easement benefiting the other Owner by reason of such nonpayment, or subjects the other Owner to personal liability for the same, then the other Owner may, after ten (10) days' written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse such Creditor Owner for the amount of such payment, including the amount of any interest or penalty amounts accrued thereon.

## ARTICLE IX

### Insurance

**9.1 Building Insurance Policy.** The Owners shall procure and maintain a single



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Building Insurance Policy insuring against loss or damage to the Building, including without limitation all Facilities and improvements within the Building (exclusive of betterments and improvements made to the standard-grade Units initially offered for sale by Lakeview Station and tenant improvements made to the Retail Property) (the “covered improvements”). Alternatively, each Owner shall procure and maintain a Building Insurance Policy insuring against loss or damage to its portion of the Building, including without limitation all Facilities and improvements within such portion of the Building, provided, however, that the Building Insurance Policies shall be issued by the same insurance carrier; in such event, the Owners agree to cooperate with each other in obtain separate Building Insurance Policies. Each Building Insurance Policy shall be issued pursuant to a Special Causes of Loss Form, together with insurance for loss of rental income or business interruption and extra expense and insurance against boiler and machinery risks, on a comprehensive, blanket basis covering the Building and Facilities on a repair or replacement basis, for an amount not less than: (i) one hundred percent (100%) of the Full Insurable Value of the Building and all Facilities and covered improvements therein, if a single Building Insurance Policy is procured by the Owners; or (ii) one hundred percent (100%) of the Full Insurable Value of the Condominium Building (and all Facilities and improvements therein) and Retail Building (and all Facilities and improvements therein), if a separate Building Insurance Policy is procured by each Owner. The Full Insurable Value shall be determined from time to time by an appraisal prepared by the insurance company or an independent appraiser chosen by the Owners, the cost of such appraisal to be shared by the Owners proportionately based on the Full Insurable Value of their respective portions of the Building, including the Facilities and covered improvements therein. If a single Building Insurance Policy is procured by the Owners, the Building Insurance Policy shall name the Owners as insureds as their interests may appear. If a separate Building Insurance Policy is procured by each Owner, (i) the other Owner shall be shown and treated as a lienholder under the other Owner’s Building Insurance Policy, (ii) such policy shall require that the insurance company issue (and not endeavor to issue) a minimum of thirty (30) days’ advance written notice to the other Owner of cancellation, non-renewal or material modification thereof, except as otherwise provided by law, and (iii) the other Owner shall, upon request, be provided with evidence of the required coverage hereunder. Each Building Insurance Policy shall be written on a repair and replacement cost basis with agreed amount endorsements in lieu of any coinsurance clauses, if reasonably available. If a single Building Insurance Policy is procured by the Owners, each Owner shall be responsible to pay its proportionate cost of the premiums payable with respect to the Building Insurance Policy proportionately based on the Full Insurable Value of their respective portions of the Building, including the Facilities and covered improvements therein. If a separate Building Insurance Policy is procured by each Owner, each Owner shall be responsible to pay the premiums payable with respect to its Building Insurance Policy.

**9.2. Liability Insurance.** Each Owner shall procure and maintain a commercial general liability insurance policy covering claims for personal and bodily injury, death or property damage occurring in, on, within, upon or about its portion of the Property, or as a result of operations thereon or the actions of such Owner or its tenants, agents or employees. Such insurance shall be maintained in such amounts as from time to time shall be carried by comparable properties located in Comparable Projects, but in all events with limits of not less than \$1,000,000 per occurrence with additional umbrella liability insurance coverage of not less than \$3,000,000, if reasonably available. Each commercial general liability insurance policy shall: (i) name the other Owner as an additional insured; and (ii) require that the insurance

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company issue (and not endeavor to issue) a minimum of thirty (30) days' advance written notice to the other Owner of cancellation, non-renewal or material modification thereof, except as otherwise provided by law. The other Owner shall, upon request, be provided with evidence of the required coverage hereunder. Each Owner shall be responsible to pay the premiums payable with respect to its commercial general liability insurance policy.

**9.3 Insurer Standards.** Insurance policies required by this Article IX hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current A.M. Best's Rating of "A-" or better and an A.M. Best's Financial Size Category of not less than VIII.

~~**9.4 Additional Agreements regarding Insurance.** All of the policies of insurance required to be obtained by or on behalf of the Owners pursuant to this Article IX: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under such policy; (ii) shall provide 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; and (iii) except for (a) insurance for loss of rental income or loss of income covered by business interruption or extra expense incurred to reduce such loss of income, and (b) liability insurance required by Section 9.2, shall provide that all losses payable thereunder shall be paid to the Depository in accordance with the terms of Article XVII hereof.~~

**9.5 Review of Required Coverage and Limits.** Limits of liability or types of insurance specified in this Article IX shall be reviewed by the Owners no less often than annually at least thirty (30) day' before the expiration of each policy 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, are in compliance with this Article IX and whether, on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Initially, deductible amounts for insurance required under Sections 9.1 and 9.2 shall not exceed \$5,000. Such limits shall be increased or decreased, deductible amounts increased or decreased, or types of insurance shall be modified, if justified, based upon said annual review, and upon the approval of any such increase, decrease or modification by an Ownership Majority, the Owners shall, at any Owner's election, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement; provided that no agreement regarding a decrease in limits of liability, an increase in the deductible amounts, or elimination of any types of coverages shall be effective without the written consent of the Owners and the holders of the First Mortgages and Junior Mortgages.

**9.6 Failure to Pay Proportionate Share of Insurance.** Should any Owner fail to pay its share of the premiums or other costs for any of the joint policies, then the other Owner may pay the Defaulting Owner's share of such costs and, upon written demand, the Defaulting Owner shall reimburse the Creditor Owner for such payment and any other reasonable costs and expenses incurred by the Creditor Owner in connection with such payment.

**9.7 Waivers.** Notwithstanding anything to the contrary contained herein, each of the

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Owners, for itself, its insurers and for each party claiming under, by or through such Owner, hereby waives all claims for recovery from the other Owner (including, without limitation, tenants and Unit Owners) for any loss or damage to any of its property insured or required to be insured hereunder.

## ARTICLE X

### Maintenance and Repair; Damage to the Building

#### 10.1 Duty to Maintain.

(a) Except as expressly provided in Sections 6.2 and 6.4 hereof relating to Maintenance of certain Facilities and areas of the Building or hereinafter in this Article X in the event of fire or other casualty, and without limiting or diminishing each Owner's obligations under Article V, each Owner shall, at its sole cost and expense, keep its respective portion of the Property, the fixtures, equipment and appurtenances therein, and its Easement Facilities in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in a safe first-class order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise, and each Owner further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property.

**10.2 Casualty Affecting a Non-Substantial Portion of the Building.** If the Building is damaged by fire or other casualty and if such damage occurs in, on, under, within, upon or about (a) the Retail Building only, or (b) the Condominium Building only, and does not in each instance materially affect (i) any Shared Facilities or Shared Facilities Easement Area, or (ii) any other Facilities constituting Retail Easement Facilities or Condominium Easement Facilities benefiting any non-damaged portion of the Building, or (iii) the use of any Easements or other rights granted to the other Owner under this Agreement, then any such damage shall be repaired and restored by the Owner of the portion of the Building in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of **Article XVIII** hereof, be entitled to withdraw any insurance proceeds held by the Depository by reason of 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 such damage which adversely and materially affects an Easement in favor of the other Owner, then (i) the other 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 ten (10) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then such 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, such Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with **Article XVIII** hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damages, for application to the cost

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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.

**10.3 Casualty Affecting a Substantial Portion of the Building.** If the Building is damaged by fire or other casualty and if the provisions of **Section 10.2** are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in **Section 10.2**, then the repair or restoration of such damage shall be the joint responsibility of the Owners. Said repair and restoration shall be conducted under the supervision of the Construction Manager, acting on behalf of the Owners, and shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of the Owners by a reputable contractor or contractors experienced in the construction of mixed-use structures similar to the Building selected and approved by an Ownership Majority. In the event an Ownership Majority fails to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If, after receiving the Architect's advice, an Ownership Majority cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be made by Arbitration pursuant to **Article XII** hereof. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless an Ownership Majority otherwise agree, subject to the approval of the holders of the First Mortgages and Junior Mortgages, in accordance with instructions given by the Owners. Such plans and specifications shall provide for the Building to be rebuilt as nearly as commercially practicable to the Building as constructed prior to the damage unless prohibited by law or unless the Owners unanimously agree, subject to the approval of the holders of the First Mortgages and Junior Mortgages. The Architect shall furnish to each of the Owners and each of the holders of the First Mortgages and Junior Mortgages a set of the plans and specifications that it has prepared or caused to be prepared for their approval. Unless an Ownership Majority otherwise agrees, the Architect and any contractor or contractors shall work under the supervision of the Construction Manager, and the Construction Manager is hereby authorized and directed to instruct the Depositary, from time to time, but only with the prior approval (not to be unreasonably withheld or delayed) of the Owner in whose portion of the Building such repair and restoration is being performed (and the holders of the First Mortgage and Junior Mortgage affecting the portion of the Building involved) as such repair and restoration progresses, to disburse in accordance with **Article XVIII** hereof, the insurance proceeds held by the Depositary and any other monies deposited with the Depositary pursuant to **Section 10.4** hereof for application against the cost and expense of any such repair and restoration.

**10.4 Costs in Excess of Insurance Proceeds.** If the cost and expense of performing any repair and restoration provided for in **Section 10.2** or **10.3** hereof shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage, then such excess cost and expense, including the cost of any applicable deductible under the insurance policy (or the entire amount of such cost and expense, if there are no insurance proceeds), shall be borne by: (i) the responsible Owner (if the provisions of **Section 10.2** are applicable); and (ii) the Owners in proportion to the cost and expense of repairing to their former condition their respective portions of the Building (if the provisions of **Section 10.3** are applicable). Any Owner may require that the responsible Owner make deposit of security for the payment of their respective share of such excess costs in accordance with (and subject to the exceptions contained in) **Section 10.5** below.

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**10.5 Security for Payment of Excess Costs of Restoration.** In any instance of repair or restoration pursuant to **Section 10.2** or **10.3** hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum theretofore has 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 (plus any applicable deductible), then any Owner or any of the holders of the First Mortgages or Junior Mortgages may at any time give notice to the other Owners demanding that, prior to commencement of the repair or restoration work, each Owner who is obligated under **Sections 10.2** or **10.3** deposit with the Depository the amount of such excess cost and expense attributable to each such Owner pursuant to this **Article X** (provided, however, no Owner having a net worth in excess of \$25,000,000 in 2004 equivalent dollars shall be required to deposit any such amounts with the Depository but shall only be required to make payment of its share of the costs as the same are incurred, provided that any Owner desiring to utilize this exemption shall, upon request of the other Owner, provide the other Owner with reasonable evidence establishing that its net worth exceeds the minimum requirement set forth above). In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner otherwise required to make a deposit of funds with the Depository may deliver to the Depository security for payment of its share reasonably acceptable to the other Owner and the holders of the First Mortgages and Junior Mortgages as evidence of such Owner's ability to fulfill its obligation hereunder. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or an irrevocable loan commitment issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual cost and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this **Section 10.5**, or fails to deliver the security provided for herein within twenty-one (21) days after receipt of the other Owner's written demand therefor, then such Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse such Creditor Owner for such payment and such Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

**10.6 Excess Insurance Proceeds.** Upon completion of the repair and restoration of any damage to the Building, any remaining insurance proceeds from the Building Insurance Policy paid by reason of such damage shall be refunded to each Owner in proportion to the ratio of insurance proceeds attributed to such Owner's portion of the Building by the insurer to the total insurance proceeds made available by the insurer for the repair and restoration. The right of the Owner of any portion of the Building to payment of excess insurance proceeds, if any, shall be subject to the rights of the holders of the First Mortgage and Junior Mortgage covering such portion of the Building with respect to any such excess insurance proceeds.

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**10.7 Total Destruction and Agreement Not to Rebuild.** If the Building is destroyed or substantially damaged and the Owners unanimously agree not to rebuild, repair or restore the Building, subject to the written approval of the holders of the First Mortgages and Junior Mortgages, then the Building 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 Building. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to each Owner in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Building to the total insurance proceeds paid by reason of such damage. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 10.3, 10.4, 10.5 and 10.8 hereof are applicable except that demolition, and not construction, shall be performed. In the event the Owners agree not to rebuild the Building, subject to the written approval of the holders of the First Mortgages and Junior Mortgages, the Owners may also make provision for sale of the Property and distribution of sale proceeds in an equitable manner, all subject to the written approval of the holders of the First Mortgages and Junior Mortgages.

**10.8 Professional Fees Included in Cost of Restoration.** For purposes of this Article X, architects' and engineers' fees, Construction Manager's fees, attorneys' fees, consultants' fees, title insurance premiums and other similar costs and expense relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

## ARTICLE XI

### Liens, Debts, Interest and Remedies

**11.1 Lien for Non-Payment of Obligations.** If, at any time, any Owner fails within the time period set forth for payment, or if no time period is set forth, then within ten (10) days after notice or demand to such Owner to pay to the other Owner any sum of money due such other Owner, as Creditor Owner under or pursuant to the provisions of this Agreement, then, in addition to any other rights or remedies the Creditor Owner may have, such Creditor Owner shall have a lien against the Defaulting Owner's interest in the Property and a lien against any insurance proceeds payable to Defaulting Owner to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article XI. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien 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. Notwithstanding anything to the contrary contained herein, if the Defaulting Owner's interest in the Property is encumbered by a First Mortgage, the Creditor Owner shall not have the liens provided for in this Section 11.1 unless the Creditor Owner has delivered to the holders of the First Mortgage and any Junior Mortgage affecting the portion of the Property owned by the Defaulting Owner a written notice specifying the default in payment made by the Defaulting Owner, and the holder of such First Mortgage or Junior Mortgage does not cure such default by the payment of the amount owed by the Defaulting Owner within thirty (30) days after the effective date of such written notice. The

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liens provided for in this **Section 11.1** shall be (i) subject and subordinate to the lien of any First Mortgage or Junior Mortgage on the Defaulting Owner's interest in the Property, (ii) prior and superior to the lien of any other encumbrance on the Defaulting Owner's interest in the Property at the time of the recording of the notice of lien for all amounts (whenever advanced or accrued) secured by said encumbrance, and (iii) subject to termination and defeat as provided in **Section 11.4** below. Notwithstanding the foregoing, but subject to **Section 11.2** below, in the event any portion of the Condominium Property has been subjected to the Condominium Act, if the Condominium Association is the Defaulting Owner, no lien created by this **Section 11.1** shall be considered prior or superior to any mortgage or trust deed encumbering any Unit, notwithstanding any notice provided to the Condominium Association or to any Unit Owner or to the holder of any mortgage encumbering any Unit.

**11.2 Agreement Controls over Condominium Act.** To the fullest extent permitted by law, the provisions of **Article X** of this Agreement shall be controlling over the provisions of the Condominium Act with respect to any Submitted Property insofar as the provisions of the Condominium Act purport to limit (i) the obligation of the Unit Owners to repair or restore the Submitted Property, or (ii) the use of insurance proceeds for repair and restoration of the Submitted Property. In the event of fire or other casualty or act of God or disaster causing damage to the Submitted Property which would entitle the Condominium Association, under the Act, to withdraw all or any part of the Submitted Property from the Condominium Act and not to repair and restore the Submitted Property as required by this Agreement, notwithstanding the foregoing sentence, then the other Owner shall have a lien on the Submitted Property and any insurance proceeds payable for loss or damage to such portion of the Building under insurance policies carried pursuant to **Article IX** hereof, in an amount necessary so that the other Owner shall have sufficient proceeds to demolish or repair and restore the Building to a condition so as adequately to assure:

- (a) the structural integrity and safety of the Building;
- (b) the continuous and efficient operation of all facilities serving the Retail Building;
- (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 over the Property; and
- (d) the architectural unity and aesthetic appearance of the restored Building as first-class property.

The lien created by this **Section 11.2** shall be superior to and take precedence over any encumbrance (other than a First Mortgage or Junior Mortgage) constituting a lien on the Submitted Property or any portion thereof. Such lien shall arise immediately upon the recording of a notice by the Owner of the Retail Building with the Recorder following the occurrence of a fire or other casualty or act of God or disaster stating that it is a lien created by this Section of the Agreement. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid to the other Owner, or the Condominium Association shall have repaired and restored that portion of the Submitted Property as required by this

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Agreement. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

**11.3 Effect of Lien against Unit Owners.** Subject to the limitations set forth in Article XV hereof, and without limiting any equitable remedies to which the Owner of the Retail Property may be entitled, no Unit Owner shall be personally liable for all or any part of any claim against the Owner of the Submitted Property in excess of an amount equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit as set forth in the Condominium Declaration. Upon payment of such amount for which a Unit Owner may be liable, (i) any lien arising against such Unit Owner's Unit on account of such claim shall be deemed released against such Unit Owner's Unit 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. When a Unit is owned by more than one "person" (as defined in the Act), the liability of each such person for any claim against the Unit shall be joint and several.

**11.4 Conveyance Does Not Affect Lien.** No conveyance or other divestiture of title shall in any way affect, diminish or defeat any lien arising pursuant to this Article XI other than a divestiture resulting from a foreclosure of a mortgage lien that is superior to the lien arising pursuant to this Article XI.

**11.5 Assignment of Lien to Mortgage Holder.** The holder of a First Mortgage or Junior Mortgage on all or any portion of the Retail Property or the Condominium Property shall have the right to an assignment of any lien affecting the property secured by its First Mortgage or Junior Mortgage upon payment of the amount secured by such lien and shall in the event of said payment or satisfaction be subrogated to such other lien and any additional security held by the holder thereof. Such holder of a First Mortgage or Junior Mortgage may at any time give to the holder of the lien a written notice of its election to pay such amount. On a date not less than ten (10) days and not more than thirty (30) days after such notice of election, the holder of a First Mortgage or Junior Mortgage shall pay the full amount of such lien, and the holder of the lien shall deliver to the holder of a First Mortgage or Junior Mortgage an instrument in recordable form assigning the lien together with the debt secured thereby.

**11.6 Interest on Past Due Amounts.** Interest shall accrue on sums owed by a Defaulting Owner to a Creditor Owner and shall be payable from the date any such amount was first advanced or paid by the Creditor Owner until paid in full, at a rate per annum equal to the lesser of: (a) the floating rate which is equal to four percent (4%) in excess of the rate of interest from time to time announced in The Wall Street Journal, as the prime rate, or (b) the then-maximum lawful rate of interest in Illinois applicable to the capacity of the Defaulting Owner and the nature of the debt. In the event a prime rate is not announced, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).

**11.7 Remedies Cumulative.** Subject to the limitations set forth in Article XV hereof, the rights and remedies of an Owner provided for in this Article XI or elsewhere in this Agreement are cumulative and not intended to be exclusive of any other remedies to which such



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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 Agreement. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

**11.8 Separate Claims.** Each claim of any Owner arising under this Agreement shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

**11.9 Actions to Enforce.** Actions to enforce any right, claim or lien under this Agreement 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; provided, however, that if prior to expiration of the period in which such action must be commenced, any holder of a First Mortgage or Junior Mortgage is diligently proceeding to foreclose the First Mortgage or Junior Mortgage, then such period in which an action by the Owner of the portion of the Property encumbered by such First Mortgage or Junior Mortgage must be commenced shall be further extended for such additional time as may reasonably be necessary in order for the holder of such First Mortgage or Junior Mortgage to obtain possession of such portion of the Property.

**11.10 Attorney's Fees.** A Defaulting Owner shall pay the reasonable attorneys' fees and court or Arbitration costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Agreement.

## ARTICLE XII

### Arbitration

**12.1 Matters Subject to Arbitration.** The following Matters shall be submitted for Arbitration to the AAA pursuant and subject to the provisions of this Article XII:

(a) All disputes, claims or controversies between the Owners arising under this Agreement involving an amount not exceeding \$100,000 (in 2004 equivalent dollars) which shall not be resolved within sixty (60) days after same have arisen; and

(b) All other matters which are specifically required under the provisions of this Agreement to be submitted for, or determined by, Arbitration.

Arbitration of any Matter shall be initiated by any Owner making a written demand therefor by giving written notice thereof to the other Owner and by filing a copy of such demand with the AAA. The AAA shall have jurisdiction upon the giving of such notice and the filing of such demand. Any such Arbitration shall be held in Chicago, Illinois, and shall be conducted and completed in an expeditious manner and without delay. The holders of the First Mortgages and Junior Mortgages shall be party to any Arbitration of a Matter involving a matter which requires the consent or approval of the holders of the First Mortgages or Junior Mortgages hereunder.

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**12.2 Demand for Arbitration and Selection of Arbitrator.** Unless otherwise agreed to in writing by the Owners, within twenty (20) business days after the notice demanding Arbitration has been given, the Owners shall jointly designate one arbitrator to resolve the Matter. If the Owners fail to designate the arbitrator within such time period, an arbitrator shall be appointed in accordance with the procedures set forth in the applicable AAA rules; provided, however, that in any event such arbitrator shall be experienced as to the design, construction and/or operation, as the Matter requires, of mixed-use structures similar to the Building. Except where contrary to the provisions set forth in this Agreement, the rules of the AAA for commercial arbitration shall apply to the Arbitration of any Matter. During the twenty (20) day time period referenced above, the Owners may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

**12.3 Hearings.** The arbitrator shall commence hearings within sixty (60) days of selection, unless the Owners unanimously agree upon an expedited or delayed schedule of hearings. Prior to the hearings any party to the Arbitration may send out requests to compel document production from the other parties to the Arbitration. The scope of document production and enforcement of the document requests shall be subject to unanimous agreement of the Owners or as may be ordered by the arbitrator to the extent reasonable. The arbitrator may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of Arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrator in rendering a decision may base such decision only on the facts presented in the course of Arbitration and shall not modify or amend the provisions of this Agreement. Subject to the other terms hereof, if any Owner fails or refuses to appear at and participate in an Arbitration hearing after due notice, the arbitrator may hear and determine the Matter upon evidence produced by the appearing Owner. Except as otherwise expressly provided for in this Agreement, (i) the Arbitration costs shall initially be borne equally by each Owner, provided however the prevailing Owner shall be entitled to recover its share of the Arbitration costs pursuant to **Section 11.10**, and (ii) each Owner shall be responsible for its own expenses incurred in the Arbitration, provided however that the prevailing Owner shall be entitled to its reasonable attorneys' fees pursuant to **Section 11.10**.

**12.4 Performance Pending Arbitration.** Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Agreement in accordance with this Agreement during the course of any Arbitration constituted or conducted under the provisions of this **Article XII**. The obligation of the Owners to continue performance and make payments despite the existence of an Arbitration hereunder shall be enforceable by any Owner by application to any court of competent jurisdiction for an injunctive order requiring the immediate performance of such obligations as provided in the preceding sentence until such time as any Matter is resolved as provided in this **Article XII**.

**12.5 Arbitration Sole Remedy as to Matters.** With respect to any Matter subject to Arbitration under this **Article XII**, it is agreed that the arbitration provisions of this **Article XII** shall be the sole remedy of the Owners under this Agreement. Notwithstanding any other provisions of this Agreement, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not

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constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter not described in this **Article XII** or with any person not named or described herein, provided that any Arbitration proceeding initiated under the terms of this **Article XII** may, at the request of any Owner, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the Owners (and the holders of the First Mortgages and Junior Mortgages), and judgment thereon shall be entered by any court having jurisdiction.

## ARTICLE XIII

### Unavoidable Delays

The Owners shall diligently perform their respective obligations set forth herein. No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be directly caused by an Unavoidable Delay and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay; provided, however, that the Non-Performing Owner shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay within ten (10) days after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay and its non-performance.

## ARTICLE XIV

### Condemnation

**14.1 Award.** 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 Property by any competent authority for any public or quasi-public use, the Award shall be allocated and disbursed, and any repair and restoration of the Building shall be performed, in accordance with the requirements of this **Article XIV**.

**14.2 Award Paid to Depository.** All Awards resulting from the taking of all or any part of the Property, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depository and disbursed by the Depository as hereinafter provided. In the event of a taking of a temporary use of any space not including Retail Easement Facilities or Condominium Easement Facilities, each of the Owner of the Condominium Property and the Owner of the Retail Property shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Property according to the law then applicable.

**14.3 Non-Substantial Taking.** In the event of a taking (other than a temporary taking) of a part of the Retail Property only or a part of the Condominium Property only, and does not in each instance materially affect (i) any Shared Facilities Easement Area, or (ii) any Shared

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Facilities or other Facilities constituting Retail Easement Facilities or Condominium Easement Facilities benefiting any other portion of the Property, or (iii) the use of any Easements or other rights granted to the other Owner under this Agreement, then, subject to the provisions of **Section 14.6** hereof, the Owner of the portion of the Property in which the taking occurred shall repair and restore the remainder of its portion of the Building 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 Property in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of **Article XVIII** hereof and to retain any excess not required for such repair and restoration in accordance with ~~Section 14.5 below; provided, however, that the right of the Owner of any portion of the~~ Property to receive such excess, if any, shall be subject to the rights of the holders of the First Mortgage and Junior Mortgage encumbering such portion of the Property with respect to any such award.

**14.4 Substantial Taking.** In the event of a taking of any portion of the Shared Facilities Easement Area or any other taking other than (a) a temporary taking described in **Section 14.2** hereof, (b) a non-substantial taking described in **Section 14.3** hereof, or (c) a taking of all or substantially all of the Property described in **Section 14.7**, then, subject to the provisions of **Section 14.6** hereof, the Owners shall jointly cooperate to repair and restore the remainder of the Building in accordance with plans and specifications unanimously approved by the Owners and by the holders of the First Mortgages and Junior Mortgages. Such repair and restoration shall be conducted under the supervision of the Construction Manager acting on behalf of the Owners and shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances by a reputable contractor or contractors experienced in the construction of mixed-use structures similar to the Building selected and unanimously approved by the Owners. In the event the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot reach unanimous agreement on a contractor or contractors, then the selection of a contractor or contractors shall be made by Arbitration pursuant to **Article XII** hereof. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless an Ownership Majority shall otherwise agree, subject to the approval of the holders of the First Mortgages and Junior Mortgages encumbering the affected portion of the Property. Such plans and specifications shall provide for repair and restoration of the remainder of the Building to form an architectural and functional whole with such changes in the Building as shall be required by reason of such taking. If, as a result of such taking, any Easements or covenants under this Agreement 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 Building services comparable, to the extent commercially practicable, to Easements created under **Articles II and III** hereof. The Architect will furnish to each of the Owners and the holders of the First Mortgages and Junior Mortgages encumbering the affected portions of the Property a set of such plans and specifications for their approval. Unless an Ownership Majority otherwise agrees, the Architect and contractor or contractors shall work under the supervision of the Construction Manager, and the Construction Manager is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Owner in whose portion of the Property such repair and restoration is being performed and the holders of the First Mortgage

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and Junior Mortgage on the affected portion of the Property, if applicable, as such repair and restoration progresses, to disburse, in accordance with **Article XVIII** hereof, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

**14.5 Use of Award.** The Award for any taking described in **Sections 14.3** and **14.4** hereof shall first be used to pay for the repair and restoration (including any repair or restoration under **Section 14.6** hereof). Any portion of the Award remaining unexpended after payment of all costs of repair and restoration shall then be allocated to each Owner in the same ratio as the apportionment of the Award to such Owner with respect to its portion of the Property (as determined in the judicial or administrative proceedings in connection with the taking) bears to the aggregate Award made to the Owners in connection with the taking; provided, however, that the right of any Owner to receive any such excess shall be subject to the rights of the holders of the First Mortgage and Junior Mortgage encumbering its respective portion of the Property.

**14.6 Rebuilding Excused in Certain Circumstances.** If, as a result of a taking (other than a temporary taking) (a) the owner of the Retail Property reasonably determines, subject to the consent of the holders of the First Mortgage and Junior Mortgage on the Retail Property, that the Retail Property no longer can be operated on an economically feasible basis, then the Owner of the Retail Building shall not be obligated to repair or restore the Retail Building as may be required by **Sections 14.3** and **14.4** hereof, or (b) the owner of the Condominium Property reasonably determines, subject to the consent of the holders of the First Mortgage and Junior Mortgage on the Condominium Property, that the Condominium Property no longer can be operated on an economically feasible basis then the Owner of the Condominium Building shall not be obligated to repair or restore the Condominium Building as may be required by **Sections 14.3** and **14.4** hereof. However, notwithstanding that an Owner may be permitted to elect not to restore its portion of the Property pursuant to this Section, the Award shall be used to repair or restore the affected portion of the Building (and the Facilities therein) to the extent, if any, as may be necessary to provide essential services (including, without limitation, provision of vehicular parking in an amount required by zoning or other applicable ordinances) or structural support for the other portions of the Property, or to provide an aesthetically uniform exterior to the entire Building. Such repair or restoration shall be deemed to be a repair or restoration to which the provisions of **Section 14.5** hereof are applicable.

**14.7 Apportionment of Award for Total Taking.** In the event of a taking of all or substantially all of the 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 such Owners in accordance with said apportionment; provided, however, that the right of any Owner to receive any Award and payment shall be subject to the rights of the holders of the First Mortgage and Junior Mortgage encumbering such Owner's portion of the Property.

**14.8 Controls over Condominium Act.** To the fullest extent permitted by law, with respect to any Submitted Property, the provisions of this **Article XIV** shall be controlling over the provisions of the Condominium Act insofar as the provisions of the Condominium Act purport to limit (i) the obligation of the Unit Owners to repair or restore the Submitted Property in the event of a taking, or (ii) the use of the Award as provided in this **Article XIV**.

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## ARTICLE XV

### Limitation of Liability

Notwithstanding anything in this Agreement to the contrary, no judgment or decree enforcing obligations under this Agreement against any Owner of any portion of the Property shall be subject to execution on, or be a lien on any assets of, such Owner other than that Owner's portion, estate or interest in the Property or insurance or condemnation proceeds relating thereto.

## ARTICLE XVI

### Architect, Structural Engineer and Construction Manager

**16.1 Appointment of Architect, Structural Engineer and Construction Manager.** The Owners, acting through an Ownership Majority, shall appoint an Architect, a Structural Engineer and a Construction Manager to serve under, pursuant and subject to the terms and provisions of this Agreement. Any Owner may cause any Architect, Structural Engineer or Construction Manager to be replaced by an Architect, Structural Engineer or Construction Manager meeting the above-stated qualifications if it demonstrates to the other Owner that such then-serving Architect, Structural Engineer or Construction Manager has failed to perform its duties hereunder diligently or competently. In such event, the Owner desiring replacement of the Architect, Structural Engineer or Construction Manager shall serve notice upon the other Owner requesting the removal of the then-serving Architect, Structural Engineer or Construction Manager, which notice shall set forth with specificity the respect or respects in which such Architect, Structural Engineer or Construction Manager shall have failed to perform diligently or competently. If, within fifteen (15) days after receipt of such notice from the Owner desiring to replace the Architect, Structural Engineer or Construction Manager, the other Owner agrees to replace the Architect, Structural Engineer or Construction Manager, then the Architect, Structural Engineer or Construction Manager, as the case may be, shall be removed and a new architectural, engineering or construction management firm meeting the above criteria shall be appointed by an Ownership Majority. If an Ownership Majority fails to timely reach agreement upon an Owner's request to remove the Architect, Structural Engineer or Construction Manager, such request for removal shall be deemed denied, without prejudicing the Owner's ability to seek removal again on a later date. Any Architect, Structural Engineer or Construction Manager acting hereunder shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the Owners, and such vacancy shall be filled with the approval of an Ownership Majority.

**16.2 Submission of Matters to Architect, Structural Engineer or Construction Manager.** In any instance when the Architect, Structural Engineer or Construction Manager, as applicable, serving pursuant to Section 16.1 hereof is authorized by this Agreement to advise the Owners concerning any dispute or matter between the Owners, any Owner involved in such dispute or matter may submit the same to the Architect, Structural Engineer or Construction Manager, as applicable. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owner and the holders of the First Mortgages and Junior Mortgages covering the Property. The Architect, Structural Engineer or Construction Manager, as applicable, shall, except in an Emergency Situation, afford

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each Owner, and any attorney or other representative designated by such Owner, an opportunity to furnish information or data or to present such Owner's views. The Architect, Structural Engineer or Construction Manager, as applicable, shall not be liable for any advice given by it hereunder, or for any other action taken by it hereunder, in good faith and in the absence of negligence.

**16.3 Replacement While Dispute or Project Pending.** If any new Architect, Structural Engineer or Construction Manager is appointed hereunder, and if the Architect, Structural Engineer or Construction Manager being replaced is then engaged in the resolution of any dispute or matter theretofore submitted hereunder, or if the Architect, Structural Engineer or Construction Manager being replaced is then engaged in the preparation of any plans and specifications or in the supervision of any work required hereunder or pursuant hereto, and if the Architect, Structural Engineer or Construction Manager being replaced has not been removed by reason of any failure to perform diligently or competently any services hereunder, then, if an Ownership Majority so chooses, the Architect, Structural Engineer or Construction Manager being replaced shall continue to act as Architect, Structural Engineer or Construction Manager with respect, and only with respect, to such pending dispute or matter or the completion of plans and specifications or supervision of any such work.

**16.4 Fees of Architect, Structural Engineer and Construction Manager.** The Architect, Structural Engineer and Construction Manager shall each be paid an industry standard fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and each Owner shall each pay its equitable share of such fees. In this regard, in any instance when the Architect, Structural Engineer or Construction Manager, as the case may be, shall, in accordance with any of the provisions of this Agreement, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Building or any part thereof, the fees and expenses of the Architect, Structural Engineer or Construction Manager 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 Agreement pursuant to which the Architect, Structural Engineer or Construction Manager is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect, Structural Engineer or Construction Manager within ten (10) days after receipt of any invoice therefor from the Architect, Structural Engineer or Construction Manager, then the other Owner may pay the same and the Defaulting Owner shall, within ten (10) days after written demand, reimburse such Creditor Owner for any such payment, with interest thereon as herein provided.

## ARTICLE XVII

### Depository

**17.1 Designation of Depository.** The Depository shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Agreement. The Depository appointed hereunder shall be a title insurance company having offices in downtown Chicago, Illinois appointed by the affected Owner or, if

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more than one, by an Ownership Majority (which approval shall not be unreasonably withheld or delayed). The Depositary shall be entitled to receive from each of the Owners its allocable share of the Depositary's reasonable fees and expenses for acting as Depositary, and may retain said fees and expenses, free of trust, from monies held by it. Any Depositary appointed to act hereunder shall execute an agreement with the Owners accepting said appointment and setting forth the terms and provisions of this Article XVII and Article XVIII.

**17.2 Provisions Relating to Depositary Duties.** The Depositary shall not be liable or accountable for any action taken or disbursement made in good faith by the Depositary, except that arising from its own negligence or willful misconduct. The Depositary's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Depositary shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award or awards unless the Depositary shall have been given express written authorization from the Owners; provided that if only one Owner claims said insurance proceeds or condemnation award or awards, then said Owner alone may authorize the Depositary to so proceed.

**17.3 Investment of Deposits.** The Depositary shall be required to hold all monies in an interest-bearing account for the benefit of the Owner(s) depositing the funds. Further, if requested by the affected Owner or Owners, the Depositary shall purchase with such monies, to the extent feasible, negotiable United States Government securities maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depositary, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depositary expects to make shortly thereafter, and the Depositary shall hold such securities in trust in accordance with the terms and provisions of this Agreement. Any interest paid or received by the Depositary on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depositary. No monies received by the Depositary pursuant to any of the provisions of this Agreement shall be commingled with the Depositary's own funds, and all such monies shall be held by the Depositary in trust for the uses and purposes herein provided.

**17.4 Indemnification of Depositary.** In consideration of the services rendered by Depositary, the affected Owner, or the affected Owners jointly and severally, agree to indemnify and hold harmless the Depositary from any and all claims, loss, damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Depositary's duties hereunder or in the defense of any claim or claims made against Depositary by reason of its appointment hereunder, except where due to the negligence or willful misconduct of the Depositary or actions not taken in good faith by the Depositary.

**17.5 Resignation and Replacement of Depositary.** The Depositary may resign by serving sixty (60) days' written notice on the affected Owner(s). Within sixty (60) days after receipt of such notice, the affected Owner(s) shall appoint a substitute in accordance with Section 17.1 hereof who qualifies thereunder, and the Depositary shall transfer all funds, together with copies of all records, held by it as Depositary to such substitute, at which time its duties as Depositary shall cease. If an Ownership Majority shall fail to approve the appointment of a



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substitute within said sixty (60) days, then the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company or a title insurer in Chicago, Illinois, which qualifies under **Section 17.1** hereof.

## ARTICLE XVIII

### Disbursement of Funds by Depository

**18.1 Request and Certification Required.** The Owner of the affected portion of the Property (if **Section 10.2** or **14.3** are applicable) or the Construction Manager (if **Section 10.3** or **14.4** are applicable), acting pursuant to the provisions of this Agreement, shall have authority to direct disbursement of insurance proceeds, any condemnation award or other funds for application to the cost of repair, restoration or demolition (the "work") by providing to the Depository a written direction to disburse which direction shall include the following items, all of which shall be dated not more than ten (10) days prior to the date of the direction for any such disbursement:

(i) a sworn statement of the relevant Owner or Construction Manager, as applicable, certifying that:

(a) the sum requested has either (1) been paid by or on behalf of the Owner of the Retail Property and/or the Owner of the Condominium Property (the certificate shall specify the amount paid by each Owner), or (2) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the work up to the date of said certificate and any other information required by the mechanics' lien law of the State of Illinois and any title insurer affording coverage against mechanics' liens;

(b) the sum requested, plus all sums previously disbursed, does not exceed the cost of the work actually in place up to the date of such certificate plus the cost of materials supplied and actually stored on site (which materials shall be adequately insured against fire, theft and other casualties for the benefit of the Owners and the holders of the First Mortgages and Junior Mortgages);

(c) no part of the cost of the services and materials described in the certificate has been previously paid or is the basis of any other previous or pending request for funds;

(d) the cost to complete the unfinished work will not exceed the funds or security therefor held by the Depository after payment of the then current request; and

(ii) a certificate of the Architect certifying that all of the work so far

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completed is proper and of the quality and class at least equal to the original work and as nearly as commercially practicable to the improvements existing immediately prior to the casualty or condemnation (unless prohibited by law or unless an Ownership Majority and all holders of First Mortgages and Junior Mortgages agree otherwise) and is in accordance with the approved plans and specifications, and is in compliance with the other requirements of this Agreement.

**18.2 Disbursement Conditions.** Upon compliance with the provisions of Section 18.1 and

(i) upon receipt of contractors' and subcontractors' sworn statements required under the mechanics' lien law of the State of Illinois accompanied by partial or final waivers of lien, as appropriate, which shall be collected by the relevant Owner or Construction Manager, as applicable, and delivered to Depositary; and

(ii) upon receipt of an official search by a title insurance company or other evidence showing that there has not been filed with respect to the work on all or any portion of the Property any vendor's, mechanic's, laborer's, materialmen's or other similar lien, which has not been discharged of record, except such as will be discharged by payment of the amount then requested (in which event such payment shall be conditioned upon such discharge certificate being delivered simultaneously therewith),

the Depositary shall, out of the monies so held by the Depositary, pay or cause to be paid to the owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the architect's certificate and contractors' and subcontractors' sworn statements, the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any of the Owners, any of the holders of the First Mortgages or Junior Mortgages, or the Depositary may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Agreement. The Depositary may rely conclusively, with respect to the information contained therein, on any direction furnished by the relevant Owner or Construction Manager, as applicable, to the Depositary in accordance with the provisions of Section 18.1 hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

**18.3 No Lien upon Funds Held by Depositary.** No contractor, subcontractor, materialman, engineer, architect or any other person whatsoever, other than the Owners and the holders of the First Mortgages and Junior Mortgages, shall have any interest in or right to or lien upon any funds held by the Depositary. Subject to the written consent of the holders of the First Mortgages and Junior Mortgages, the Owners may unanimously agree at any time to provide for a different disposition of funds than that provided for in this Agreement, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time, with the written consent of the holders of the First Mortgages and Junior Mortgages, the Owners unanimously instruct the Depositary in writing with regard to the disbursement of any funds held by the Depositary, then the Depositary shall disburse such funds in accordance with said instructions and the Depositary shall have no liability to anyone by reason of having so disbursed said funds in accordance with said

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instructions.

## ARTICLE XIX

### Estoppel Certificates

**19.1 Delivery and Content of Estoppel Certificates.** Each Owner shall, from time to time, within ten (10) days after receipt of written request from the other Owner, execute, acknowledge and deliver to such other Owner or to any existing or prospective purchaser or mortgagee designated by such other Owner, an Estoppel Certificate stating:

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

(b) whether there is any existing default hereunder by the other Owner and, if so, specifying the nature and extent thereof;

(c) whether there are any sums which the Owner executing such Estoppel Certificate is entitled to receive from, and which is due and payable by, the requesting Owner, and if there is any such sum, specifying the nature and amount thereof;

(d) whether the Owner executing the Estoppel Certificate has performed or is performing work (other than services pursuant to Article VI hereof), 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 the requesting 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 otherwise known, by the Owner executing the Estoppel Certificate against the enforcement of the requesting Owner's obligations hereunder;

(f) the total amount of all liens being asserted by the Owner executing the Estoppel Certificate under the provisions of this Agreement 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 XII made within the ninety (90) days preceding the date of such Estoppel Certificate;

(i) the current address to which notices given to the Owner executing such Estoppel Certificate are required to be delivered under Article XXII hereof; and

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

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**19.2 Estoppel by Condominium Association.** With respect to any Submitted Property, (a) an Estoppel Certificate requested from the Owner of the Submitted Property 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 the Condominium Association, and (b) an Estoppel Certificate from the Owner of the Retail Property may only be requested by the Condominium Association on behalf of a Unit Owner or Unit Owners and the Condominium Association.

## ARTICLE XX

### Association Acting for Unit Owners

With respect to any Submitted Property, all rights, Easements and benefits under this Agreement appurtenant to or enjoyed by the Condominium Property shall be exercised by the Condominium Association on behalf of the Unit Owners, except for such rights or benefits expressly granted to Unit Owners, and except for Easements which by their nature are exercisable by Unit Owners. Any action to enforce rights, obligations, Easements, burdens and benefits under this Agreement on behalf of any of the Unit Owners or the Condominium Association shall be taken, on behalf of all Unit Owners and the Condominium Association, solely by the Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the Condominium Declaration or resolution of the board of managers of the Submitted Property.

## ARTICLE XXI

### Alterations; Zoning

**21.1 (A) Compliance.** Except as otherwise expressly required or permitted in **Articles V, X and XIV** hereof, any Altering Owner may, at any time, at such Altering Owner's sole cost and expense, make Alterations to the part of the Building within such Altering Owner's portion of the Building, provided that such Alterations comply with the restrictions contained in **Article IV** hereof, the provisions of this **Section 21.1** and of the other provisions of this **Article XXI**. Prohibitions and restrictions on Alterations by the Owner of the Condominium Property shall also apply to individual Unit Owners.

**(B) Consent of Owners and Mortgagees.** No Alterations shall be made by any Owner to its portion of the Building without the prior written consent of the other Owner if such Alterations will:

- (i) unreasonably diminish the benefits afforded to such other Owner by any Easement or unreasonably interrupt such other Owner's use or enjoyment of any Easement,
- (ii) increase the costs or expenses for which any such Owner is or would be responsible pursuant to **Article VI** hereof,

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- (iii) alter the facade of the Building;
- (iv) increase the width of the Building beyond the width of the Building existing as of the date of this Agreement,
- (v) consist of drilling, coring, chipping, chopping or otherwise making any opening or hole into any primary structural concrete element, including floor slabs and beams or vertical column elements, which would violate the provisions of **Section 5.1** hereof,
- (vi) adversely affect Retail Easement Facilities or the Condominium Easement Facilities (other than minimally or incidentally), or
- (vii) necessitate the erection of additional columns, bearing walls, or other structures upon or within the Retail Property or the Condominium Property for the support of the portion of the Building to which the Alteration is to be made.

The prior written consent of the holders of the First Mortgages and Junior Mortgages shall also be required with respect to any Alterations described in (i) through (viii) above, but only with respect to Alterations to be made to the portions of the Property on which said holders of First Mortgages and Junior Mortgages have liens, or Alterations which otherwise materially and adversely affect the Easements or other rights granted to the Owner of the portions of the Property on which said holders of First Mortgages and Junior Mortgages have liens.

**(C) Review of Proposed Alterations by Other Owner.** If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent or approval of the other Owner, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the other Owner a copy of the plans and specifications showing the proposed Alterations and a reference to this **Section 21.1**. If such other Owner consents to such Alterations or state that its consent is not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owner whose consent or approval is requested shall 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 Owner's consent to the proposed Alterations and if, in the good faith opinion of the other Owner, the Altering Owner has violated or will violate the provisions of **Section 21.1(A)** or **(B)**, then the Objecting Party shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of **Section 21.1(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 violation of **Section 21.1(A)** or **(B)**, then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of an Altering Owner's violation or likely violation of the provisions of this **Section 21.1**, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

**(D) Owner Dispute.** If a dispute arises between the Owners with respect to

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whether any Alterations or proposed Alterations violate the provisions of **Section 21.1(A)** or **(B)**, then any Owner may submit such matter to the Architect for its determination as to whether the Alterations or proposed Alterations violate the provisions of **Section 21.1(A)** or **(B)** hereof. If the issue is not timely submitted to Arbitration, the Architect's determination shall be final and binding on the Owners and the holders of the First Mortgages and Junior Mortgages. If, after the Architect makes its determination, either the Altering Owner or the Objecting Party in good faith does not concur in such determination, such Owner may, within fifteen (15) days after the Architect's rendering of its determination in writing, subject the issue for resolution by arbitration under the provisions of **Article XII** hereof.

**(E) Alteration Standards.** The Owners, in making Alterations, shall (i) ~~perform all work in a first-class workmanlike manner and in accordance with good construction practices,~~ (ii) comply with all then applicable federal, state, local and other governmental and quasi governmental laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code, and (iii) comply with all of the applicable provisions of this Agreement. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Building in such a manner as to minimize any noise, vibration and dust infiltration or other environmental hazard or disturbance which would injure or disturb an occupant or occupants of the other portion of the Building.

**21.2 Prohibitions.** None of the Owners shall make any Alterations, allow any use of or undertake any other action relating to their respective portions of the Property which would violate the provisions of (i) the zoning ordinance applicable to the Parcel, as said ordinance may be amended from time to time, (ii) any health codes, building codes, fire codes, or environmental and life safety regulations, or (iii) its First Mortgage or Junior Mortgage. In addition, none of the Owners shall change the use of their respective portions of the Property from the uses permitted under **Section 4.2** without the approval of an Ownership Majority.

**21.3 Application for Permits.** Applications for building permits to make Alterations which comply with the provisions of this **Article XXI** shall be filed and processed by the Altering Owner without the joinder of the other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the other Owner. If joinder by the other Owner not making Alterations is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument. If the other Owner fails to execute said application or instruments when required hereunder to do so, unless such Owner is in good faith contesting the proposed Alteration pursuant to **Section 21.1(D)** above, the Altering Owner is hereby irrevocably appointed attorney-in-fact of such other Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such other Owner.

**21.4 Contractor Lien Rights.** An Owner performing any work required or provided for under this Agreement shall include in any construction contract a provision pursuant to which the contractor either (i) recognizes the separate ownership of the Retail Property and Condominium Property and agrees that any lien rights which the contractor or subcontractors

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have under the mechanics' lien laws of the State of Illinois shall only be enforceable against the portion of the Property owned by the Altering Owner, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of the mechanics' lien law of the State of Illinois in connection with giving notice of such "no lien" provision.

**21.5 (A) One Zoning Lot.** The Retail Parcel and Condominium Parcel are now and shall continue to be combined and treated as one zoning lot for the purposes of complying with the zoning ordinance applicable to the Parcel.

~~**(B) Zoning Applications.** Applications for variations in or amendments to the application of the provisions of the zoning ordinance applicable to the Parcel which do not change the permitted use thereof, may be filed and processed solely by the Owner of the portion of the Property directly affected by such application and shall not require the joinder of the other Owner.~~

**(C) Cooperation.** Each Owner shall execute such applications or other instruments as may be necessary to obtain any zoning variation or amendment conforming with the provisions of this Section 21.5, provided, however, the Owner requesting such zoning variation or amendment shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of such applications or other instruments. If the other Owner fails to execute said applications or instruments when required hereunder to do so, unless the refusing Owner is in good faith contesting its obligation hereunder to execute the zoning variation pursuant to the provisions hereof, the Owner requesting such zoning variation or amendment is hereby irrevocably appointed attorney-in-fact of such other Owner (such power of attorney being coupled with an interest) to execute said application or instruments on behalf of such other Owner.

## ARTICLE XXII

### Notices; Procedures for Obtaining Consents or Approvals

**22.1 Notice Addresses.** All notices, demands, elections, or other communications required, permitted or desired to be served hereunder shall be in writing and shall be either (i) delivered in person, (ii) sent by facsimile or e-mail transmission, with a confirmation copy (and proof of transmission) simultaneously mailed by regular first-class mail, or (iii) mailed as certified or registered mail, postage prepaid, return receipt requested, or (iv) delivered by nationally recognized overnight courier service, in each case addressed or sent as below stated:

To the Owner of  
the Retail Property:

Lakeview Station , 3920 N. Sheridan Rd, LLC  
180 N. Stetson  
Chicago, Illinois 60601  
Attention: Anthony G. Loukas  
Fax: (312) 938-1500

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With a copy to: Krawitz & Associates, Ltd.  
 2 North LaSalle, Suite 1776  
 Chicago, Illinois 60602  
 Attention: Carmel K. York, Esq.  
 Fax: (312) 606-9500  
 E-mail: yorklaw@ameritech.net

and a copy to: The holders of record of the First Mortgage and Junior Mortgage encumbering the Retail Property at the address, facsimile number and/or e-mail address set forth in such First Mortgage and Junior Mortgage

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To the Owner of the Condominium Property: Lakeview Station , 3920 N. Sheridan Rd., LLC  
 180 N. Stetson  
 Chicago, Illinois 60601  
 Attention: Anthony G. Loukas  
 Fax: (312) 606-9500

With a copy to: Krawitz & Associates, Ltd.  
 2 North LaSalle, Suite 1776  
 Chicago, Illinois 60602  
 Attention: Carmel K. York, Esq.  
 Fax: (312) 606-9500  
 E-mail: yorklaw@ameritech.net

And a copy to: The holders of record of any First Mortgage and Junior Mortgage encumbering the Condominium Property at the address, facsimile number and/or e-mail address set forth in such First Mortgage and Junior Mortgage

**22.2 Procedures for Obtaining Consents or Approvals.** Wherever in this Agreement there is a requirement that an Owner obtain the consent, approval or agreement of the other Owner as to any matter or as a prerequisite to the taking of any action, then the party requesting the approval, consent or agreement of the other Owner (herein the “requesting party”) shall reduce its request to a writing which writing shall include all supplemental materials required by this Agreement or otherwise deemed reasonably necessary by the requesting party for the other Owner to make an informed decision on the issue raised (collectively herein “request for approval”). The request for approval shall be delivered by the requesting party (in the manner required of a Notice under Section 22.1 above) to the other Owner. Each Owner receiving a request for approval shall review and respond to such request for approval within thirty (30) days after the effective date thereof, unless: (i) a shorter time for response is mandated by the terms of this Agreement in which event the request for approval shall so state the shorter time period; or (ii) solely with respect to matters which require a vote of the Unit Owners pursuant to the terms of the Condominium Declaration or the by-laws of the



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Condominium Association, the Condominium Association notifies the requesting party, prior to the expiration of said 30-day approval period, of its desire to extend said approval period for a period not to exceed an additional thirty (30) days. Responses to any request for approval shall be rendered by each Owner in a written response delivered to the requesting party. If a response is not timely received from an Owner, it shall be deemed an approval, consent or agreement by such Owner.

**22.3 Notices to Condominium Association.** With respect to any Submitted Property, (a) the Owner of the Retail Property may, but shall not be obligated to, give personal notice to any Unit Owner, it being expressly agreed that the giving of a notice to the Condominium Association shall be deemed sufficient notice to all Unit Owners for all purposes, and (b) the Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners under this Agreement, which notice shall be binding on the Unit Owners.

**22.4 Notices to Mortgagees.** In order to obtain notices pursuant to this Agreement, each holder of a First Mortgage or Junior Mortgage (other than the Initial Mortgagees as hereinafter defined) shall give written notice to the other Owner stating its name, address, phone number, facsimile number, e-mail address, and contact person, as well as the portion of the Parcel encumbered by its mortgage. Notwithstanding anything to the contrary contained in this Agreement, if any holder of a First Mortgage or Junior Mortgage (other than the Initial Mortgagees) fails to provide such notice to the other Owner, such holder shall: (i) not be entitled to any notice otherwise required under this Agreement; and (ii) automatically waive any consent or approval rights required to be obtained from such holder pursuant to the terms of this Agreement. For purposes of this Section, "Initial Mortgagees" shall mean those holders of First Mortgages and Junior Mortgages on any portion of the Parcel on the date of the recording of this Agreement.

**22.5 Effective Date of Notices.** Any notice, demand, election or other communication (i) delivered personally as aforesaid shall be deemed effective upon receipt; (ii) sent by facsimile or e-mail transmission as aforesaid shall be deemed given when transmitted; (iii) sent by certified or registered mail as aforesaid shall be deemed given five (5) days after deposit in the United States mail; and (iv) delivered by overnight courier service as aforesaid shall be deemed given one (1) business day following deposit with such courier service. Addresses for service of notice may be changed by written notice given as hereinabove provided at least ten (10) days prior to the effective date of any such change. Nothing herein contained, however, shall be construed to preclude service of any notice, demand, election or other communication in the same manner that service of a summons or legal process may be made.

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## ARTICLE XXIII

### Environmental Liabilities

**23.1 Indemnity for Acts of Owners.** To the extent that any Environmental Liabilities (as hereinafter defined) are the result of the act or omission of any Owner, or its agents, employees, tenants, invitees or contractors, or result from an occurrence related to the use of that portion of the Property owned by such Owner, such Owner agrees that it shall be responsible for, and shall indemnify and hold the other Owner harmless from, any loss, cost, liability or expense (including, without limitation, remediation and clean-up costs and reasonable attorneys' fees and court costs) arising from such Environmental Liabilities.

**23.2 Other Environmental Liabilities.** In the event of any Environmental Liabilities which affect the Shared Facilities or the Shared Facilities Easement Area (which shall be deemed to affect both Owners) or portions of the Property owned by both Owners and which are not the result of the act or omission of any Owner or of their respective agents, employees, tenants, invitees or contractors, the Owners shall bear such Environmental Liabilities pro-rata in accordance with their respective Gross Square Footage allocations; provided, however, that nothing contained herein shall prevent the Owners, or either of them, from seeking recourse for all such Environmental Liabilities from any party or parties that may be responsible for same under any Environmental Laws, or under contract, tort or otherwise. The Owners shall cooperate with each other to pursue all remedies and shall allocate any recoveries (net of expenses) pro-rata in proportion to the amounts expended by the Owners in satisfying the Environmental Liabilities at issue. Counsel engaged to represent the Owners regarding any Environmental Liabilities shall be selected by an Ownership Majority.

## ARTICLE XXIV

### General

**24.1** In fulfilling obligations and exercising rights under this Agreement, each Owner, and, with respect to Submitted Property, each Unit Owner, shall cooperate with each other to promote the efficient operation of each respective portion of the Property and the harmonious relationship amongst them and to protect the value of each of their respective portion, estate or interest in the Property. To that end, each Owner shall share information which it possesses relating to matters which are the subject of this Agreement, 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 the 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 the other Owner hereto may reasonably request in order to enable such utility company to furnish utility services as required by the requesting Owner, provided that the holders of any First Mortgages and Junior Mortgages having a lien on that portion of the Property affected by such easement have first consented in writing to such

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easements.

**24.2** The illegality, invalidity or unenforceability of any covenant, restriction, condition, limitation or any other provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the other provisions of this Agreement.

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

**24.4** This Agreement may be amended or terminated only by an instrument signed by the then-existing Owner of the Retail Property, the then-existing Owner of the Condominium Property, and the holder of record of each First Mortgage and Junior Mortgage encumbering the Retail Property or any part thereof and the Condominium Property or any part thereof. Notwithstanding anything to the contrary contained herein, the rights and obligations of Lakeview Station contained in **Section 4.1** shall not be amended or terminated without the prior written consent of Lakeview Station. Subject to Lakeview Station's rights stated in **Section 1.55** hereof, with respect to the Submitted Property, the Condominium Association shall, by its authorized officers, execute all amendments to or any termination of this Agreement on behalf of all Unit Owners and the Owner of the Submitted Property, which amendments or termination shall be binding on all Unit Owners and the Owner of the Submitted Property. Any amendment to or termination of this Agreement shall be recorded with the Recorder.

**24.5** Except for the Temporary Construction Easements described in **Section 3.1** hereof (which shall expire as provided in **Section 3.1**), all Easements created herein are and shall be perpetual Easements and all the covenants, conditions and restrictions contained in this Agreement, including, without limitation, the provisions of **Section 21.5(A)** hereof providing for one zoning lot, shall be perpetual in nature, shall run with the land and shall be enforceable by and inure to the benefit of the Owners and their respective successors and assigns forever.

**24.6** The provisions of this Agreement shall be construed to the end that the Building shall remain a first-class retail and condominium property.

**24.7** Terms used in this Agreement, unless elsewhere defined in this Agreement, shall have the meanings set forth in **Article I**.

**24.8** Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Building subject to an Easement unless the Owner benefited by such Easement (with the written consent of the holders of the First Mortgage and Junior Mortgage encumbering such Owner's portion of the Property) states in writing its intention to abandon the Easement.

**24.9** Except as otherwise specifically set forth herein, all of the Easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained touch and concern the land and shall run with the land and shall inure to the benefit of and be binding upon the Owners and each subsequent holder of any interest in any portion of the Property and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the

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Property or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees or mortgagees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in any such documents.

**24.10** The parties hereto acknowledge that this Agreement 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 Agreement and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Illinois, including without limitation, matters affecting title to all real property described herein.

**24.11** This Agreement 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 holders of the First Mortgages and Junior Mortgages as expressly stated in this Agreement) under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

**24.12** Each provision of the Recitals to this Agreement and each Exhibit and Schedule attached hereto is hereby incorporated in this Agreement and is an integral part hereof.

**24.13** No provision of this Agreement shall be deemed to have been waived by any party hereto unless such waiver is in writing signed by the party making such waiver. The failure of any party subject hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement, shall not be deemed a waiver thereof or prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

**24.14** If and to the extent that any of the covenants, Easements or other provisions of this Agreement 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 such covenants, Easements or other provisions may be valid, then the provision in question shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of George W. Bush, current President of the United States, living at the date of this Agreement.

**24.15** If it becomes clear that additional easements between the portions of the Property are necessary or desirable to effectuate the purposes of this Agreement, provided said proposed additional easements will not materially interfere with the use and occupancy of any portion of the Property, materially affect access to, or operation of, any portion of the Property, or materially increase the operating costs of, or create any additional expense for, the Owners, and subject to the agreement of the Owners and to the reasonable consent of the holders of the First Mortgages and Junior Mortgages having a lien on that portion of the Property affected by such easements, the Owners hereby agree to reasonably cooperate with each other to determine, create and grant, at no cost, such additional easements as are necessary. If any Owner in good faith determines an additional easement to be necessary to effectuate the purpose of this Agreement,

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but the Owner of the affected portion of the Property refuses to agree to grant such additional easement, the Owner proposing the additional easement may submit the issue for resolution by Arbitration pursuant to **Article XII** hereunder. In the event any such new easements are created, this Agreement and the Exhibits hereto shall be amended by designating and describing said easements and such amended Agreement shall be signed by the Owners and the holders of the First Mortgages and Junior Mortgages, if necessary, to effectuate the grant or creation of such additional easements, and shall be recorded with the Recorder and shall have the same force, effect and priority as if such new easements were originally contained herein. Notwithstanding anything to the contrary contained herein, no additional easements affecting the Reserved Easement Area may be granted by the Owner of the Condominium Property without the prior written approval of the Lakeview Station Parties, which may be withheld in its sole discretion.

**24.16** All consents and approvals of any of the Owners or any of the holders of the First Mortgages and Junior Mortgages shall not be unreasonably withheld or delayed. Any disapproval of or failure to consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefor. Except as otherwise provided in **Section 22.2** hereof, the failure of any Owner to provide a response within thirty (30) days after a request for approval or consent shall be deemed an approval or consent as to such matter on the part of the non-responding Owner. **EXCEPT AS OTHERWISE PROVIDED IN SECTION 22.4 HEREOF, IF ANY HOLDER OF A FIRST MORTGAGE OR JUNIOR MORTGAGE FAILS TO PROVIDE A RESPONSE WITHIN THIRTY (30) DAYS AFTER AN INITIAL REQUEST FOR APPROVAL OR CONSENT, SUCH FAILURE SHALL BE DEEMED AN APPROVAL OR CONSENT AS TO SUCH MATTER ON THE PART OF THE NON-RESPONDING HOLDER OF THE FIRST MORTGAGE OR JUNIOR MORTGAGE.**

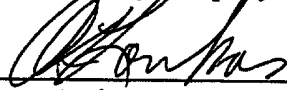
**24.17** Notwithstanding any ownership, directly or indirectly, in all or any portion of the Retail Property or Condominium Property in one person or entity (including, without limitation, Lakeview Station ), it is the intent and understanding that all such properties and estates shall remain separate and distinct from each other and shall not be merged into such other estates and properties by reason of such common ownership. A merger of any of such estates and properties can only be effected by a written instrument signed by the then-existing Owner of such estates and properties and by each mortgagee of such estates and properties and recorded in the office of the Recorder.

**24.18** Subject to **Sections 11.1** and **22.4**, each holder of a First Mortgage or Junior Mortgage on any portion of the Property is given the right, but not the obligation, to act on behalf of the Owner whose interest is mortgaged to it to cure defaults of such Owner within any applicable cure period set forth herein (or, if no cure period is stated, then within thirty (30) days after the date on which the default notice is given), provided that the holder of such First Mortgage or Junior Mortgage shall not have any cure rights with respect to an Emergency Situation arising from or otherwise caused by a performance (i.e., non-payment) default. Each Owner agrees to accept performance by such holder of a First Mortgage or Junior Mortgage.

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IN WITNESS WHEREOF, Lakeview Station , as the Owner of the Condominium Property and the Owner of the Retail Property, has caused this Agreement to be duly executed as of the day and year first above written.

LAKEVIEW STATION LLC, an Illinois limited liability company



By: Anthony G. Loukas  
Its: Member

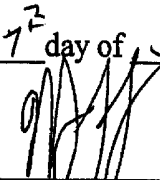
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STATE OF ILLINOIS     )  
  )SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Anthony G. Loukas, the Member LAKEVIEW STATION, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN, under my hand and Notarial Seal this 27<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 7/21/07

Property of Cook County Clerk's Office







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PROPERTY OF

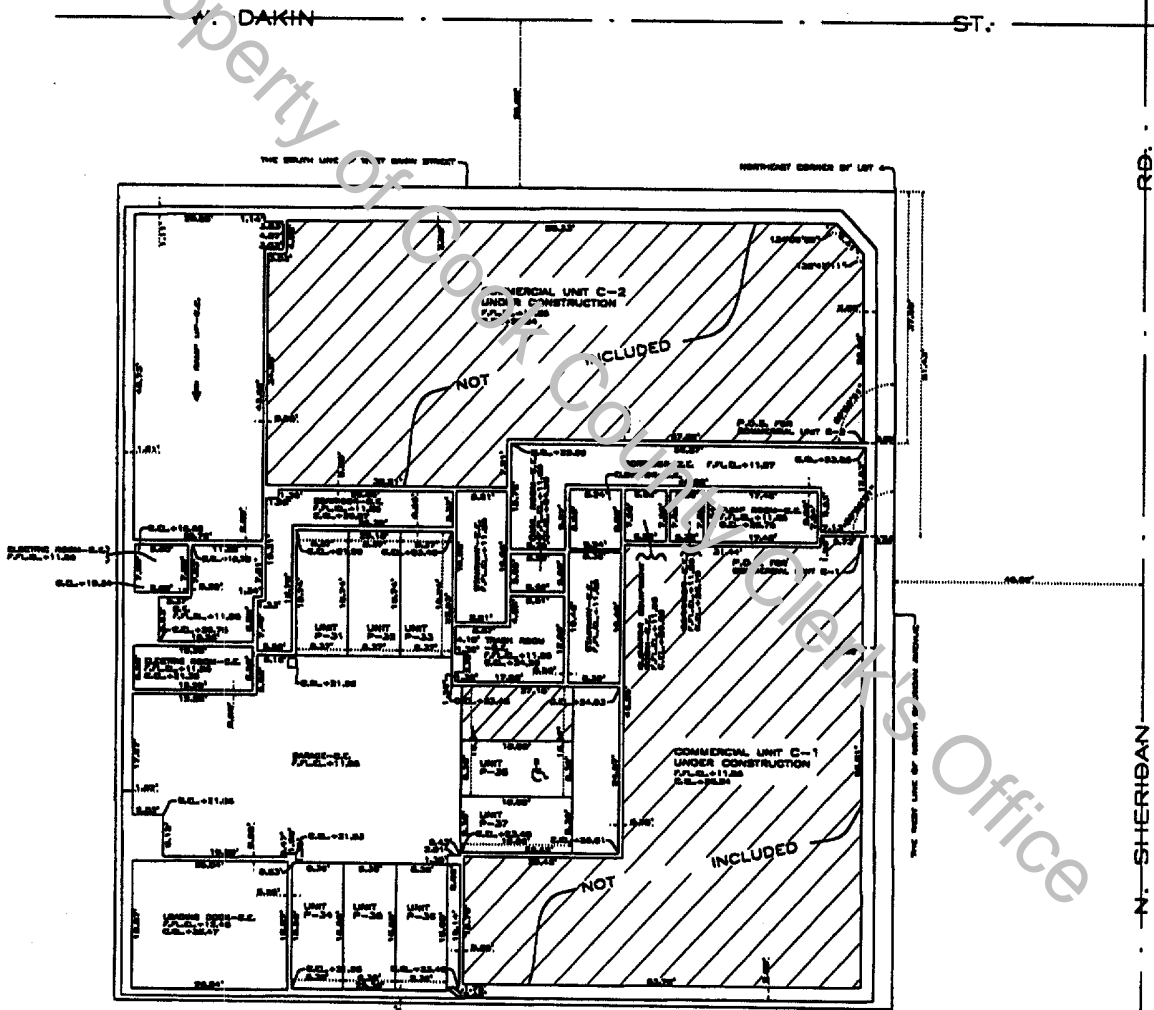
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FIRST LEVEL

3920 NORTH SHERIDAN ROAD

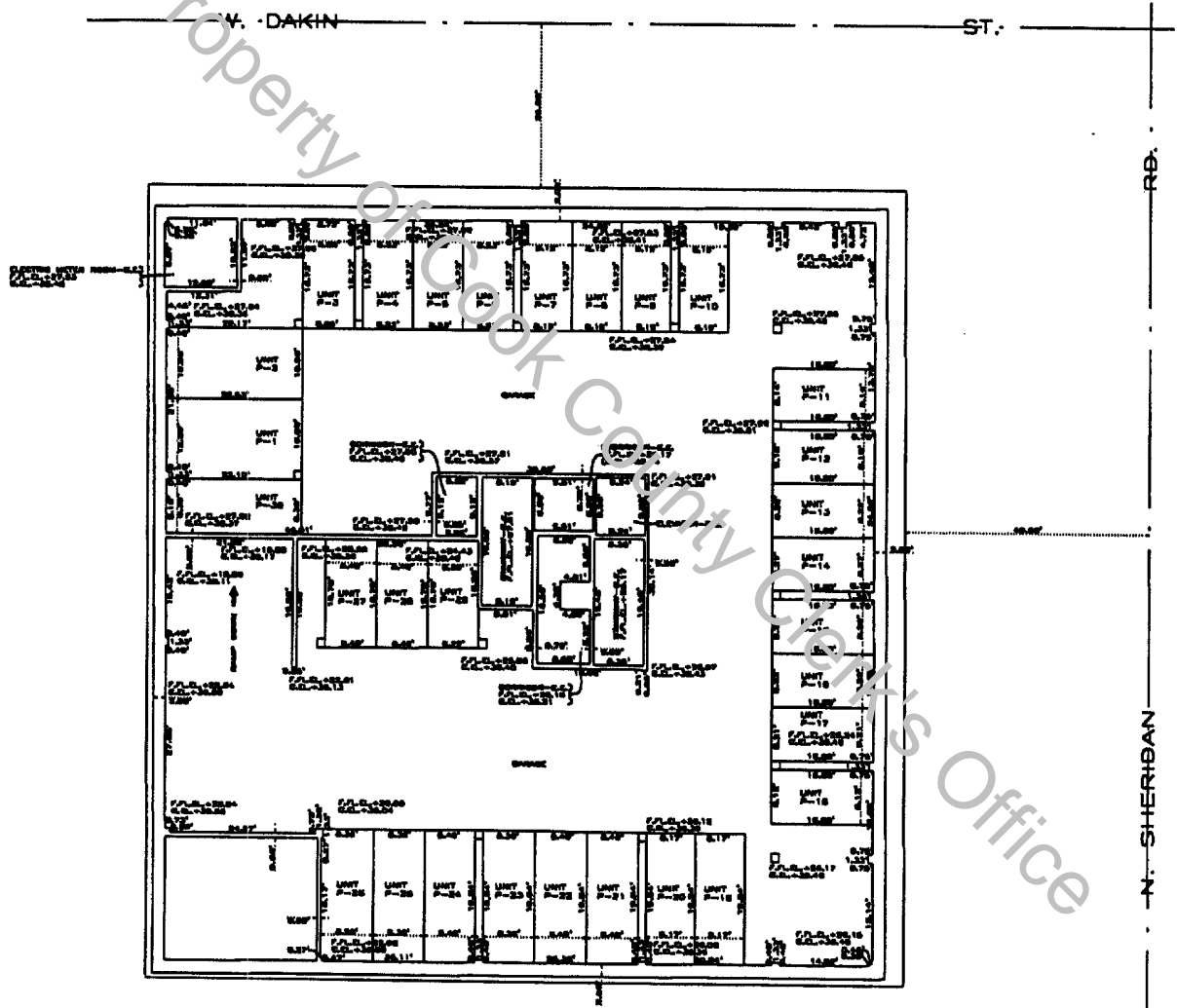
**LEGEND :**

- F.A.S. - Federal Fire Division
- C.S. - Chicago Fire Department
- by the Building Code of the Submerged Unit
- S.C. - Standard Contract

ORDER NUMBER 06-74708

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THE BOUNDARY OF THE SOUTH LINE OF SAFFORD AVENUE AND ALSO THE EAST OF THE WEST LINE OF SOUTH BROADWAY AND  
SHERIDAN AND IN PART AND GENERAL, FRONT YARDWAY,  
AND GENERAL, FRONT YARDWAY OF THE CORNER WITH THE TOP OF FRINGE PLAZA, CENTER OF FRINGE BUILDING  
AND THE EAST LINE OF FRINGE PLAZA, CENTER OF FRINGE BUILDING



**SECOND LEVEL**

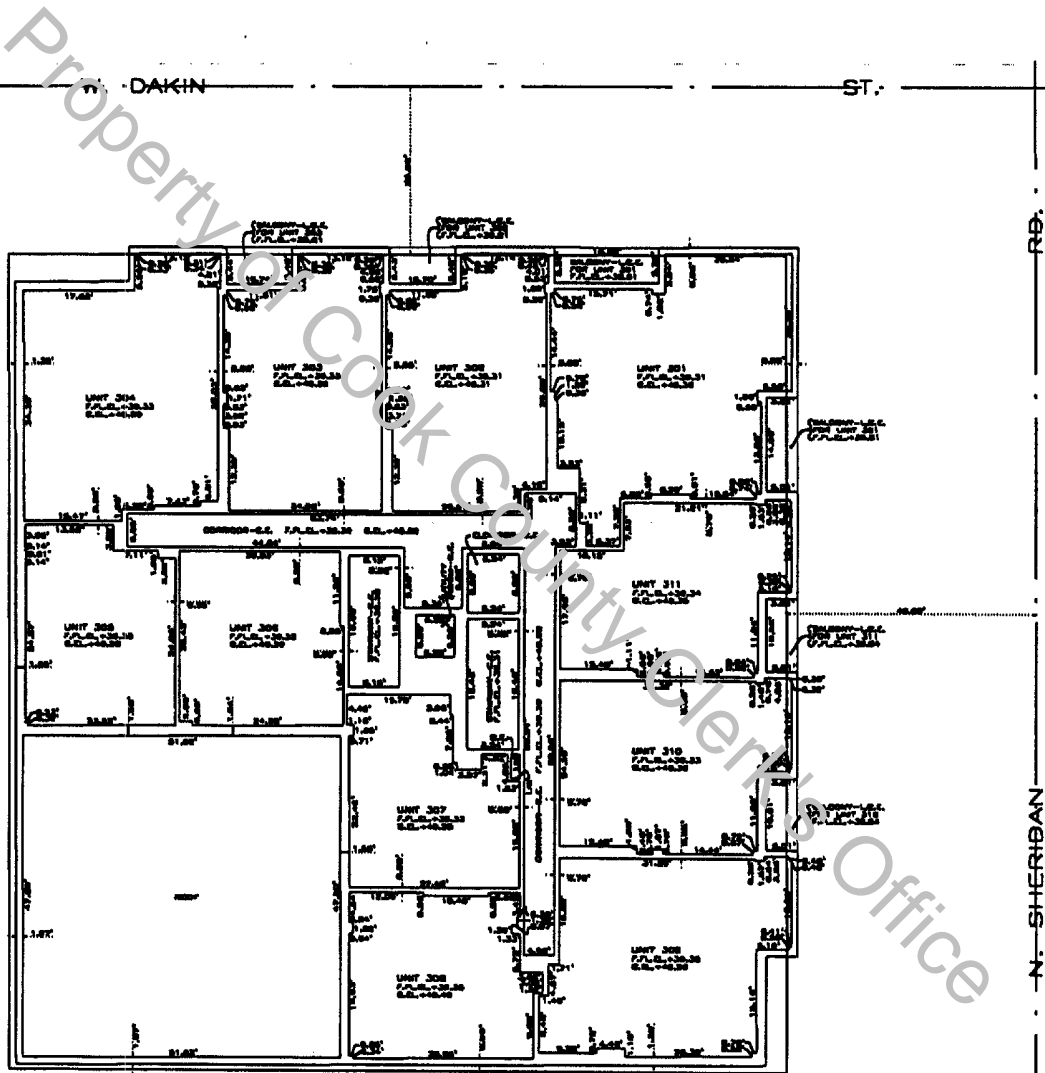
3320 NORTH SHERIDAN ROAD

DRAWING NUMBER: 00-74782

**LEGEND**

- 1. - 1" = 1' - 1/2" Scale
- 2. - 1" = 1' - 1/2" Scale
- 3. - 1" = 1' - 1/2" Scale
- 4. - 1" = 1' - 1/2" Scale
- 5. - 1" = 1' - 1/2" Scale

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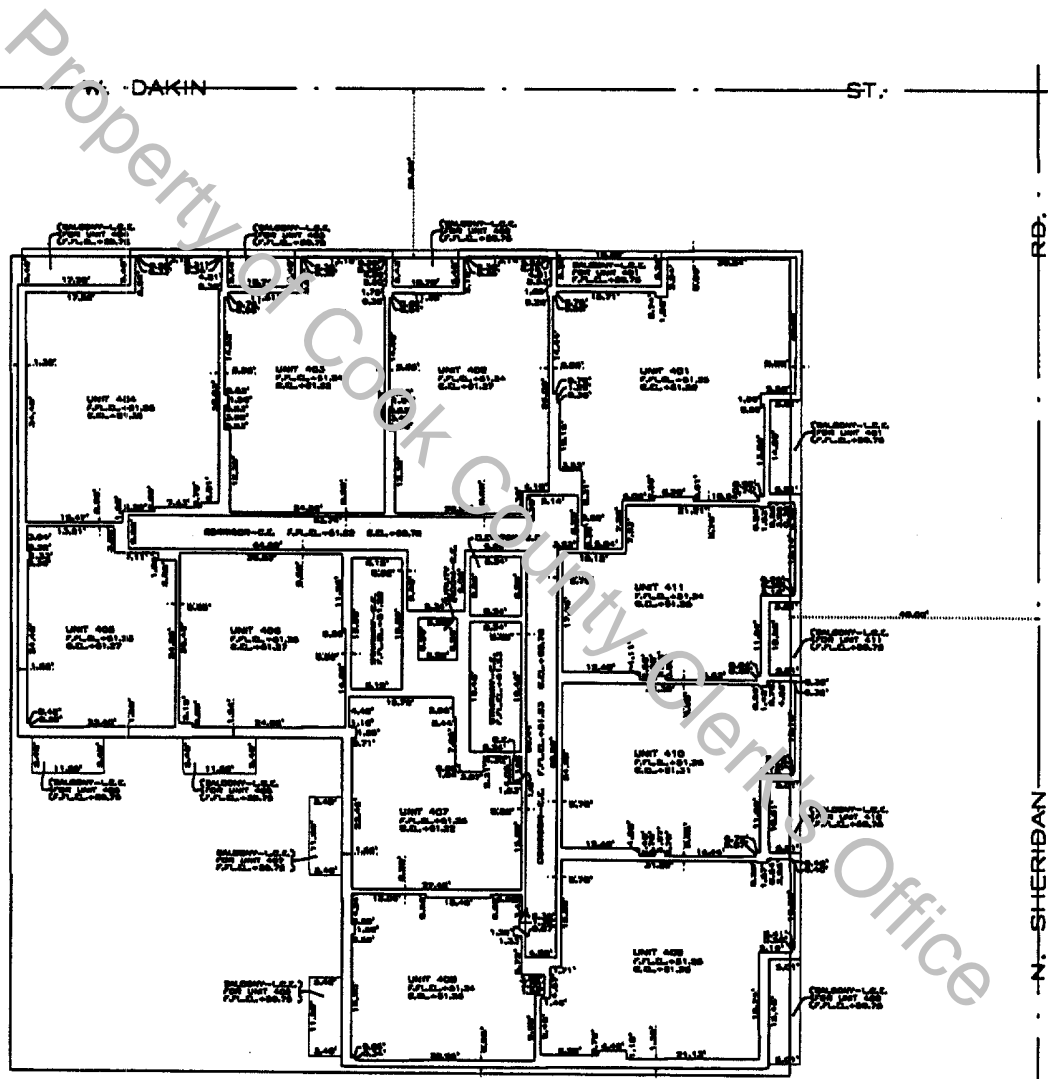


THIRD LEVEL  
#3920 NORTH SHERIDAN ROAD

DRAWING NUMBER: 02-74762

**LEGEND**  
 P.F.L. - Polished Floor Elevator  
 C.D. - Ceiling Detail  
 U.E. - Utility Equipment Enclosure  
 for the Location Size of the Background Unit  
 S.C. - Storage Cabinet

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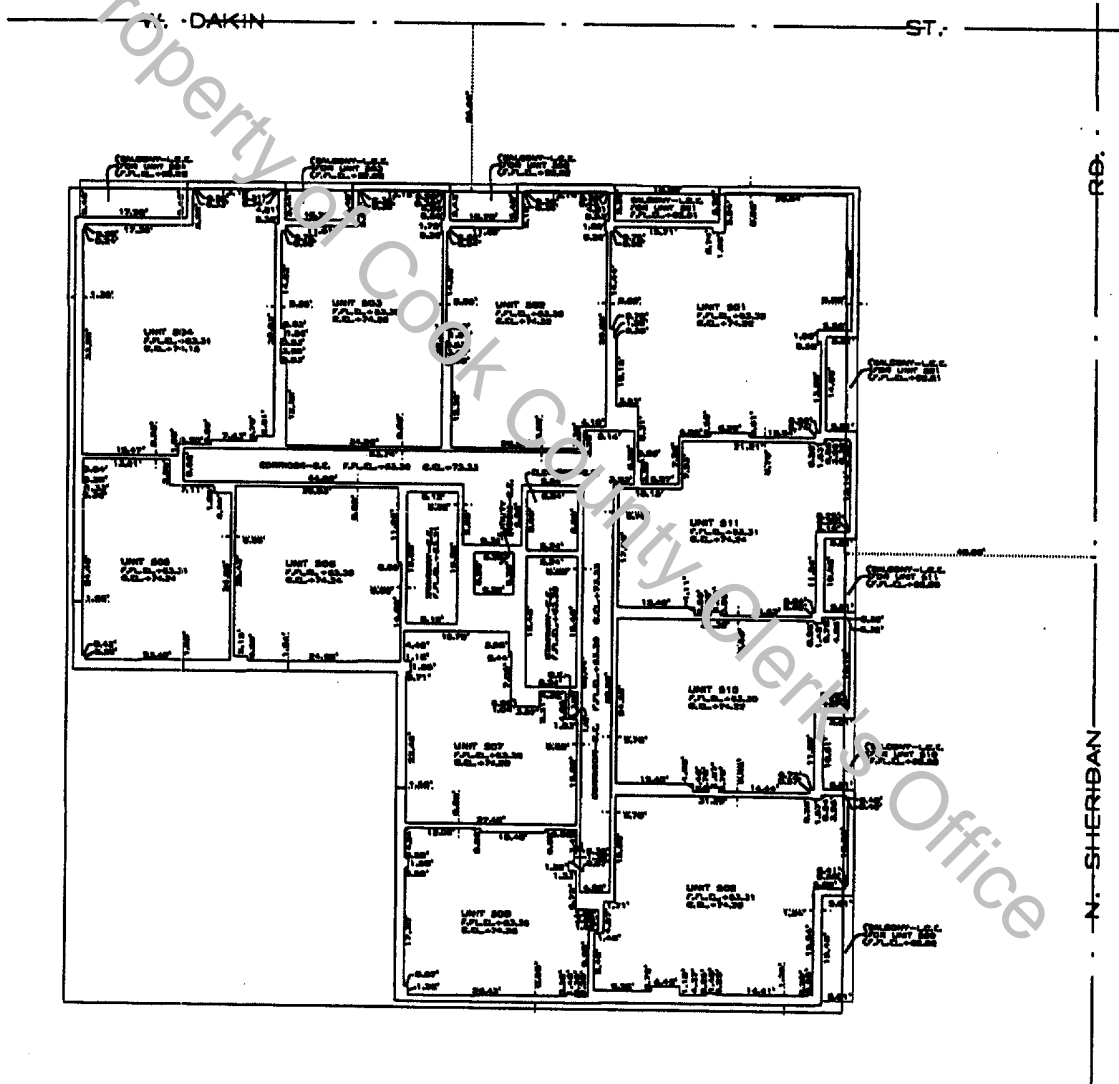


FOURTH LEVEL  
 #3320 NORTH SHERIDAN ROAD

ORDER NUMBER 00-74782

**LEGEND 1**  
 P.F.L. - Filtered Floor Slab  
 C.F.L. - Ceiling Slab  
 U.S.L. - Utility Storage Slab  
 S.C. - Service Core  
 S.C. - Service Core

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FIFTH LEVEL

#3620 NORTH SHERIDAN ROAD

DRAWING NUMBER 00-74702

**LEGEND 1**  
 C.A. - Ceiling Area  
 C.C. - Ceiling Core  
 L.S. - Lobby Service  
 S.C. - Service Core  
 S.E. - Service Elevator

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## EXHIBIT B

### Legal Description

LOTS 1, 2, 3, AND 4 IN THOMAS S. WALKER'S SUBDIVISION OF PART OF BLOCK 3 IN LAFLIN, SMITH AND DYERS SUBDIVISION OF THE NORTHEAST  $\frac{1}{4}$  (EXCEPT 1.28 ACRES IN THE NORTHEAST CORNER THEREOF) IN SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 9, 1900 AS DOCUMENT 294556, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM:

COMMERCIAL UNIT C-1

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 11.85 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 25.06 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS, 1, 2, 3 AND 4, TAKEN AS A SINGLE TRACT, IN THOMAS S. WALKER'S SUBDIVISION OF PART OF BLOCK 3 IN LAFLIN, SMITH AND DYER'S SUBDIVISION OF THE NORTHEAST  $\frac{1}{4}$  (EXCEPT 1.28 ACRES IN THE NORTHEAST CORNER THEREOF) IN SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 9, 1900 AS DOCUMENT 294556, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT, BEING THE NORTHEAST CORNER OF SAID LOT 4 AND THE INTERSECTION OF THE SOUTH LINE OF WEST DAKIN STREET WITH THE WEST LINE OF NORTH SHERIDAN ROAD: THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT, A DISTANCE OF 51.43 FEET; THENCE WEST ALONG A LINE MAKING AN ANGLE OF 89 DEGREES 50 MINUTES 51 SECONDS MEASURED COUNTER-CLOCKWISE, NORTH TO WEST FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 2.99 FEET TO A POINT ON THE EXTERIOR FACE OF A FIVE STORY BRICK BUILDING COMMONLY KNOWN AS 3920 NORTH SHERIDAN ROAD IN CHICAGO; THENCE CONTINUING WEST ALONG THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 2.00 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF SAID BUILDING, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE SOUTH, A DISTANCE OF 25.45 FEET; NORTH, A DISTANCE OF 46.55 FEET; EAST, A DISTANCE OF 31.44 FEET; NORTH A

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DISTANCE OF 1.66 FEET; EAST A DISTANCE OF 6.73 FEET TO THE POINT OF BEGINNING.

ALSO  
COMMERCIAL UNIT C-2

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 11.85 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 25.06 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS, 1, 2, 3 AND 4, TAKEN AS A SINGLE TRACT, IN THOMAS S. WALKER'S SUBDIVISION OF PART OF BLOCK 3 IN LAFLIN, SMITH AND DYER'S SUBDIVISION OF THE NORTHEAST ¼ (EXCEPT 1.28 ACRES IN THE NORTHEAST CORNER THEREOF) IN SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 9, 1900 AS DOCUMENT 294556 IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT, BEING THE NORTHEAST CORNER OF SAID LOT 4 AND THE INTERSECTION OF THE SOUTH LINE OF WEST DAKIN STREET WITH THE WEST LINE OF NORTH SHERIDAN ROAD: THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT, A DISTANCE OF 37.50 FEET; THENCE WEST ALONG A LINE MAKING AN ANGLE OF 89 DEGREES 50 MINUTES 51 SECONDS MEASURED COUNTER-CLOCKWISE, NORTH TO WEST FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 2.99 FEET TO A POINT ON THE EXTERIOR FACE OF A FIVE STORY BRICK BUILDING COMMONLY KNOWN AS 3920 NORTH SHERIDAN ROAD IN CHICAGO; THENCE CONTINUING WEST ALONG THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 2.00 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF SAID BUILDING, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE CONTINUING WEST ALONG THE LAST DESCRIBED COURSE EXTENDED. A DISTANCE OF 57.09 FEET; SOUTH, A DISTANCE OF 7.21 FEET; WEST, A DISTANCE OF 38.81 FEET; NORTH, A DISTANCE OF 34.56 FEET; EAST, A DISTANCE OF 3.03 FEET; NORTH, A DISTANCE OF 4.98 FEET; EAST A DISTANCE OF 88.33 FEET; SOUTHEAST ALONG A LINE MAKING AN ANGLE OF 134 DEGREES 09 MINUTES 09 SECONDS MEASURED COUNTER-CLOCKWISE, NORTHWEST TO SOUTH FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 28.05 FEET TO THE POINT OF BEGINNING.



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**OVERSIZE**

**EXHIBIT  
FORWARD  
TO PLAT COUNTER  
FOR SCANNING**

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

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