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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR THE STATE RANDOLPH DEVELOPMENT**



**This document prepared by and  
after recording return to:**

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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE STATE RANDOLPH DEVELOPMENT

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE STATE RANDOLPH DEVELOPMENT** (the "**Declaration**") is made and entered into as of the 1st day of October, 2007, by **SMITHFIELD PROPERTIES XX, L.L.C.**, an Illinois limited liability company (the "**Declarant**").

### RECITALS:

- A. The terms used in these Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in Article 2 hereof.
- B. Declarant is the owner of the Total Parcel.
- C. The Total Parcel is improved with a Building comprised of: (i) the Retail Parcel encompassing substantially all of the first and second floors (excluding the lobby that is part of the Joffrey Parcel); (ii) the Joffrey Parcel encompassing the third and fourth floors (including a mezzanine to be constructed between the third and fourth floors of the Building as part of the improvements to the Joffrey Portion) and a portion of the first floor (for its lobby); and (iii) the Condominium Parcel encompassing the basement and floors numbered 5-8 and 9-33 (there is no floor numbered 13).
- D. The Retail Parcel, the Condominium Parcel and the Joffrey Parcel will depend upon the other, to some extent, for structural support, utility services, ingress and egress, and other facilities and components necessary to the efficient operation and intended use of the Retail Parcel, the Condominium Parcel and the Joffrey Parcel.
- E. Declarant desires by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Parcel, to assure the harmonious relationship of the Owner of each such respective portion, estate or interest in the Total Parcel, and to protect the respective values of each such portion, estate and interest in the Total Parcel, by providing for, declaring and creating (i) certain easements, covenants, and restrictions against and affecting the Condominium Parcel which will be binding upon each present and future Owner of the Condominium Parcel, or of any portion thereof or interest or estate therein, and which will inure to the benefit of each of the present and future Owners of the Retail Parcel and the Joffrey Parcel, or of any portion thereof or interest or estate therein to the extent provided herein, (ii) certain easements, covenants, and restrictions against and affecting the Retail Parcel, which will be binding upon each present and future Owner of the Retail Parcel, or of any portion thereof or interest therein, and which will inure to the benefit of each of the present and future Owner of the Condominium Parcel and the Joffrey Parcel or of any portion thereof or interest or estate therein, to the extent provided herein, and (iii) certain easements, covenants, and restrictions against and affecting the Joffrey Parcel, which will be binding upon each present and future Owner of the Joffrey Parcel, or of any portion thereof or interest therein, and which will inure to the benefit of each of the present and future Owner of the Condominium Parcel and the Retail Parcel or of any portion thereof or interest or estate therein, to the extent provided herein.

**NOW, THEREFORE**, Declarant hereby declares that the Total Parcel and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Declaration, and declares that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at

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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 Total Parcel and each of the foregoing shall run with the land subject to this Declaration.

## ARTICLE 1 INCORPORATION OF RECITALS

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

## ARTICLE 2 DEFINITIONS

- (i) "AAA" shall mean the American Arbitration Association.
- (ii) "Act" means the Condominium Property Act of the State of Illinois 765 ILCS 605/1 et seq., as amended from time to time.
- (iii) "Allocation Percentage" means the percentage of a particular operating cost allocated to the Owners as set forth on the Allocation Schedule, which percentages are subject to adjustment as provided herein. The portion allocable to the Owner of the Retail Parcel for a particular cost is referred to herein as the "Applicable Retail Percentage," the portion allocable to the Owner of the Joffrey Parcel for a particular cost is referred to herein as the "Applicable Joffrey Percentage," and the portion allocable to the Owners of the Condominium Parcel for a particular cost is referred to herein as the "Applicable Condominium Percentage." For example, the Applicable Retail Percentage is 9.5% for extermination, but 60.0% for loading dock maintenance and repair. The portion allocable to an Owner for a particular cost is referred to herein as the "Applicable Percentage" for such Owner.
- (iv) "Allocation Schedule" means the Schedule attached hereto as Exhibit D and incorporated herein, as may be revised from time to time as reflected therein, pursuant to which various operating costs are allocated between the Owners. Not all operating costs are so allocated, as specifically provided in the text hereof.
- (v) "Architect" shall have the meaning set forth in Article 15 hereof.
- (vi) "Assessor" shall mean the Assessor of Cook County, Illinois.
- (vii) "Award" shall mean the award, damages, or just compensation resulting from the taking by condemnation of a portion of the Total Parcel.
- (viii) "Basement" shall mean the below grade levels owned by the Owner of the Condominium Parcel.
- (ix) "Building" shall mean the thirty-two (32) story multi-use building located on the Total Parcel.
- (x) "Common Elements" means all portions of the Total Parcel submitted from time to time to the Act pursuant to the Condominium Declaration except the Units.

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- (xi) "**Common Walls, Floors and Ceilings**" means all common structural and partition walls, floors and ceilings now or hereafter adjoining the Retail Parcel, the Joffrey Parcel and the Condominium Parcel, or located on one parcel but forming the walls, floors or ceilings of an adjoining parcel.
- (xii) "**Condominium Association**" means an Illinois not-for-profit corporation to be formed for the purpose of administering the Condominium Property pursuant to the Act.
- (xiii) "**Condominium Common Facilities**" means all Facilities equipment and areas now or hereafter located within the Condominium Parcel and intended generally for the common use of the tenants or occupants of the Condominium Parcel.
- (xiv) "**Condominium Declaration**" means any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits any portion of the Total Parcel to the provisions of the Act as may be amended from time to time.
- (xv) "**Condominium Improvements**" means all improvements now or hereafter constructed within and upon the Condominium Parcel or hereafter located on, within or forming a part of any Condominium Property. In the event of any reconstruction of the Condominium Improvements pursuant to Articles 10 or Article 14, the Condominium Improvements shall include any such improvements reconstructed on the Condominium Parcel.
- (xvi) "**Condominium Parcel**" means that portion of the Total Parcel legally described on Exhibit B attached hereto.
- (xvii) "**Condominium Passenger Elevator**" means any Passenger Elevator providing or to provide service to the Condominium Improvements (and the second floor of the Retail Parcel) from the first floor of the Building, which shall be owned by the Owner of the Condominium Parcel.
- (xviii) "**Condominium Property**" means any portion of the Total Parcel from and after its submission to the Act and so long as it has not been withdrawn from the Act.
- (xix) "**Creditor Owner**", except where otherwise defined hereunder in a specific context, means an Owner to which a payment of money or other duty or obligation is owed under this Declaration by another Owner which has failed to make such payment or to perform such duty or obligation as and when required hereunder.
- (xx) "**Declarant**" means Smithfield Properties XX, L.L.C., its successors and assigns (including, without limitation, any Mortgagee succeeding to the rights of Smithfield Properties XX, L.L.C. under this Declaration pursuant to a collateral assignment of its rights hereunder) and any other person or entity designated by a Declarant to be the Declarant.
- (xxi) "**Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, amendments and supplements hereto, as may be amended from time to time.
- (xxii) "**Default Rate**" means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Section 11.4 hereof.

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

(xxiv) "**Depository**" means the person or entity from time to time acting pursuant to Article 16 of this Declaration.

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

(xxvi) "**Emergency Situation**" means a situation impairing or imminently likely to impair structural support of the Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Total Parcel or any part thereof or any property in, on, under, within, upon or about the Total Parcel. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

(xxvii) "**Facilities**" means all components of the chilled and heating hot water, condenser water, central air handling and fan, temperature control, domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, cable television system, master antenna, emergency power, telephone, elevator, loading dock, trash removal and other utility systems now or hereafter forming a part of the Total Parcel and designed or utilized to furnish utility and other services to any portion of the Total Parcel, including but not limited to: air intake valves and ducts, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chutes, coils, compressors, computers, conduits, controls, control centers, cooling towers, couplers, dampers, devices, ducts, elevator cars, elevator rails, equipment, fans, fixtures, generators, grease traps, hangers, heat traces, heat exchangers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring and the like.

(xxviii) "**Freight Elevator**" means that certain freight elevator providing or to provide service to each floor of the Building, which Freight Elevator is or shall be owned by the Owner of the Retail Parcel.

(xxix) "**Improvements**" means the Retail Improvements, the Joffrey Improvements and Condominium Improvements.

(xxx) "**Indemnifying Owner**" shall have the meaning set forth in Section 7.3 hereof.

(xxxi) "**Indemnitee**" shall have the meaning set forth in Section 7.3 hereof.

(xxxii) "**Joffrey Improvements**" means all improvements now or hereafter constructed within and upon the Joffrey Parcel. In the event of any reconstruction of the Joffrey Improvements pursuant to Article 10 or Article 14, the Joffrey Improvements shall include any improvements reconstructed on the Joffrey Parcel.

(xxxiii) "**Joffrey Parcel**" shall mean that portion of the Total Parcel legally described on Exhibit C-2 attached hereto, including the lobby portion on the first floor of the Building and the Joffrey Passenger Elevator.

(xxxiv) "**Joffrey Passenger Elevator**" means any Passenger Elevator providing or to provide service to the Joffrey Improvements from the first floor of the Building, which shall be owned by the Owner of the Joffrey Parcel.

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(xxxv) "**Maintenance**" means and includes operating, maintaining, repairing, reconditioning, refurbishing, reconfiguring, inspecting, testing, cleaning, painting, installing and replacing when necessary or desirable Facilities or such other portions of the Improvements and includes the right of access to and the right to remove from the Improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

(xxxvi) "**Mechanics Lien Act**" means the Mechanics Lien Act of the State of Illinois 770 ILCS 60/0.01 et seq., as may be amended from time to time.

(xxxvii) "**Mortgage**" means a bona fide mortgage or trust deed in the nature of a first mortgage on any Parcel.

(xxxviii) "**Mortgagee**" means a bank or other institutional lender holding a Mortgage on either the Retail Parcel or the Joffrey Parcel.

(xxxix) "**Non-Performing Owner**" shall mean an Owner which fails to perform its obligations pursuant to this Declaration as described in Section 13.1 hereof

(xl) "**Owner**" means either the Owner of the Condominium Parcel, the Owner of the Retail Parcel or the Owner of the Joffrey Parcel, as the context requires. "**Owners**" means the Owner of the Condominium Parcel, the Owner of the Retail Parcel and the Owner of the Joffrey Parcel, as the context may require.

(xli) "**Owner of the Condominium Parcel**" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Condominium Parcel. If and so long as the Condominium Parcel, or any portion thereof has been submitted to and remains subject to the provisions of the Act, the Owner of the Condominium Parcel, or such portion thereof, shall mean collectively all of the Unit Owners in and to the Condominium Parcel (or such portion subject to the Act) and not individually.

(xlii) "**Owner of the Joffrey Parcel**" means the person or entity (or persons or entities if more than one) at any time in question holding fee simple title to the Joffrey Parcel.

(xliii) "**Owner of the Retail Parcel**" means the person or entity (or persons or entities if more than one) at any time in question holding fee simple title to the Retail Parcel.

(xliv) "**Parcels**" means the Retail Parcel, the Joffrey Parcel and the Condominium Parcel, collectively.

(xlv) "**Passenger Elevator**" means any passenger elevators including any Condominium Passenger Elevator, the Retail Passenger Elevator and the Joffrey Passenger Elevator.

(xlvi) "**Recorder**" means the Recorder of Deeds of Cook County, Illinois.

(xlvii) "**Retail Improvements**" means all improvements now or hereafter constructed within and upon the Retail Parcel. In the event of any reconstruction of the Retail Improvements pursuant to Article 10 or Article 14, the Retail Improvements shall include any improvements reconstructed on the Retail Parcel.



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(xlviii) "**Retail Parcel**" shall mean that portion of the Total Parcel legally described on Exhibit C-1 attached hereto.

(xlix) "**Retail Passenger Elevator**" means any Passenger Elevator (other than a Condominium Passenger Elevator) providing or to provide service to the Retail Improvements between the first and second floors of the Building, which shall be owned by the Owner of the Retail Parcel.

(l) "**Substantial(ly) Damage(d)**" means that (i) with respect to the Condominium Parcel, that in excess of fifty (50%) percent of the Condominium Parcel has been damaged by fire or other casualty, (ii) with respect to the Retail Parcel, that in excess of fifty (50%) percent of the Retail Parcel (or any demised premises leased to a tenant in the Retail Parcel) has been damaged in excess of fifty (50%) percent of such area and the time required to substantially complete the repair to the Retail Parcel (or demised premises) will exceed two hundred twenty (220) days from the date of the occurrence, and (iii) with respect to the Joffrey Parcel, that in excess of fifty (50%) percent of the Joffrey Parcel has been damaged and the time required to substantially complete the repair to the Joffrey Parcel will exceed two hundred twenty (220) days from the date of the occurrence.

(li) "**Total Parcel**" means the land, property and space legally described on Exhibit A attached hereto.

(lii) "**Unit**" means any portion of the Total Parcel submitted to the Act described as a "Unit" in a Condominium Declaration.

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

(liv) "**Unit Ownership**" means a part of any portion of the Total Parcel submitted to the Act consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

(lv) "**Unavoidable Delay**" shall have the meaning set forth in Article 13 hereof.

## ARTICLE 3 SPECIFIC EASEMENTS IN FAVOR OF PARCELS

3.1 **Joffrey Parcel and Retail Parcel Easements in Favor of Condominium Parcel.** The following perpetual Easements in, to, under, over, upon, through and about the Retail Parcel and the Joffrey Parcel, as applicable, in favor of the Condominium Parcel are hereby granted, reserved, declared and created (the term "**Granted**" or "**granted**" as hereinafter used in describing Easements shall be deemed to mean "**granted, reserved, declared and created**");

(a) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams, Facilities and any other supporting components now or hereafter located in or constituting a part of the Retail Parcel or the Joffrey Parcel, as applicable, for the support of the Condominium Improvements.

(b) A non-exclusive Easement in, to, over, under, across and upon certain areas of the Retail Parcel or the Joffrey Parcel, as applicable, for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation of storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable lines, and other utility lines which serve the Condominium

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Improvements. The installation of any utility lines shall be subject, as to location, to the approval of the Owner of the Retail Parcel and the Owner of the Joffrey Parcel, if applicable, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) A non-exclusive Easement for the use for their intended purposes of all Facilities now or hereafter located in the Retail Improvements or the Joffrey Improvements, as applicable, and now or hereafter connected to Facilities now or hereafter located in the Condominium Improvements, and any replacements thereof, which provide or shall be necessary or desirable to provide the Condominium Parcel with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Condominium Improvements, except to the extent any such Facilities (e.g., chilled water) are provided separately and directly to each of the Condominium Parcel, the Retail Parcel and the Joffrey Parcel. In the event the Condominium Association desires to cancel the Chilled Water Service Agreement entered into by the Owner of the Condominium Parcel, then chillers will be required to be installed for the Condominium Improvements at a location approved by the Owners of the Joffrey Parcel and the Retail Parcel and at the sole cost and expense of the Owners of the Condominium Parcel.

(d) A non-exclusive Easement permitting encroachments of any part of the Condominium Improvements upon any part of the Retail Parcel or the Joffrey Parcel, as applicable, in the event and to the extent that, by reason of the original construction of the Condominium Improvements or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Condominium Improvements or the subsequent settlement or shifting of any part of the Condominium Improvements, any part of the Condominium Improvements encroaches or shall hereafter encroach upon any part of the Retail Parcel or the Joffrey Parcel, as applicable. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Condominium Improvements continues to exist.

(e) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Retail Parcel or the Joffrey Parcel, as applicable, to the extent necessary to permit the construction, equipping, fixturing and furnishing of the Condominium Parcel and the Maintenance of the Condominium Parcel as required or permitted pursuant to this Declaration, or as necessary in an Emergency Situation, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article 6 hereof.

(f) A non-exclusive Easement for ingress and egress including pedestrian and vehicular traffic over, on and across those walkways, doorways, passageways, stairs, stairwells, elevators and elevator shafts located in the Retail Parcel or the Joffrey Parcel, as applicable, required or necessary to permit access to the Condominium Improvements. The foregoing easement for ingress and egress shall include, without limitation, certain corridors and stairways located in the Building which contain both Retail Parcel and/or Joffrey Parcel space and Condominium Parcel space.

(g) A non-exclusive Easement for the use of the elevator pits, shafts and rails attached thereto now or hereafter located in or passing through the Retail Parcel or the Joffrey Parcel, as applicable, which elevator pits, shafts and rails house and guide the Freight Elevator and any Condominium Passenger Elevators.

(h) A non-exclusive Easement for ingress, egress and access to, and the use of, the loading docks, service areas, delivery entrances, trash compactor room and related corridors, facilities and equipment located or to be located in the interior and exterior portions of the Retail Parcel for shipping, receiving, trash collection and removal, delivery, loading, unloading and similar purposes. In exercising



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the Easements granted pursuant to this Section, the Owners of the Condominium Parcel and the Retail Parcel shall adhere to reasonable rules and regulations established by the Owner of the Retail Parcel for the use of the loading docks and related facilities.

(i) A non-exclusive Easement in, to, over, under, across and upon such portions of the Retail Parcel or the Joffrey Parcel, as applicable, as may be reasonably necessary to carry out the intent of this Agreement and to provide the necessary services and other items referred to herein.

3.2 **Condominium Parcel Easements in Favor of Joffrey Parcel and Retail Parcel.** The following perpetual Easements in, to, under, over, upon, through and about portions of the Condominium Parcel in favor of the Joffrey Parcel and the Retail Parcel, as applicable, are hereby granted:

(a) A non-exclusive Easement in and under the Condominium Parcel to the extent reasonably necessary to permit the construction, reconstruction, equipping, and maintenance of structural members, walls, ceilings, and any other supporting components of the Retail Improvements or the Joffrey Improvements, as applicable.

(b) A non-exclusive Easement in, to, over, under, across and upon certain areas of the Condominium Parcel for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation of storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable lines, and other utility lines which serve the Retail Improvements or the Joffrey Improvements, as applicable. The installation of any utility lines shall be subject, as to location, to the approval of the Owner or Owners of the Condominium Parcel which approval shall not be unreasonably withheld, conditioned or delayed.

(c) A non-exclusive Easement for the use for their intended purposes of all Facilities now or hereafter connected to Facilities now or hereafter located in the Condominium Parcel, and any replacements thereof, which provide or shall be necessary or desirable to provide the Retail Improvements or the Joffrey Improvements, as applicable, with any utilities or other services or which may otherwise be necessary or desirable to the operation, use and enjoyment of the Retail Improvements or the Joffrey Improvements, as applicable, except to the extent any such Facilities (e.g., chilled water) are provided separately and directly to each of the Condominium Parcel, the Retail Parcel and the Joffrey Parcel.

(d) A non-exclusive Easement, permitting encroachments of any part of the Retail Improvements or the Joffrey Improvements, as applicable, upon any part of the Condominium Parcel in the event and to the extent that, by reason of the original construction of the Retail Improvements or the Joffrey Improvements, as applicable, or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Retail Improvements or the Joffrey Improvements, as applicable, or the subsequent settlement or shifting of any part of the Retail Improvements or the Joffrey Improvements, as applicable, any part of the Retail Improvements or the Joffrey Improvements, as applicable, encroaches or shall hereafter encroach upon any part of the Condominium Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Retail Improvements or the Joffrey Improvements, as applicable, continues to exist.

(e) A non-exclusive Easement for ingress and egress (and where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Condominium Parcel to the extent reasonably necessary to permit the construction, equipping, fixturing and furnishing of the Retail Improvements or the Joffrey Improvements, as applicable, and the Maintenance of the Retail Improvements or the Joffrey Improvements, as applicable, as required or permitted pursuant to this

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Declaration, or as necessary in an Emergency Situation, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to provide structural support required by Article 6 hereof.

(f) A non-exclusive Easement for ingress and egress including pedestrian and vehicular traffic over, on and across those driveways, walkways, ramps, doorways, passengerways, stairways and corridors located in the Condominium Parcel required or necessary to permit access to the Retail Improvements or the Joffrey Improvements, as applicable, elevator shafts and penthouses, mechanical components, or the roof areas of the Building.

(g) A non-exclusive Easement for the use of the elevator shafts, rails, and penthouses attached thereto now or hereafter located in or passing through the Condominium Parcel, which elevator shafts, rails, and penthouses house, guide or affect the use of the Freight Elevator and the Passenger Elevators, and as to the Retail Parcel, such a non-exclusive Easement to serve the second floor of the Retail Parcel.

(h) A non-exclusive Easement for ingress and egress to the roof areas of the Building for access to Facilities serving the Retail Parcel or the Joffrey Parcel, as applicable, and the maintenance, repair and replacement thereof, as necessary, including without limitation the right of the Owner of the Retail Parcel and any tenant thereof to install telecommunications equipment thereon serving the Retail Parcel subject to the terms of any such lease, and as to each Owner of the Retail Parcel and the Joffrey Parcel, subject to Exhibit Z attached hereto.

(i) A non-exclusive Easement in, to, over, under, across and upon the basement of the Building for access to any Facilities serving the Retail Parcel or the Joffrey Improvements, as applicable, and the Freight Elevator and any Retail Passenger Elevator or any Joffrey Passenger Elevator and related appurtenances located therein..

(j) A non-exclusive Easement in, to, over, under, across and upon such portions of the Condominium Parcel as may be reasonably necessary to carry out the intent of this Agreement and to provide the necessary services and other items referred to herein.

3.3 **Retail Parcel Easements in Favor of Joffrey Parcel.** The following perpetual Easements in, to, under, over, upon, through and about portions of the Retail Parcel in favor of the Joffrey Parcel are hereby granted:

(a) A non-exclusive Easement in and under the Retail Parcel to the extent reasonably necessary to permit the construction, reconstruction, equipping, and maintenance of structural members, walls, ceilings, and any other supporting components of the Joffrey Improvements.

(b) A non-exclusive Easement in, to, over, under, across and upon certain areas of the Retail Parcel for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation of storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable lines, and other utility lines which serve the Joffrey Improvements. The installation of any utility lines shall be subject, as to location, to the approval of the Owner or Owners of the Retail Parcel which approval shall not be unreasonably withheld, conditioned or delayed.

(c) A non-exclusive Easement for the use for their intended purposes of all Facilities now or hereafter connected to Facilities now or hereafter located in the Retail Parcel, and any replacements thereof, which provide or shall be necessary or desirable to provide the Joffrey Improvements with any utilities or other services or which may otherwise be necessary or desirable to the operation, use and

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enjoyment of the Joffrey Improvements, except to the extent any such Facilities (e.g., chilled water) are provided separately and directly to each of the Condominium Parcel, the Retail Parcel and the Joffrey Parcel.

(d) A non-exclusive Easement, permitting encroachments of any part of the Joffrey Improvements upon any part of the Retail Parcel in the event and to the extent that, by reason of the original construction of the Joffrey Improvements or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Joffrey Improvements or the subsequent settlement or shifting of any part of the Joffrey Improvements encroaches or shall hereafter encroach upon any part of the Retail Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Joffrey Improvements continues to exist.

(e) A non-exclusive Easement for ingress and egress (and where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Retail Parcel to the extent reasonably necessary to permit the construction, equipping, fixturing and furnishing of the Joffrey Improvements and the Maintenance of the Joffrey Improvements as required or permitted pursuant to this Declaration, or as necessary in an Emergency Situation, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.3 or to provide structural support required by Article 6 hereof.

(f) A non-exclusive Easement for ingress and egress including pedestrian and vehicular traffic over, on and across those driveways, walkways, ramps, doorways, passengerways, stairways and corridors located in the Retail Parcel required or necessary to permit access to the Joffrey Improvements, elevator shafts and penthouses, mechanical components, or the roof areas of the Building.

(g) A non-exclusive Easement for the use of the elevator shafts, rails, and penthouses attached thereto now or hereafter located in or passing through the Retail Parcel, which elevator shafts, rails, and penthouses house, guide or affect the use of the Freight Elevator and the Passenger Elevators.

(h) A non-exclusive Easement for ingress and egress to the roof areas of the Building for access to Facilities serving the Joffrey Parcel and the maintenance, repair and replacement thereof, as necessary, in compliance with Exhibit Z attached hereto.

(i) A non-exclusive Easement in, to, over, under, across and upon the basement of the Building for access to any Facilities serving the Joffrey Improvements and the Freight Elevator and any Joffrey Passenger Elevator and related appurtenances located therein.

(j) A non-exclusive Easement in, to, over, under, across and upon such portions of the Retail Parcel as may be reasonably necessary to carry out the intent of this Agreement and to provide the necessary services and other items referred to herein.

3.4 **Joffrey Parcel Easements in Favor of Retail Parcel.** The following perpetual Easements in, to, under, over, upon, through and about portions of the Joffrey Parcel in favor of the Retail Parcel are hereby granted:

(a) A non-exclusive Easement in and under the Joffrey Parcel to the extent reasonably necessary to permit the construction, reconstruction, equipping, and maintenance of structural members, walls, ceilings, and any other supporting components of the Retail Improvements.

(b) A non-exclusive Easement in, to, over, under, across and upon certain areas of the Joffrey Parcel for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation

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of storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone and cable lines, and other utility lines which serve the Retail Improvements. The installation of any utility lines shall be subject, as to location, to the approval of the Owner or Owners of the Joffrey Parcel which approval shall not be unreasonably withheld, conditioned or delayed.

(c) A non-exclusive Easement for the use for their intended purposes of all Facilities now or hereafter connected to Facilities now or hereafter located in the Joffrey Parcel, and any replacements thereof, which provide or shall be necessary or desirable to provide the Retail Improvements with any utilities or other services or which may otherwise be necessary or desirable to the operation, use and enjoyment of the Retail Improvements, except to the extent any such Facilities (e.g., chilled water) are provided separately and directly to each of the Condominium Parcel, the Retail Parcel and the Joffrey Parcel.

(d) A non-exclusive Easement, permitting encroachments of any part of the Retail Improvements upon any part of the Joffrey Parcel in the event and to the extent that, by reason of the original construction of the Retail Improvements or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Retail Improvements or the subsequent settlement or shifting of any part of the Retail Improvements encroaches or shall hereafter encroach upon any part of the Joffrey Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Retail Improvements continues to exist.

(e) A non-exclusive Easement for ingress and egress (and where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Joffrey Parcel to the extent reasonably necessary to permit the construction, equipping, fixturing and furnishing of the Retail Improvements and the Maintenance of the Retail Improvements as required or permitted pursuant to this Declaration, or as necessary in an Emergency Situation, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.4 or to provide structural support required by Article 6 hereof.

(f) A non-exclusive Easement for ingress and egress including pedestrian and vehicular traffic over, on and across those driveways, walkways, ramps, door ways, passengerways, stairways and corridors located in the Joffrey Parcel required or necessary to permit access to the Retail Improvements, elevator shafts and penthouses, mechanical components, or the roof areas of the Building.

(g) A non-exclusive Easement for the use of the elevator shafts, rails, and penthouses attached thereto now or hereafter located in or passing through the Joffrey Parcel, which elevator shafts, rails, and penthouses house, guide or affect the use of the Freight Elevator and the Passenger Elevators.

(h) A non-exclusive Easement for ingress and egress to the roof areas of the Building for access to Facilities serving the Retail Parcel and the maintenance, repair and replacement thereof, as necessary.

(i) A non-exclusive Easement in, to, over, under, across and upon such portions of the Joffrey Parcel as may be reasonably necessary to carry out the intent of this Agreement and to provide the necessary services and other items referred to herein.



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## ARTICLE 4 GENERAL PROVISIONS APPLICABLE TO ALL EASEMENTS

4.1 Each Easement created under Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through a particular Parcel, shall be subject (except in an Emergency Situation) to such reasonable limitations as the applicable Owner of such Parcel affected by such Easement may, from time to time after consultation with the Owners of the other Parcels, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable Parcel, and in order to assure the reasonable security of the applicable Parcel; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement.

4.2 Easements provided for, declared or created under Article 3 shall be binding upon the Owner of the applicable Parcel, shall run in favor of and inure to the benefit of and be appurtenant to the other Parcels and each portion thereof.

4.3 With regard to any portion of the Total Parcel over which Easements have been granted pursuant to Article 3 hereof, the Owner of that portion of the Total Parcel burdened by such Easement shall have the right, after consultation with the Owner or Owners benefitted by such Easements, to relocate any such Easements in the event comparable alternative means can be substituted to insure the continuation of the benefit granted and such relocation will not result in any cost to or material adverse affect on the Owner or Owners benefitted by such easement.

4.4 The grantee of any Easement hereunder affecting the Total Parcel or any portion thereof shall perform any construction, installation and/or Maintenance pursuant to such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Parcel and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Parcel or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Parcel to substantially the same condition as existed immediately prior to such construction, installation and/or Maintenance. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from any Owner, the Creditor Owner may, at its option, perform, or cause to be performed, the necessary restoration or replacement work, and shall be entitled to recover from the Defaulting Owner 110% of all costs and expenses incurred in connection therewith plus interest thereon as described in Section 11.4 hereof, and the Creditor Owner shall obtain a lien against that portion of the Total Parcel owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

4.5 The Easements granted, declared or created pursuant to Article 3 shall benefit the applicable Owners and their respective tenants, guests and invitees.

4.6 In the event of the submission of the Condominium Parcel or any portion thereof to the Act, then all of the Easements granted under Section 3.1 hereof shall, with respect to the portion of the Condominium Parcel so subjected to the Act, inure to the benefit of the Condominium Property and shall be part of the Common Elements attributable to the Condominium Property if and so long as the Condominium Property is subject to the Act.



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## ARTICLE 5 SERVICES

5.1 The Owners of the Condominium Parcel shall be solely responsible for the performance and implementation of the following services (“**Ownership Services**”), including the cost thereof unless otherwise specified herein, to the extent required and except as hereinafter limited or otherwise provided herein:

(a) Scavenger Service/Dumpsters. Providing for scavenger service for the Condominium Parcel and dumpsters and the maintenance thereof.

(b) Entrances. Maintenance of all entrances exclusively serving the Condominium Parcel, including entryways and lobbies serving the Condominium Parcel.

(c) Ramps and Stairways. Maintenance of all ramps and stairways exclusively serving the Condominium Parcel, and Maintenance of emergency stairs for the benefit of all Owners, except that each Owner shall be responsible for its Applicable Percentage of such emergency stairs Maintenance costs, payable as provided in Section 5.5 hereof.

(d) Utilities. Maintenance of all heating, ventilating and air conditioning systems and utilities located in the Total Parcel except for any such systems and utilities exclusively servicing the Retail Parcel or the Joffrey Parcel, as applicable. To the extent utilities are shared by the Owners, such services shall be separately metered or submetered and each party shall be solely responsible for the cost of such utility service, except that separate metering or submetering for domestic water will not be provided. The parties agree that each Owner shall pay its Applicable Percentage of the costs of hot water, sewer and gas. The Owners of the Condominium Parcel shall receive the billing from the service provider for any such utilities which require apportionment and shall timely submit invoices to the Owners of the Retail Parcel and the Joffrey Parcel, as applicable, for the share attributable to the Retail Parcel and the Joffrey Parcel, as applicable. The Owners of the Retail Parcel and the Joffrey Parcel shall each pay its Applicable Percentage of any such apportioned utilities to the Owners of the Condominium Parcel. The Owners of the Condominium Parcel shall be primarily responsible for payment of any such apportioned utility bills.

(e) Condominium Passenger Elevators. Maintenance of the Condominium Passenger Elevator and all costs associated therewith.

(f) Janitorial/Cleaning. Providing all janitorial and cleaning service for the Condominium Parcel at its sole cost and expense.

(g) Window Maintenance and Washing. Maintenance, washing, repair and replacement of the windows located on the Total Parcel which are part of the Condominium Parcel and are used or usable by Condominium Owners shall be the sole responsibility of the Owners of the Condominium Parcel.

(h) Exterior Facade. The Owners of the Condominium Parcel shall be responsible for the maintenance and other costs associated with the exterior facade of all of the floors of the Building above the fourth (4<sup>th</sup>) floor.

(i) Landscaping. Maintenance of the green roof above the fourth floor of the Building, except that each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

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(j) Extermination. Extermination of insects, rodents, vermin and other pests. Each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

(k) Plumbing Repairs. Maintenance of and repairs to all plumbing systems for the Total Parcel and supplies therefor. Each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

(l) Other Services. Any other services required for the use, operation, care and maintenance of the Condominium Property shall be provided by the Owners of the Condominium Parcel. The Owners of the Condominium Parcel shall not contract for services required for the use, operation, care and maintenance of the Total Parcel which are not for the exclusive use of any Parcel and which are not apportioned as provided herein without consultation with and the reasonable consent of the Owners of the Retail Parcel and the Joffrey Parcel.

5.2 The Owner of the Retail Parcel shall be solely responsible for the performance and implementation of the following services, including the cost thereof unless otherwise specified herein, to the extent required, except as hereinafter limited:

(a) Entrances. Maintenance of all entryways exclusively servicing the Retail Parcel.

(b) Ramps and Stairways. Maintenance of all ramps and stairways exclusively serving the Retail Parcel.

(c) Utilities. Maintenance of all heating, ventilating and air conditioning systems and utilities located in the Total Parcel which exclusively service the Retail Parcel. Shared systems shall be apportioned as set forth in Section 5.1(d) herein.

(d) Sidewalk Maintenance. Maintenance of all sidewalks and street level pavement adjacent to the Building, including snow removal, except that each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

(e) Elevators. Maintenance of the Retail Passenger Elevator serving the Retail Parcel and the Freight Elevator, and all costs associated therewith, except that the Owner of the Retail Parcel shall contribute the Applicable Retail Percentage of said costs for Maintenance of the Freight Elevator, the Owner of the Joffrey Parcel shall contribute the Applicable Joffrey Percentage of said costs for Maintenance of the Freight Elevator and the Owners of the Condominium Parcel shall contribute the Applicable Condominium Percentage of said costs for Maintenance of the Freight Elevator, payable in each case as provided in Section 5.5 hereof.

(f) Janitorial/Cleaning. The Owner of the Retail Parcel shall provide all janitorial and cleaning service for the Retail Parcel at its sole cost and expense.

(g) Window Washing and Maintenance. Maintenance, washing, repair and replacement of the windows on the Total Parcel which are part of the Retail Parcel and are used or usable by the Retail Parcel shall be the sole responsibility of the Owner of the Retail Parcel.

(h) Fire Panel Monitoring/Fire Safety Supplies. Providing for fire panel monitoring and fire safety systems for the Total Parcel, including supplies, except that each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

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(i) Trash Rooms. Deodorization and maintenance of the trash rooms in the basement of the Building adjacent to the loading docks, except that each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

(j) Loading Dock Area. Maintenance of the loading docks, service areas, delivery entrances, and related corridors, facilities and equipment located or to be located within the Total Parcel, except that each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

(k) Exterior Facade. The Owner of the Retail Parcel shall be responsible for the maintenance and other costs associated with the exterior facade of the first two (2) floors of the Building.

(l) Landscaping. Maintenance of all grade level planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials now or hereafter located or planted in the area surrounding the Building, excluding the green roof over the fourth floor.

(m) Inspections, Fees and Permits. Obtaining all permits and providing for all required inspections relating to the construction and occupancy of the Total Parcel, including required fees, except that each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in Section 5.5 hereof.

(n) Other Services. Any other services required exclusively for the use, operation, care and maintenance of the Retail Parcel shall be provided by the Owner of the Retail Parcel. The Owner of the Retail Parcel shall not contract for services required for the use, operation, care and maintenance of the Total Parcel which are not for the exclusive use of the Retail Parcel, the Joffrey Parcel or the Condominium Parcel and which are not apportioned as provided herein without consultation with and the reasonable consent of the Owners of the Condominium Parcel and the Joffrey Parcel, as applicable.

5.3 The Owner of the Joffrey Parcel shall be solely responsible for the performance and implementation of the following services, including the cost thereof unless otherwise specified herein, to the extent required, except as hereinafter limited:

(a) Entrances. Maintenance of all entryways exclusively servicing the Joffrey Parcel.

(b) Ramps and Stairways. Maintenance of all ramps and stairways exclusively servicing the Joffrey Parcel.

(c) Utilities. Maintenance of all heating, ventilating and air conditioning systems and utilities located in the Total Parcel which exclusively service the Joffrey Parcel. Shared systems shall be apportioned as set forth in Section 5.1(d) herein.

(e) Passenger Elevator. Maintenance of the Joffrey Passenger Elevator serving the Joffrey Property, and all costs associated therewith.

(f) Janitorial/Cleaning. The Owner of the Joffrey Parcel shall provide all janitorial and cleaning service for the Joffrey Parcel at its sole cost and expense.

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(g) Window Washing and Maintenance. Maintenance, washing, repair and replacement of the windows on the Total Parcel which are part of the Joffrey Parcel and are used or usable by the Joffrey Parcel shall be the sole responsibility of the Owner of the Joffrey Parcel.

(h) Exterior Facade. The Owner of the Joffrey Parcel shall be responsible for the Maintenance and other costs associated with the exterior facade of all of the floors of the Building above the second floor and below the fifth floor.

(i) Intentionally Deleted.

(j) Other Services. Any other services required exclusively for the use, operation, care and maintenance of the Joffrey Parcel shall be provided by the Owner of the Joffrey Parcel. The Owner of the Joffrey Parcel shall not contract for services required for the use, operation, care and maintenance of the Total Parcel which are not for the exclusive use of the Retail Parcel, the Joffrey Parcel or the Condominium Parcel and which are not apportioned as provided herein without consultation with and the reasonable consent of the Owners of the Retail Parcel and the Condominium Parcel.

5.4 Chilled water for cooling will be provided to each of the Retail Parcel, the Joffrey Parcel and the Condominium Parcel through a separate heat exchanger or exchangers provided by Thermal Technologies, Inc. pursuant to a separate agreement to be entered into between the Owner of each of the Parcels and Thermal Technologies, Inc. and usage of same shall be separately metered to each such Parcel, as will natural gas service.

5.5 Any costs reimbursable by the Owner or Owners of a Parcel to the Owner or Owners of the other Parcels shall be paid within fifteen (15) days after receipt of invoices accompanied by supporting data in reasonable detail. Any such invoices shall specify the item for which reimbursement is requested together with the basis for calculating the amount due from the applicable Owner or Owners. The Owner or Owners of the Parcel seeking reimbursement shall make available to the Owner or Owners of the other Parcels its books and records related to any costs for which reimbursement is sought.

5.6 The Owner or Owners of the a Parcel seeking reimbursement shall make good-faith efforts to secure and furnish the services described herein at competitive market prices for such services and in a manner so as to provide the Owner or Owners of the other Parcels with occupancy and enjoyment of its Parcel for its intended use. The Owners shall consult and cooperate with each other to effectuate the orderly operation and administration of the Improvements, and each Owner shall have reasonable input into parties to provide the aforesaid services. Notwithstanding the foregoing or anything else to the contrary herein, with respect to service providers or subcontractors providing services relating to the construction of the Building (e.g., fire alarm and other life safety systems and warranty work providers) shall be designated by the Declarant.

5.7 In the event of a dispute concerning the services to be provided or the costs associated therewith, the parties shall continue to provide services during the pendency of the dispute until final determination of the matters in issue by court proceedings, arbitration or otherwise.

## ARTICLE 6 STRUCTURAL SUPPORT; EXTERIOR OF THE BUILDING; SIGNAGE

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



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6.2 Except in the case in which Sections 10.3 or 10.4 hereof or Article 14 hereof is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the Improvements is endangered, then the following provisions shall apply:

(a) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, which determination shall be made by the Architect, then the Owner or Owners benefited by the structural support shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 21 would not require such approval) the Owners of the portions of the Total Parcel affected thereby, the Architect and Mortgagees under any Mortgage encumbering the portions of the Total Parcel affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners benefited thereby in proportion to the relative benefits to be derived by such Owner(s) from such substitute or additional support, as determined by the Architect and expressed as a percentage for each such Owner.

(b) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 21 would not require such approval) the Owners of the portions of the Total Parcel affected thereby, the Architect and the Mortgagees under any Mortgage encumbering the portions of the Total Parcel affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners responsible for the reduction or endangerment in proportion to the relative degree of culpability of such Owner(s) in causing the reduction or endangerment, as determined by the Architect and expressed as a percentage for each such Owner.

6.3 The responsible Owner or Owners shall commence, within a reasonable time under the circumstances, the construction of such substitute or additional support free of all mechanics lien claims, and having commenced such construction shall proceed diligently to cause the completion of such construction.

6.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners in accordance with Section 6.2 shall be determined as responsible for such construction, any Owner may, upon not less than thirty (30) days advance written notice to the other Owners (except that such advance written notice shall not be required in an Emergency Situation), provide substitute or additional structural support as and wherever may be required, or any Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner or Owners shall be liable for and pay all costs and expenses incurred as a result of any Owner's providing of any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners for substitute or additional support, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of any portion of the Total Parcel during any period of reconstruction.

6.5 Except as provided in Section 5.1(h) and Section 5.2(k), the Owner of the Condominium Parcel shall maintain the exterior and roof (over the fourth floor and the top floor) of the Building in a good condition as part of Ownership Services as set forth in Article 5 hereof. Each Owner may maintain



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and the Building directories in the locations which exist for Building signage as of the date of this Declaration. In the event of disputes as to the plans, specifications or location of any signs, the disputed issues shall be submitted to the Architect for determination as provided in Article 15 hereof. The roof (over the fourth floor and the top floor) of the Building and the air rights appurtenant to the Building shall be owned by the Owner of the Condominium Parcel and shall be subject to the Easements granted in favor of the Owners of the Retail and Joffrey Parcels set forth in Article 4 hereof.

6.6 The Building shall be named "The Joffrey Tower" and the Condominium Property shall be named "The Residences at The Joffrey Tower" (collectively, the "**Project Names**"). Appropriate signage and banners will be made available to identify the Building and the Condominium Property as such Project Names, at the sole cost and expense of the Owner of the Joffrey Parcel. By way of illustration and not as a limitation, the Owner of the Joffrey Parcel shall be entitled, subject to Declarant's approval, to have a professionally designed vertical blade sign comparable to the combined height of the third and fourth floors of the Building, as well as professionally designed silk screen, backlit signs applied to the inside of the glass windows of the Joffrey Improvements, substantially as depicted on Exhibit E-2 attached hereto and made a part hereof. The signage for the Joffrey Parcel as set forth in said Exhibit E-2 attached hereto is hereby deemed approved by the Owners of the Retail Parcel, the Joffrey Parcel and the Condominium Parcel. Declarant, at its sole cost and expense, shall be permitted to affix vertical canvass banners containing the names of any retailers occupying the Retail Improvements to the first and second floors of the Retail Parcel. Appropriate covenants (the "**Project Name Covenants**") will be recorded against the Total Parcel providing for the use of the Project Names for so long as The Joffrey Ballet is the primary occupant of the Joffrey Improvements; provided, however, the Owner of the Joffrey Parcel acknowledges and understands the Condominium Property has been marketed to the public as "MoMo" without reference to the Project Names. In the event the Owner of the Condominium Parcel objects to the Project Names for the Condominium Property, Declarant shall have the right to amend the Project Name Covenants to allow the Owner of the Condominium Parcel to adopt a legal entity name other than a Project Name, but such other name shall not be displayed on the exterior of the Building.

6.7 The Owner of the Retail Parcel shall be permitted to affix (or cause to be affixed) (i) one (1) sign on the west façade of the Building along North State Street above its entrance and to affix six (6) banners, four (4) on the western façade of the Building along North State Street and two (2) banners on the south façade of the Building along East Randolph Street, in each case such banner will be perpendicular to the Building façade from which they protrude and shall extend from the top of the first floor to the bottom of the fourth floor, as set forth in Exhibit E-1 attached hereto, together with the window signage depicted in said Exhibit E-1, which signage is hereby deemed approved by the Owners of the Retail Parcel, the Joffrey Parcel and the Condominium Parcel, and (ii) such other signage upon the glass panes and supports of any window (or within less than 24 inches of any window), or upon the doors or the exterior walls (including the rear) of the Retail Parcel, including advertising placards, names, insignias, trademarks, descriptive material or any other such like item or items which shall have first been approved in writing by the Owner of the Retail Parcel as to size, type, color, location, copy, nature and display qualities. No other banners or signs will be permitted on the first four floors of the Building other than the blade signs described in Section 6.6 hereof, which will be located only on the corners of the Building extending from the top of the fourth floor to the bottom of the third floor and diagonal to the corners of the Building so as not to obstruct the signs or banners of the Owner of the Retail Parcel. Those blade signs may only be used by the Owner of the Joffrey Parcel. Declarant shall not place on or affix to (or permit any other person to place on or affix to) the roof, exterior or interior walls of the Retail Parcel or Joffrey Parcel, or above Retail Parcel's store front or the first four floors of the Building, any signs or banners except as set forth above and in Section 6.6 hereof. Notwithstanding the foregoing, nothing in this Declaration shall restrict the Owner of the Retail Parcel to install (or cause to be installed) signs, decorations, advertising or other items in the interior of the Retail Parcel. The signs used by the Owner of

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the Joffrey Parcel may be used by any future Owner or tenant of the Joffrey Parcel which replaces The Joffrey Ballet. The Owner of the Joffrey Parcel and the Owner of the Condominium Parcel may have entry signs inside the first floor lobbies of their respective Parcels.

## ARTICLE 7 COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

### 7.1 Each Owner:

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

(b) shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Total Parcel or any portion thereof or the requirements of any insurance policy affecting insurance coverage on any other Owner's portion of the Total Parcel if non-compliance by it with respect to its portion of the Total Parcel or any portion thereof would (i) increase the premiums of any policy of insurance maintained by any other Owner or the premiums of any policy of insurance maintained by all Owners, or (ii) render any other Owner's portion of the Total Parcel uninsurable, or (iii) create a valid defense to any other Owner's right to collect insurance proceeds under policies insuring the Total Parcel or any other Owner's portion of the Total Parcel; provided, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in any other Owner's portion of the Total Parcel, such other Owner shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such non-compliance is not proceeding diligently and if upon expiration of ten (10) days after the receipt of such notice, any such cure of the non-compliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for 110% of all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur, together with interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner.

7.2 Any Owner shall remove, within thirty (30) days after the filing thereof, any mechanics, materialmen or any other like lien arising by reason of its act or any work or materials which it has ordered on any other Owner's portion of the Total Parcel, or on its portion of the Total Parcel if the existence or foreclosure of such lien on its portion of the Total Parcel would adversely affect any Easement hereunder or services to be furnished pursuant to Article 5 hereof. Notice of the filing of any such lien shall be served upon the Mortgagees. Any Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event any Defaulting Owner fails to remove any such lien within such thirty (30) day period, any Creditor Owner may, but is not required to, take such action as

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the Creditor Owner may deem necessary to remove such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for 110% of all costs and expenses incurred by the Creditor Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date of payment of such costs and expenses by the Creditor Owner to the date of reimbursement to the Creditor Owner. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing the Mortgagees; (ii) within said thirty (30) day period, foreclosure proceedings relating to such lien cannot be completed; and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner and to the Mortgagees, if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to an escrow agent for the mutual benefit of the parties cash (or an equivalent title insurance policy or endorsement) 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. Such escrow agent shall be a title insurance company designated by the Creditor Owner and reasonably satisfactory to the Defaulting Owner who shall hold such sum in an interest bearing account acceptable to the parties and shall disburse the proceeds thereof first to pay any final and non-applicable judgment with respect to such lien claim, and second to the Defaulting Owner to the extent excess proceeds remain in such escrow after the above payout or in the event of a final non-applicable judgment with respect to such lien claim removes any such lien without the requirement of payment or the lien is otherwise removed. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under any Mortgage, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within ten (10) days after the occurrence of any of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time after the end of said 10-day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

7.3 Each Owner (hereinafter in this Section 7.3 the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners (hereinafter in this Section 7.3, the "**Indemnitee**") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from: (i) the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Parcel or activities therein, or (ii) the use, exercise or enjoyment of an easement by the Indemnifying Owner or its tenants, guests or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, the Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.



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## ARTICLE 8 REAL ESTATE TAXES

8.1 The Owners shall make good faith efforts and cooperate with each other so that the Retail Parcel, the Joffrey Parcel and the Condominium Parcel shall, when and as soon as possible, be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor (hereinafter referred to as the "Assessor") of Cook County, Illinois. From and after submission of the Condominium Parcel to the Act, separate real estate tax bills and real estate tax index numbers will be applied for with respect to each Unit of the Condominium Property. At such time as the Retail Parcel, the Joffrey Parcel and the Condominium Parcel have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, the Owner of the Retail Parcel shall pay the real estate tax bill for the Retail Parcel, the Owner of the Joffrey Parcel shall pay the real estate tax bill for the Joffrey Parcel, and the Owner of the Condominium Parcel shall pay the real estate tax bill for the Condominium Parcel.

8.2 Until such time as the Parcels have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, the Owner of the Condominium Parcel shall be responsible for 84.375% of the real estate tax bill for the Total Parcel, the Owner of the Retail Parcel shall be responsible for 6.000% of the real estate tax bill for the Total Parcel, and the Owner of the Joffrey Parcel shall be responsible for 9.625% of the real estate tax bill for the Total Parcel. The Owner of the Retail Parcel shall pay the combined tax bill or bills for the Total Parcel prior to their due date. The Owners of the Condominium Parcel and the Joffrey Parcel shall each be responsible for and shall pay or reimburse the Owner of the Retail Parcel (within ten (10) days after the demand of the Owner of the Retail Parcel therefor, accompanied by copies of the applicable real estate tax bills and a statement setting forth the determination made by the Owner of the Retail Parcel of each Owner's share of the amount due), for its aforesaid percentage of the total real estate taxes levied in the combined tax bill or bills for the Total Parcel.

8.3 If any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to Section 8.2, then any Creditor Owner may, after at least ten (10) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, plus interest thereon as provided in Section 11.4 hereof, and shall also have a lien against the portion of the Total Parcel owned by the Defaulting Owner in accordance with Article 11 hereof.

8.4 It is understood and acknowledged that the Owner of the Joffrey Parcel has applied, or intends to apply, for exemption from real estate taxes with respect to the Joffrey Parcel. If pursuant to Section 8.2 hereof the Owner of the Joffrey Parcel pays a percentage of the real estate tax bill for the Total parcel, and thereafter obtains an exemption from real estate taxes for all or a portion of the period for which it has paid such real estate taxes, then the Owner of the Joffrey Parcel shall be entitled to seek and obtain from the taxing authorities a refund of all or a portion of such real estate taxes paid by the Owner of the Joffrey Parcel applicable to the Joffrey Parcel.

## ARTICLE 9 INSURANCE

9.1 The Owners shall procure and maintain the following insurance:

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(a) Each Owner shall keep its respective Improvements (including without limitation the foundation, if applicable) insured under a single insurance policy under an "all risk" or "special form" property policy for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policy shall be endorsed with a replacement coverage endorsement and an agreed amount clause and a "joint loss" clause, and no co-insurance penalty shall be applicable.

(b) Each Owner shall maintain Condominium General Liability Insurance under a single insurance policy covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Total Parcel, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of first-class, mixed-use buildings in the City of Chicago, but in all events for limits of not less than ONE MILLION AND NO/100 (\$1,000,000) DOLLARS combined single limit per occurrence with a general policy aggregate of TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS for personal and bodily injury or property damage with at least an additional THREE MILLION AND NO/100 (\$3,000,000) DOLLARS umbrella coverage, and shall also include non-owned and hired automobile liability insurance for limits of not less than FIVE HUNDRED THOUSAND AND NO/100 (\$500,000) DOLLARS.

(c) The Owner of the Retail Parcel shall insure under a single policy the remainder of the Improvements on a comprehensive, blanket basis covering all Building equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis, and such other insurance that may be reasonably required to carry out the intent of this Agreement and to adequately protect the respective interests of the Owners.

9.2 The costs of the insurance premiums on the insurance policies described in Section 9.1(c) hereof shall be allocated between the Owners as provided in the Allocation Schedule, and paid as provided in Section 5.5 Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-/VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service.

9.3 Each policy described in Section 9.1 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days' advance written notice shall be sufficient and (iii) shall, if available, provide, except for the liability insurance required under Section 9.1(b), that all amounts payable thereunder shall be paid to the Depositary in accordance with Articles 16 and 21 hereof. Nothing contained in this Section 9.3 shall prevent the naming of any person, as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of mortgage clause, and each Owner shall be required to name the Owners as additional insured parties as their interests may appear with respect to liability policies referred to in Section 9.1(b) hereof; provided, however, that a Mortgagee receiving any proceeds of any insurance policy described in Section 9.1(a) and Section 9.1(c) shall deposit the insurance proceeds with the Depositary in accordance with Articles 16 and 17 to the extent that the Owner of the portion of the Total Parcel subject to such Mortgage receiving such proceeds would be required to do so.



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9.4 Limits of liability or types of insurance specified in this Article 9 or carried by the Owners shall be reasonable and prudent for an Owner of a mixed-use development similar to the Total Parcel, and shall be jointly reviewed by the Owners at least once every five (5) years to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverage or endorsements should be deleted. Deductible amounts for insurance required under Section 9.1 shall be in such amounts as are customary or prevalent for an Owner of a mixed-use development similar to the Total Parcel. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said periodic review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance agent or consultant to perform such review periodically on their behalf and the cost of employing any such agent or consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder. If the parties are unable to agree upon the types or amount of insurance coverage to be maintained, the issue shall be submitted to arbitration in the manner set forth in Article 12 hereof.

9.5 Certificates in the form of Accord 27 or similar form delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner (or, if appropriate, to the Condominium Association) and to the Mortgagees, at least thirty (30) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Copies of such policies shall be delivered upon request. Should an Owner fail to pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and any other Owner may pay the Defaulting Owner's share of such premiums or costs and the Defaulting Owner shall reimburse the Creditor Owner for 110% of any such amounts paid by the Creditor Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner. Additionally, the Creditor Owner shall obtain a lien against the property of the Defaulting Owner pursuant to Section 11.1 hereinbelow.

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

## ARTICLE 10 MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

10.1 The Owner of the Condominium Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owners of the Retail Parcel and the Joffrey Parcel, as applicable, pursuant to this Declaration, shall keep the Condominium Parcel and all Facilities located therein or Improvements thereon or for which the Owner of the Condominium Parcel is assigned

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Maintenance responsibility in this Declaration 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 good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Condominium Parcel further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property. Except as otherwise expressly provided in this Declaration (including in any exhibits hereto), any such costs incurred in accordance with this Section 10.1 shall be paid for by the Owner of the Condominium Parcel.

10.2 Subject to Article 5 hereof, the Owner of the Retail Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owners of the Condominium Parcel and the Joffrey Parcel, as applicable, pursuant to this Declaration, shall keep the Retail Parcel and all Facilities located therein or Improvements thereon or for which the Owner of the Retail Parcel is assigned Maintenance responsibility in this Declaration 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 and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Retail Parcel further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Except as otherwise expressly provided in this Declaration (including in any exhibits hereto), any such costs incurred in accordance with this Section 10.2 shall be paid for by the Owner of the Retail Parcel.

10.3 Subject to Article 5 hereof, the Owner of the Joffrey Parcel, at its sole cost and expense except to the extent of costs and expenses required to be paid by the Owners of the Condominium Parcel and the Retail Parcel, as applicable, pursuant to this Declaration, shall keep the Joffrey Parcel and all Facilities located therein or Improvements thereon or for which the Owner of the Joffrey Parcel is assigned Maintenance responsibility in this Declaration 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 and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Joffrey Parcel further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Except as otherwise expressly provided in this Declaration (including in any exhibits hereto), any such costs incurred in accordance with this Section 10.3 shall be paid for by the Owner of the Joffrey Parcel.

10.4 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about one (1) Parcel only, then any such damage shall be repaired and restored by the Owner of the portion of the Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of any other Owner or services to be furnished any other Owner under Article 6 hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or

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restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 17 hereof be entitled to reimbursement upon demand from the Defaulting Owner for 110% of all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds, plus interest at the Default Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner.

10.5 If the Improvements are damaged by fire or other casualty and if the provisions of Section 10.3 are not applicable because the nature of the damage is such that it does not fall within a single Parcel as set forth in Section 10.5, then the repair and restoration of such damage shall be the responsibility of the Owner or Owners whose portions of the Total Parcel are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners who are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Mortgagees, if required. In the event such Owners, and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration pursuant to Article 12 hereof. The plans and specifications for such repair and reconstruction shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Mortgagees, if required.

10.6 If the cost and expense of performing any repair and restoration to any Owner's Improvements provided for in Section 10.5 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owners' Improvements, then such excess cost and expense shall be borne by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements.

10.7 In any instance of repair or restoration pursuant to Sections 10.4 or 10.5 hereof, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable, independent, professional, construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing such repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owners demanding that each Owner deposit with the Depository the amount of such excess cost and expense attributable to each Owner pursuant to this Article 10. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owners and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 10.7, or fails to deliver the security provided for within thirty (30) days after receipt of another Owner's written demand therefor, then the



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Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for 110% of such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment, plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

10.8 If any or all of the Condominium Improvements, the Joffrey Improvements and/or Retail Improvements are Substantially Damaged, then the following provisions shall be applicable:

(a) The proceeds of insurance shall be allocated between the Condominium Improvements, the Retail Improvements and the Joffrey Improvements based upon the extent of damage to each respective Improvements. Insurance proceeds applicable to the Condominium Improvements shall be paid into a Depositary established for the Owners of the Condominium Parcel consistent with the provisions of Sections 16.1 and 16.2 hereof. Insurance proceeds applicable to the Retail Improvements or the Joffrey Improvements shall be paid into a Depositary established for the Owner of the Retail Parcel or the Owner of the Joffrey Parcel, as applicable. The Mortgagee of a mortgage encumbering the damaged portion of the Retail Parcel or the Joffrey Parcel shall be deemed to be the Depositary; provided, however, any such Mortgagee shall have the right within thirty (30) days after such casualty loss has been finally adjusted to elect not to act as the Depositary with respect to such funds. If such right of election is exercised within such thirty (30) day period, then the Owner of the Retail Parcel may appoint the Depositary (subject to the approval of the said Mortgagee, which approval will not be unreasonably withheld or delayed) with respect to such funds.

(b) The Owners of the Condominium Parcel shall determine whether to rebuild and restore the Condominium Improvements consistent with the provisions of the Act. In the event that the Owners of the Condominium Parcel reach a determination not to rebuild or restore the Condominium Improvements, then the Condominium Improvements (or affected areas thereof) 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 Condominium Improvements. In such event, the available insurance proceeds allocated to the Condominium Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to the Owners of the Condominium Parcel, or, if applicable, the Mortgagees holding mortgages encumbering such Owners' respective portions of the Condominium Parcel in accordance with the terms of such encumbrances. Such demolition shall be deemed to be a "**repair or restoration**" to which the provisions of Sections 10.4, 10.5, 10.6 and 10.7 hereof are applicable except that demolition, and not construction, shall be performed. The Owners of the Condominium Parcel shall restore the Condominium Improvements after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the Improvements, to preserve the use of the Easements granted in the Declaration, to preserve utility service and building systems affecting the remaining portions of the Improvements, and to prevent any violations of the applicable ordinances of the City of Chicago caused by the failure to rebuild. The cost of preserving utility service and building systems affecting the remaining portions of the Improvements shall be equitably divided between the Owners.

(c) The Owner of the Retail Parcel shall determine whether to rebuild and restore the Retail Improvements subject to the approval of any Mortgagee whose mortgage encumbers the damaged area of the Retail Improvements. In the event that the Owner of the Retail Parcel determines not to rebuild or restore the Retail Improvements, then the Retail Improvements (or affected areas thereof) 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

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the Retail Improvements. In such event, the available insurance proceeds allocated to the Retail Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be paid to the Mortgagees holding mortgages encumbering the Retail Parcel, or, if the Retail Parcel is unencumbered, then such proceeds shall be paid to the Owner of the Retail Parcel. Such demolition shall be deemed to be a **"repair or restoration"** to which the provisions of Sections 10.10.5, 10.6 and 10.7 hereof are applicable except that demolition, and not construction, shall be performed. The Owner of the Retail Parcel shall restore the Retail Improvements portion after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the Improvements, to preserve the use of the Easements granted in the Declaration, to preserve utility service and building systems affecting the remaining portions of the Improvements, and to prevent any violations of the applicable ordinances of the City of Chicago caused by the failure to rebuild. The cost of preserving utility service and building systems affecting the remaining portions of the Improvements shall be equitably divided between the Owners.

(d) The Owner of the Joffrey Parcel shall determine whether to rebuild and restore the Joffrey Improvements subject to the approval of any Mortgagee whose mortgage encumbers the damaged area of the Joffrey Improvements. In the event that the Owner of the Joffrey Parcel determines not to rebuild or restore the Joffrey Improvements, then the Joffrey Improvements (or affected areas thereof) 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 Joffrey Improvements. In such event, the available insurance proceeds allocated to the Joffrey Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be paid to the Mortgagees holding mortgages encumbering the Joffrey Parcel, or, if the Joffrey Parcel is unencumbered, then such proceeds shall be paid to the Owner of the Joffrey Parcel. Such demolition shall be deemed to be a **"repair or restoration"** to which the provisions of Sections 10.10.5, 10.6 and 10.7 hereof are applicable except that demolition, and not construction, shall be performed. The Owner of the Joffrey Parcel shall restore the Joffrey Improvements portion after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the Improvements, to preserve the use of the Easements granted in the Declaration, to preserve utility service and building systems affecting the remaining portions of the Improvements, and to prevent any violations of the applicable ordinances of the City of Chicago caused by the failure to rebuild. The cost of preserving utility service and building systems affecting the remaining portions of the Improvements shall be equitably divided between the Owners.

10.9 For purposes of this Article 10 architects' and engineers' fees, attorneys' fees, consultants' fees, insurance fees, reasonable costs and expenses of institutional lenders incurred in connection with financing repairs or restoration of Improvements for a term of not more than one year, title insurance premiums and other similar construction expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

## ARTICLE 11 LIENS, RIGHTS AND REMEDIES

11.1 If, at any time, any Owner fails within thirty (30) days after notice or demand to pay any sum of money due another Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor owner may have, the Creditor Owner shall have in the event of a default under Articles 10 or 14, a lien against any condemnation award or insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Improvements or otherwise under insurance policies carried pursuant to Article 9 hereof. Such liens shall



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continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The lien provided for in this Section 11.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on a portion of the Total Parcel or other interest of the Defaulting Owner, other than a Mortgage against such portion of the Total Parcel at the time of the recording of the notice of lien.

11.2 To the fullest extent permitted by law, the provisions of this Article 11 shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligations of the Unit Owners to repair or restore any portion of the Improvements that constitutes Condominium Property, or (ii) the use of insurance proceeds to repair or restore any portion of the Improvements that constitutes Condominium Property. In the event of fire or other casualty or act of nature or force majeure causing damage to any portions of the Improvements subject to the Act which would entitle any Owner, under the Act, to withdraw all or any part of such Condominium Property from the Act and not to repair and restore such Condominium Property as required by this Declaration, then the other Owners shall have a lien on any insurance proceeds payable for loss or damage to such portion of the Improvements under insurance policies carried pursuant to Article 9 hereof and on any condemnation award pursuant to Article 14, in an amount necessary so that the other Owners shall have sufficient proceeds to demolish or repair and restore the Improvements to a condition so as adequately to assure:

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

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

11.3 No conveyance or other divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall in any way affect or diminish any lien arising pursuant to this Article 11, and any lien which would have arisen against any property pursuant to this Article 11 had there been no conveyance or foreclosure of a lien which shall then be and remain superior) shall not be defeated or otherwise diminished or affected by reason of such conveyance or divestiture of title.

11.4 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall be payable from the date any such sum first is due hereunder until

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paid in full, at a rate of interest (the "**Default Rate**") equal to the lesser of (a) the floating rate which is equal to four percent (4%) per annum in excess of the annual rate of interest from time to time announced by First American Bank at Chicago, Illinois (or other major bank in the City of Chicago selected by the Owners if First American Bank ceases to exist) as its "prime rate" or "corporate base rate" of interest or a reasonable substitute therefor in the event a "prime rate" or "corporate base rate" is no longer announced, or (b) the then maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt.

11.5 If any Owner fails to perform its obligations under this Declaration (except when such failure is caused by an Unavoidable Delay as defined in Article 13 hereof), and such failure shall continue for a period of sixty (60) days after written notice thereof to the Defaulting Owner, any Creditor Owner shall have the right to take possession and control of and to operate, maintain, repair and replace the Facilities (wherever located) required for the furnishing of such service until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure. For any period in which a Creditor Owner is performing pursuant to this Section 11.5, the Defaulting Owner shall pay the Creditor Owner 110% of the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance plus interest thereon as described in Section 11.6 hereof.

11.6 The rights and remedies of an Owner provided for in this Article 11 or elsewhere in this Declaration are cumulative and not intended to be exclusive of any other remedies to which such Owner may be entitled at law or in equity or by statute. Any Owner may enforce, by a proceeding in equity for mandatory injunction, any other Owner's obligation to execute or record any document which such other Owner is required to execute under or pursuant to this Declaration. The exercise by such Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

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

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

11.9 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs together with interest at the Default Rate from the date expended shall be added to the amount of any applicable lien created under this Article 11.

## ARTICLE 12 ARBITRATION

12.1 The following matters shall be submitted for arbitration to the American Arbitration Association (the "AAA") pursuant and subject to the provisions of this Article 12:

(a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$100,000, which \$100,000 shall mean \$100,000 in 2007 equivalent dollars, which shall not be resolved within sixty (60) days after same has arisen; and

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(b) All other matters which are required under this Declaration to be submitted for, or determined by, arbitration.

Any such dispute, claim, controversy or matter is referred to herein as a "**Matter**". Arbitration of any Matter shall be initiated by any Owner making a written demand therefor by giving written notice thereof to the other Owners involved in the Matter 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 applicable Mortgagees shall be parties to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagees hereunder. Should the AAA cease to exist, another entity offering arbitration of disputes shall be appointed by the parties as the arbiter of the dispute, claim or controversy.

12.2 Unless otherwise agreed to in writing by the parties to the arbitration within twenty (20) business days after the notice demanding arbitration has been given, the parties shall jointly designate three (3) arbitrators to resolve the Matter. If the parties fail to designate the arbitrators within such time period, arbitrators shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in any event such arbitrators shall be experienced as to the design, construction and/or operation, as the Matter requires, of high-rise, multi-use structures similar to the Building. Except where contrary to the provisions set forth in this Declaration, the AAA Commercial Arbitration Rules shall apply to the arbitration of any Matter. During the twenty (20) business-day time period referenced above, the parties may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

12.3 The arbitrators shall commence hearings within sixty (60) days of selection, unless the Owners and the arbitrators agree upon an expedited or delayed schedule of hearings. Prior to the hearings, any Owner may send out requests to compel document production from the Owners. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by such Owners or may be ordered by the arbitrators to the extent reasonable. The arbitrators 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 arbitrators 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 Declaration. 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 arbitration panel may hear and determine the Matter upon evidence produced by the appearing Owners. The arbitration costs shall be borne equally by each Owner involved in the Matter being arbitrated, except that each Owner shall be responsible for its own expenses.

12.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Declaration in accordance with this Declaration during the course of any arbitration constituted or conducted under the provisions of this Article 12. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by any Owner to the Matter 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 12.

12.5 With respect to any Matter subject to arbitration under this Article 12, it is agreed that the arbitration provisions of this Article 12 shall be the sole remedy of the Owners under this Declaration.

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Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter not described in this Article 12 or with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article 12 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 arbitrators shall be final and binding upon the Owners and the Mortgagees and judgment thereon shall be entered by any court having jurisdiction.

12.6 For purposes of this Article 12, "**2007 equivalent dollars**" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 2007. The 2007 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 (a) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination and (b) the Consumer Price Index for October 1, 2007, and the denominator of which is the Consumer Price Index for October 1, 2007. As used herein, the term "**Consumer Price Index**" shall mean the Consumer Price Index for Urban Wage Earners and the Clerical Workers, City of Chicago, All Items (Base Year 1982-84 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

## ARTICLE 13 UNAVOIDABLE DELAYS

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

## ARTICLE 14 CONDEMNATION

14.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Parcel by any competent authority for any public or quasi-public use, the award, damages or just compensation (the "**Award**") resulting from any such taking shall be allocated and disbursed, and any repair and restoration of the Improvements shall be performed, in accordance with the requirements of this Article 14.

14.2 All Awards resulting from the taking of all or any part of the Total Parcel, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to



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the Depositary and disbursed by the Depositary as hereinafter provided. In the event of a taking of a temporary use of any space not affecting services described in Article 5 hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Total Parcel.

14.3 In the event of (a) a taking (other than a temporary taking) of all or a part of the Condominium Parcel only (not affecting services described in Article 5 hereof, except those having minimal or incidental effect), or (b) a taking (other than a temporary taking) of all or a part of the Retail Parcel or Joffrey Parcel only, then, subject to the provisions of Section 14.6 hereof, the Owner of the portion of the Total Parcel in which the taking occurred shall repair and restore the remainder of its portion of the Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner of the portion of the Total Parcel in which the taking occurred. Such Owner shall be entitled to withdraw any Award paid to the Depositary by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article 17 hereof and to retain any excess not required for such repair and restoration.

14.4 In the event of a taking other than (a) a temporary taking described in Section 14.2 hereof, (b) a taking described in Section 14.3 hereof, or (c) a taking of all or substantially all of the Total Parcel, then, subject to the provisions of Section 14.6 hereof, the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners affected by such taking and their Mortgagees, if required by the terms of the Mortgages. The plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the Improvements as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and the costs of such work shall be paid by those Owners whose portions of the Total Parcel were the subject of the taking in such shares as such Owners may agree among themselves and shall be performed on behalf of the Owners by a contractor jointly selected by the Owners. The selection of such contractors shall be subject to the approval of the affected Mortgagees, if required. In the event such Owners and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration pursuant to Article 12 hereof. If such repair and restoration is to be performed solely in the portion of the Total Parcel owned by one of the Owners, then, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined in Article 21, the approval of the Owners of, and any Mortgagees with respect to, the other portions of the Total Parcel shall not be required with respect to the plans and specifications therefor, nor shall the consent of the Owners of, and any Mortgagees with respect to, the other portions of the Total Parcel be required with respect to selection of a contractor therefor. If as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements of access, ingress and egress and use of Facilities and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 3 and 4 hereof and for the furnishing of services under Article 5 hereof.

14.5 The Award for any taking described in Section 14.4 shall first be used to pay for the repair and restoration (including any demolition, repair or restoration under Section 14.6 hereof). Each portion of the Award attributable to a particular portion of the Total Parcel shall only be utilized to repair and restore that portion of the Total Parcel to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Parcel over the cost of repair and restoration to that portion of the Total Parcel shall then be allocated to the respective Owners of that portion of the Total Parcel or, if applicable,

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to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Parcel in accordance with the terms of such encumbrance.

14.6 Notwithstanding any other provision to the contrary, if, as a result of a taking (other than a temporary taking or a taking described in Section 14.7 hereof), any Owner reasonably determines that the portion of the Total Parcel owned by it no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the Improvements owned by it as may be required by Sections 14.3 and 14.4 hereof. However, in such case, such Owner shall demolish, repair or restore the Improvements owned by it to the extent, if any, as may be necessary to provide essential services or structural support for the other portions of the Total Parcel, but only if all the Owners of the other portions of the Total Parcel affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of the Total Parcel owned by it and shall restore its portion of the Total Parcel to a slightly and safe condition and in such a manner as to safeguard the other portions of the Total Parcel, and to preserve the use of the Easements granted hereunder. Such demolition, repair or restoration shall be deemed to be a repair or restoration to which the provisions of Section 14.4 hereof are applicable.

14.7 In the event of a taking of all or substantially all of the Total Parcel, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners in accordance with said apportionment, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owners' respective portions of the Total Parcel in accordance with the terms of such encumbrance.

## ARTICLE 15 ARCHITECT

15.1 The appointment of an architect in accordance with this Article 15 shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Total Parcel. Any Owner desiring that a determination of a dispute be submitted to an Architect pursuant to the provisions of this Declaration shall notify the other Owner or Owners involved in said dispute and in said notice identify three (3) firms consisting of both architects and engineers experienced in the design and operation of structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Declaration. Each such firm shall not have or have had any relationship with the Owner so proposing such firm. The responding Owner or Owners shall choose one of said three (3) firms who shall be deemed the "Architect" hereunder. Failure of the responding Owner or Owners to so choose one of said firm within fifteen (15) days of said notice shall be deemed to be an appointment of the first listed of said three (3) firms to be the Architect hereunder.

15.2 In any instance when the Architect serving pursuant to Section 15.1 hereof is authorized by this Declaration to advise the Owners concerning any dispute or matter, any Owner involved in such dispute or matter may submit the same to the Architect. The decision of such Architect shall be final and binding upon the Owners. The Owner submitting such dispute or matter shall simultaneously give written notice of the submission of such dispute or matter to the other Owners involved in such dispute and the Mortgagees. The Architect shall, except in an Emergency Situation, afford each Owner involved in any dispute or matter, and any attorney or other representative designated by such Owner and the Mortgagees, an opportunity to furnish information or data or to present such Owner's views.

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15.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursable for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their equitable share of such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Defaulting Owner shall, within ten (10) days after written demand for reimbursement, reimburse the Creditor Owner for any such payment, plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

## ARTICLE 16 DEPOSITARY

16.1 In the event of Substantial Damage to the Condominium Improvements, the Retail Improvements, the Joffrey Improvements, or the Improvements as a whole, a depositary (a "**Depositary**") shall be appointed in the manner hereinafter provided for each of the Condominium Improvements, the Retail Improvements or the Joffrey Improvements, as applicable, to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies, to otherwise administer the insurance proceeds applicable to the Condominium Improvements, the Retail Improvements or the Joffrey Improvements, as applicable, consistent with the provisions of Section 10.7 hereof, and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Section 9.1(a) hereof and condemnation awards arising in connection with this Declaration shall be paid to the applicable Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

16.2 As used hereinafter in this Article, the phrase "**Damaged Improvements**" shall refer to either the Condominium Improvements, the Retail Improvements, or the Joffrey Improvements, as applicable, or any combination thereof, if applicable, as to which a casualty loss shall have occurred. In the event of any casualty loss which affects only the Condominium Improvements, the Retail Improvements or the Joffrey Improvements, as applicable, then the Mortgagee of a Mortgage applicable to the Damaged Improvements shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, to elect either to act as Depositary or to appoint the Depositary with regard to such funds. If such right of election is not exercised within said thirty (30) day period, then the Owner of the Damaged Improvements shall have the right to appoint the Depositary with regard to such funds.

16.3 Each Owner whose portion of the Improvements is the subject of any such casualty loss or condemnation shall be obligated to pay the reasonable fees and expenses of the Depositary in proportion to their respective insurance proceeds or respective condemnation awards, as the case may be. Any Depositary appointed to act hereunder shall execute an agreement with the Owners whose portion of the Improvements is the subject of any such casualty loss or condemnation accepting said appointment in form and content acceptable to such Owners and in accordance with the provisions of this Declaration.

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16.4 The Depository shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award or awards unless the Depository shall have been given an express written authorization from the Owners; provided that, if only one Owner claims said insurance proceeds or condemnation award or awards, then said Owner alone may authorize the Depository to so proceed; provided further, however, that if the Condominium Improvements and/or the Retail Improvements and/or the Joffrey Improvements are in any material way affected by the disbursement of any such insurance proceeds or condemnation award or awards, then the consent of the Mortgagee of the appropriate Mortgage shall be required.

16.5 The monies on deposit shall be held in an interest-bearing account pursuant to an agreement among the Depository and the Owners whose portion of the Total Parcel has been the subject of any casualty loss or condemnation. Any interest paid or received by the Depository on monies held in trust shall be added to the monies or securities so held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Declaration shall not be commingled with the Depository's own funds and shall be held by the Depository in trust for the uses and purposes herein provided.

16.6 The Depository may resign by serving written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall jointly, with the consent of the Mortgagees, if required, appoint a substitute who qualifies under Section 16.1 hereof, and the Depository shall transfer all funds together with copies of all records held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, then the Mortgagees shall appoint a substitute who qualifies under Section 16.1 hereof within thirty (30) days thereafter, and the Depository shall transfer all funds, together with copies of all records held by it as Depository, to such substitute, at which time its duties as Depository shall cease. If the Mortgagees shall fail to appoint a substitute within said additional thirty (30) day period, then the Depository may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois, who qualifies under Section 16.1 hereof.

16.7 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policies required to be carried pursuant to this Declaration or condemnation awards of less than ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS shall be paid directly to the party so entitled rather than to the Depository.

## ARTICLE 17 DISBURSEMENTS OF FUNDS BY DEPOSITARY

17.1 (a) Each request by an Owner or the Architect acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any condemnation award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the applicable Owner or Architect, and with respect to the information described in Section 17.1(a)(ii) below, verified by the Architect, dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:

- (i) That the sum requested has either (1) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (2) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses



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shall be stated) who have rendered or furnished certain services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics Lien Act set forth in 770 ILCS 60/0.01 et seq. (the "**Mechanics Lien Act**") and any title insurer affording coverage against mechanics liens;

- (ii) That the sum 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);
  - (iii) That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and
  - (iv) That the cost to complete the unfinished Work will not exceed the funds or security therefor held by the Depository after payment of the then-current request.
- (b) Upon compliance with the provisions of Section 17.1(a) (but not more frequently than once in any thirty (30) day period) and
- (i) upon receipt of contractors' and subcontractors' sworn statements required under the Mechanics Lien Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by any title insurer affording coverage against mechanics liens from the persons named in the sworn statement, and
  - (ii) approval by the title insurer, the Owners, the Mortgagees of the Mortgages on portions of the Improvements on which or for the benefit of which Work will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics lien claims relating to Work in place and the continued priority of the lien of the Mortgages securing the Mortgagees whose approval is required above;

the Depository shall, out of the monies so held by the Depository and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the owner's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners or the Mortgagees or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner or the Architect to the Depository in accordance with the provisions of Section 17.1(a) hereof and shall

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not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

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

## ARTICLE 18 ESTOPPEL CERTIFICATES

18.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner (subject to payment of the fees described below in this Section 18.1, if applicable), execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or Mortgagee designated by the requesting Owner, a certificate (an "**Estoppel Certificate**") stating:

- (a) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;
- (b) whether there is any existing default hereunder (or, to the responding Owner's knowledge, grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;
- (c) whether there are any sums (other than those arising out of the normal course of operation of the Improvements within the previous forty-five (45) days) which the responding Owner is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amount thereof;
- (d) whether the responding Owner has performed or is performing Work other than services pursuant to Article 5 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 such other Owner, and if there is any such Work, specifying the nature and extent thereof;
- (e) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder or otherwise known by the responding Owner against the enforcement of the requesting Owner's rights hereunder;
- (f) the total amount of all liens being asserted or capable of being asserted after giving the requisite notice, if any, required hereunder by the responding Owner under the provisions of this Declaration, and describing the applicable provision or provisions and the details of any such lien claim;

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(g) whether the responding Owner 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 12 involving the responding Owner made within the ninety (90) days preceding the date of such Estoppel Certificate;

(i) the current address or addresses to which notices given to the responding Owner are required to be mailed under Article 22 hereof; and

(j) such other facts or conclusions pertaining to matters arising under this Declaration as to which the responding Owner has knowledge as may be reasonably requested.

18.2 So long as any portion of the Total Parcel remains subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of such portion of the Total Parcel subject to the Act shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by the Owner of any portion of the Total Parcel subject to the Act may only be requested by the Condominium Association on behalf of the Owner of such portion of the Total Parcel subject to the Act.

## ARTICLE 19 CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

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

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## ARTICLE 20 AMENDMENTS TO DECLARATION

20.1 Declarant reserves the right and power to record a special amendment (a "**Special Amendment**") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration. A Special Amendment may also, with the consent of an affected Owner, contain such complementary, additional and supplemental grants and reservations of Easements as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Parcel and may also make such other modifications of, or additions or deletions to, this Declaration as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Parcel or any portion thereof. Declarant also reserves the right to include, within a Special Amendment, revisions to the legal descriptions of the Condominium Parcel, the Retail Parcel and the Joffrey Parcel. Each Mortgage, other evidence of obligation, or other instrument affecting any portion of the Total Parcel, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. Each Special Amendment shall be recorded with the Recorder and shall be effective from and after the date of recording. The right of the Declarant to act pursuant to rights reserved or granted under this Section 20.1 shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Total Parcel. Notwithstanding the foregoing, no Amendment may be made to this Declaration which in any material respect adversely impacts a Parcel without the prior written approval of the Owner of such Parcel.

## ARTICLE 21 ALTERATIONS

21.1 (a) Any Owner (an "**Altering Owner**") may, at any time, at such Altering Owner's sole cost and expense, make additional improvements or alterations ("**Alterations**") to the part of the Improvements within such Altering Owner's portion of the Total Parcel, provided that such Alterations comply with the balance of this Section 21.1 and all of the other provisions of this Article 20. Any plans and specifications for any restoration of the Improvements which contain substantially the same architectural features as the Improvements which existed prior to the necessity of restoration shall not be deemed to be Alterations within the meaning of this Article 21. Further, the Alteration of interior space contained in a Parcel may be made without the prior approval of the Owners of the other Parcels.

(b) Unless otherwise provided in Section 21.1(a) and this Section 21.1(b) or in Section 21.4 below, Alterations shall not be made without the prior written consent of the other Owner or Owners affected by such Alterations if such Alterations will:

- (i) unreasonably diminish the benefits afforded to such other Owner(s) by any Easement or unreasonably interrupt such other Owner(s) use or enjoyment of any Easement;
- (ii) alter the facade of the Improvements;
- (iii) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Parcel;
- (iv) affect Facilities benefitting such other Owner(s) other than minimally or incidentally; or



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- (v) materially change the expected pedestrian and traffic patterns or patterns of ingress and egress.

(c) If, at any time, the Altering Owner proposes to make any Alterations which require the consent of one or more of the other Owners or the Mortgagees, if applicable, then before commencing or proceeding with such Alterations, the Altering Owner shall deliver to the affected Owners and the applicable Mortgagees, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 21.1. If such affected Owners and the applicable Mortgagees consent to such Alterations or state that their consents are not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. The Owners or Mortgagees whose consents are requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the other Owners consent to the proposed Alterations, and if, in the good faith opinion of any other Owner or Owners affected by such proposed Alterations or the applicable Mortgagees, the Altering Owner has violated or will violate the provisions of Section 21.1(a) or (b), such Owners or Mortgagees (an "**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 a 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) If any matter arises between the Owners with respect to 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 advice, and the Architect shall render and promptly deliver to such Owners its written opinion whether the Alterations or proposed Alterations violate the provisions of Section 21.1(a) or (b) hereof.

(e) The Owners, in making Alterations, shall (i) perform all Work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code, and (iii) comply with all of the applicable provisions of this Declaration. Each Owner shall, to the extent reasonably practicable, make Alterations within its portion of the Total Parcel in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the other portions of the Total Parcel, but such Owner shall not be liable in any event for damages as a result of any such disturbance.

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

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

## ARTICLE 22 NOTICES

22.1 All notices, demands, elections or other communications required, permitted or desired to be served hereunder ("Notices") shall be in writing and shall be sent by nationally recognized courier service or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of each Parcel at the address set forth in writing from the Owner of such Parcel to Declarant. Until such time as a parcel is conveyed, if ever, by the Declarant, Notices are to be sent as below stated:

All Notices: Smithfield Properties XX, L.L.C.  
400 W. Huron Street  
Chicago, Illinois 60610  
Attn: William H. Smith

With a copy to: Lawrence M. Gritton Ltd.  
400 W. Huron Street  
Chicago, Illinois 60610  
Attn: Lawrence M. Gritton

Concurrently with the giving of any notification required hereunder to be given, or which any other party hereto may desire to give to any Owner, a duplicate original of such notification shall be given to the Mortgagees affected thereby at the address for the giving of notice set forth in the Mortgage securing the indebtedness to such Mortgagee. The Owners of the Parcels may amend the location and parties to receive notice hereunder by appropriate notice given to the other party in the manner herein contained.

22.2 Any Notice sent as aforesaid shall be deemed received upon receipt. Address for service of Notice may be changed by written notice served as hereinabove provided at least thirty (30) days prior to the effective date of such address change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

## ARTICLE 23 LIMITATION OF LIABILITY

23.1 Each Owner of a portion of the Total Parcel shall use reasonable diligence in performing the services required of such Owner, but shall not be liable for interruption or inadequacy of service, or for loss or damage to property or injury (including death) to any person as a result of interruption or

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inadequacy of service other than in the case of gross negligence or wilful misconduct. Each Owner obligated to furnish services hereunder is reserved the right to curtail or halt the performance of any services hereunder at any time in reasonable respects for a reasonable period to time to make necessary repairs or in the case of an Emergency Situation.

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

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

## ARTICLE 24 GENERAL

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

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

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

24.4 Except as otherwise provided herein, this Declaration may be amended or terminated only by an instrument signed by all of the Owners and the Mortgagees. So long as any portion of the Total Parcel is submitted to the Act, the Condominium Association administering such portion of the

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Total Parcel may, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners in such portion of the Total Parcel, which amendments or termination shall be binding on all Unit Owners. Any amendment to or termination of this Declaration shall be recorded with the Recorder. Notwithstanding the foregoing or anything to the contrary herein, no Amendment may be made to this Declaration which in any material respect adversely impacts a Parcel without the prior written approval of the Owner of such Parcel.

24.5 The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law and as provided below, for successive periods of ten (10) years each, subject to amendment or termination as hereinabove set forth in Article 20 or Section 24.4; provided, however, that this Declaration, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the date of the last to survive of the class of persons consisting of all of the lawful descendants of Richard M. Daley, Mayor of the City of Chicago, living at the date of this Declaration.

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

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

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

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

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

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



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

24.13 All rights which are specified by this Declaration to be rights of the Declarant are assignable, mortgageable, pledgeable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of the Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

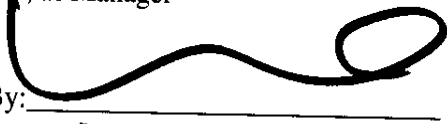
24.14 No Owner, tenant, or occupant of the Condominium Portion, the Joffrey Portion or the Retail Portion shall use, operate, or conduct any activities which interfere with others use of their space; provided, however, it is understood and agreed that the Joffrey Portion will be used as dance studios with rehearsal and performance spaces, support facilities and business offices. The dance activities will regularly include impulsive dance movements and stomping on the floors of the studios by up to forty dancers or more. The activity may also include the playing of music at high volume. The Owners of the Condominium Portion and the Retail Portion recognize this use and the right of the Owner of the Joffrey Portion to carry on such activities unimpeded and recognize and agree that the conduct of such activities in the Joffrey Portion shall not be considered interference with the use, operation, or conduct of any activities in either or both of the Condominium Portion or the Retail Portion.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 1st day of October, 2007.


**SMITHFIELD PROPERTIES XX, L.L.C.**

By: **Harris Management, Ltd.**, an Illinois corporation, as Manager

By: 

Its: President

By: **NorWol Corporation**, an Illinois corporation, as Manager

By: 

Its: President

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid. DO HEREBY CERTIFY, that W. Harris Smith, as President of Harris Management, Ltd., an Illinois corporation, the Manager of **Smithfield Properties XX, L.L.C.**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of the Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of October, 2007.

(NOTARY SEAL)



Notary Public *Adriana M. Hernandez*

My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for the County and State aforesaid. DO HEREBY CERTIFY, that Robert Buono, as President of NorWol Corporation, an Illinois corporation, the Manager of **Smithfield Properties XX, L.L.C.**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of the Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of October, 2007.

(NOTARY SEAL)



Notary Public: *Adriana M. Hernandez*

My Commission Expires: \_\_\_\_\_

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## EXHIBIT A

### Legal Description of the Total Parcel

Lots 25 to 31, inclusive, in Block 9 in Fort Dearborn Addition to Chicago in the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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**Common Address:** 151 North State Street, Chicago, Illinois 60601  
**PIN:** 17-10-305-007-8001

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## EXHIBIT B

### Legal Description of the Condominium Parcel

#### CONDOMINIUM PARCEL 1-LOWER LEVEL

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, EXCEPT THAT PART DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 18.86 FEET; THENCE SOUTH 89° 59' 24" WEST 42.30 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 12' 02" WEST 20.39 FEET; THENCE NORTH 89° 47' 58" WEST 9.51 FEET; THENCE SOUTH 00° 12' 02" WEST 1.38 FEET; THENCE NORTH 89° 47' 58" WEST 16.50 FEET; THENCE NORTH 00° 12' 02" EAST 22.43 FEET; THENCE SOUTH 89° 47' 58" EAST 16.50 FEET; THENCE SOUTH 00° 12' 02" WEST 0.66 FEET; THENCE SOUTH 89° 47' 58" EAST 9.51 FEET TO THE POINT OF BEGINNING, ALSO EXCEPT THAT PART DESCRIBED AS FOLLOWS, COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 41.67 FEET; THENCE SOUTH 89° 59' 24" WEST 26.08 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89° 38' 16" WEST 9.21 FEET; THENCE NORTH 00° 21' 44" EAST 9.08 FEET; THENCE SOUTH 89° 38' 16" EAST 9.21 FEET; THENCE SOUTH 00° 21' 44" WEST 9.08 FEET TO THE POINT OF BEGINNING) IN COOK COUNTY, ILLINOIS.

#### CONDOMINIUM PARCEL 2-FIRST FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 3.94 FEET; THENCE SOUTH 89° 59' 24" WEST 42.48 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 24' 39" WEST 14.85 FEET; THENCE NORTH 89° 27' 22" WEST 9.68 FEET; THENCE NORTH 00° 24' 39" EAST 14.85 FEET; THENCE SOUTH 89° 27' 22" EAST 9.68 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### CONDOMINIUM PARCEL 3-FIRST FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 18.97 FEET; THENCE SOUTH 89° 59' 24" WEST 23.71 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE

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NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 4-FIRST FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 89° 02' 58" WEST ALONG THE SOUTH LINE OF SAID TRACT 24.13 FEET TO THE POINT OF BEGINNING, THENCE NORTH 00° 39' 37" EAST 32.36 FEET; THENCE SOUTH 89° 30' 51" EAST 0.54 FEET; THENCE NORTH 00° 51' 55" EAST 10.05 FEET; THENCE NORTH 89° 29' 18" WEST 30.36 FEET; THENCE SOUTH 00° 18' 34" WEST 42.19 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 89° 02' 58" EAST ALONG SAID SOUTH LINE 29.52 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 5-SECOND FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW

A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 18.97 FEET; THENCE SOUTH 89° 59' 24" WEST 23.71 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 6-SECOND FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST 24.86 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET; THENCE SOUTH 00° 23' 58" WEST 20.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 7-SECOND FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY

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DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST 43.52 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 9.09 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 9.09 FEET; THENCE SOUTH 00° 23' 58" WEST 20.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 8-THIRD-FOURTH FLOORS

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +102.32 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 18.97 FEET; THENCE SOUTH 89° 59' 24" WEST 23.71 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 9-THIRD-FOURTH FLOORS

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +102.32 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST 24.86 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET; THENCE SOUTH 00° 23' 58" WEST 20.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 10-THIRD-FOURTH FLOORS

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +102.32 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST 43.52 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 9.09 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 9.09 FEET; THENCE SOUTH 00° 23' 58" WEST 20.43 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## CONDOMINIUM PARCEL 11-FIFTH FLOOR AND ABOVE

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THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +102.32 CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

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Permanent Index Number: 17-10-305-007-8001

Street Address: 151 N. State Street/8 E. Randolph Street, Chicago, Illinois

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## EXHIBIT C-1

### Legal Description of the Retail Parcel

#### RETAIL PARCEL 1-LOWER LEVEL

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 18.86 FEET; THENCE SOUTH 39° 59' 24" WEST 42.30 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 12' 02" WEST 20.39 FEET; THENCE NORTH 89° 47' 58" WEST 9.51 FEET; THENCE SOUTH 00° 12' 02" WEST 1.38 FEET; THENCE NORTH 89° 47' 58" WEST 16.50 FEET; THENCE NORTH 00° 12' 02" EAST 22.43 FEET; THENCE SOUTH 89° 47' 58" EAST 16.50 FEET; THENCE SOUTH 00° 12' 02" WEST 0.66 FEET; THENCE SOUTH 89° 47' 58" EAST 9.51 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### RETAIL PARCEL 2-LOWER LEVEL

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 41.67 FEET; THENCE SOUTH 89° 59' 24" WEST 26.08 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89° 38' 16" WEST 9.21 FEET; THENCE NORTH 00° 21' 44" EAST 9.08 FEET; THENCE SOUTH 89° 38' 16" EAST 9.21 FEET; THENCE SOUTH 00° 21' 44" WEST 9.08 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### RETAIL PARCEL 3-FIRST FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, (EXCEPT THAT PART DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 3.94 FEET; THENCE SOUTH 89° 59' 24" WEST 42.48 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 24' 39" WEST 14.85 FEET; THENCE NORTH 89° 27' 22" WEST 9.68 FEET; THENCE NORTH 00° 24' 39" EAST 14.85 FEET; THENCE SOUTH 89° 27' 22" EAST 9.68 FEET TO THE POINT OF BEGINNING,

ALSO EXCEPTING

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 18.97 FEET; THENCE SOUTH 89° 59' 24" WEST 23.71 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 23' 58" WEST 20.43 FEET;

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THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET;  
THENCE SOUTH 89° 36' 02" EAST 10.74 FEET TO THE POINT OF BEGINNING,

ALSO EXCEPTING

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 89° 02' 58"  
WEST ALONG THE SOUTH LINE OF SAID TRACT 24.13 FEET TO THE POINT OF BEGINNING,  
THENCE NORTH 00° 39' 37" EAST 32.36 FEET; THENCE SOUTH 89° 30' 51" EAST 0.54 FEET;  
THENCE NORTH 00° 51' 55" EAST 10.05 FEET; THENCE NORTH 89° 29' 18" WEST 30.36 FEET;  
THENCE SOUTH 00° 18' 34" WEST 42.19 FEET TO A POINT ON THE SOUTH LINE OF SAID  
TRACT; THENCE SOUTH 89° 02' 58" EAST ALONG SAID SOUTH LINE 29.52 FEET TO THE  
POINT OF BEGINNING,

ALSO EXCEPTING

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 89° 02' 58"  
WEST ALONG THE SOUTH LINE OF SAID TRACT 24.13 FEET, THENCE NORTH 00° 39' 37" EAST  
32.36 FEET; THENCE SOUTH 89° 30' 51" EAST 0.54  
FEET; THENCE NORTH 00° 51' 55" EAST 10.05 FEET; THENCE SOUTH 89° 39' 40" EAST 9.75  
FEET; THENCE SOUTH 01° 00' 43" WEST 6.44 FEET; THENCE SOUTH 89° 23' 42" EAST 13.42  
FEET TO A POINT ON THE EAST LINE OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST  
ALONG SAID EAST LINE 36.17 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY,  
ILLINOIS.

## RETAIL PARCEL 4-SECOND FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO  
CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39  
NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT,  
LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY  
DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30  
CHICAGO CITY DATUM, (EXCEPT THAT PART DESCRIBED AS FOLLOWS; COMMENCING AT  
THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE  
EAST LINE OF SAID TRACT 18.97 FEET; THENCE SOUTH 89° 59' 24" WEST 23.71 FEET TO THE  
POINT OF BEGINNING, THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; THENCE NORTH 89° 36'  
02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02"  
EAST 10.74 FEET TO THE POINT OF BEGINNING,

ALSO EXCEPTING

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36"  
WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST  
24.86 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 10.74 FEET;  
THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET  
THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; TO THE POINT OF BEGINNING,

ALSO EXCEPTING

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36"  
WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST  
43.52 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 9.09 FEET;  
THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 9.09 FEET  
THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; TO THE POINT OF BEGINNING,

# UNOFFICIAL COPY

ALSO EXCEPTING

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 18.09 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89° 59' 24" WEST 12.51 FEET; THENCE NORTH 00° 10' 21" EAST 17.95 FEET; THENCE NORTH 89° 59' 24" EAST 12.45 FEET TO A POINT ON THE EAST LINE OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG SAID EAST LINE 17.95 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## RETAIL PARCEL 5-THIRD-FOURTH FLOORS

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +102.32 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 28.74 FEET; THENCE SOUTH 89° 59' 24" WEST 42.65 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 12' 02" WEST 10.51 FEET; THENCE NORTH 89° 47' 58" WEST 9.20 FEET; THENCE NORTH 00° 12' 02" EAST 10.51 FEET, THENCE SOUTH 89° 47' 58" EAST 9.20 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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Permanent Index Number: 17-10-305-007-8001  
 Street Address: 151 N. State Street/8 E. Randolph Street, Chicago, Illinois

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## EXHIBIT C-2

### Legal Description of the Joffrey Parcel

#### JOFFREY PARCEL 1-FIRST FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +15.09 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 89° 02' 58" WEST ALONG THE SOUTH LINE OF SAID TRACT 24.13 FEET; THENCE NORTH 00° 39' 37" EAST 32.36 FEET; THENCE SOUTH 89° 30' 51" EAST 0.54 FEET; THENCE NORTH 00° 51' 55" EAST 10.05 FEET; THENCE SOUTH 89° 39' 40" EAST 9.75 FEET; THENCE SOUTH 01° 00' 43" WEST 6.44 FEET; THENCE SOUTH 89° 23' 42" EAST 13.42 FEET TO A POINT ON THE EAST LINE OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG SAID EAST LINE 25.17 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### JOFFREY PARCEL 2-SECOND FLOOR

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +36.30 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 18.09 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89° 59' 24" WEST 12.51 FEET; THENCE NORTH 00° 10' 21" EAST 17.95 FEET; THENCE NORTH 89° 59' 24" EAST 12.45 FEET TO A POINT ON THE EAST LINE OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG SAID EAST LINE 17.95 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### JOFFREY PARCEL 3-THIRD-FOURTH FLOORS

THAT PART OF LOTS 25 TO 31, INCLUSIVE, IN BLOCK 9 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +102.32 CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +58.39 CHICAGO CITY DATUM, AND LYING WITHIN ITS HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, (EXCEPT THAT PART DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 18.97 FEET; THENCE SOUTH 89° 59' 24" WEST 23.71 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET TO THE POINT OF BEGINNING,



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ALSO EXCEPTING

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST 24.86 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 10.74 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 10.74 FEET THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; TO THE POINT OF BEGINNING,

ALSO EXCEPTING

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE NORTH 00° 00' 36" WEST ALONG THE EAST LINE OF SAID TRACT 20.62 FEET; THENCE SOUTH 89° 59' 24" WEST 43.52 FEET TO THE POINT OF BEGINNING, THENCE NORTH 89° 36' 02" WEST 9.09 FEET; THENCE NORTH 00° 23' 58" EAST 20.43 FEET; THENCE SOUTH 89° 36' 02" EAST 9.09 FEET; THENCE SOUTH 00° 23' 58" WEST 20.43 FEET; TO THE POINT OF BEGINNING,

ALSO EXCEPTING

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00° 00' 36" EAST ALONG THE EAST LINE OF SAID TRACT 28.74 FEET; THENCE SOUTH 89° 59' 24" WEST 42.65 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 00° 12' 02" WEST 10.51 FEET; THENCE NORTH 89° 47' 58" WEST 9.20 FEET; THENCE NORTH 00° 12' 02" EAST 10.51 FEET; THENCE SOUTH 89° 47' 58" EAST 9.20 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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Permanent Index Number: 17-10-305-007-8001

Street Address: 151 N. State Street/8 E. Randolph Street, Chicago, Illinois

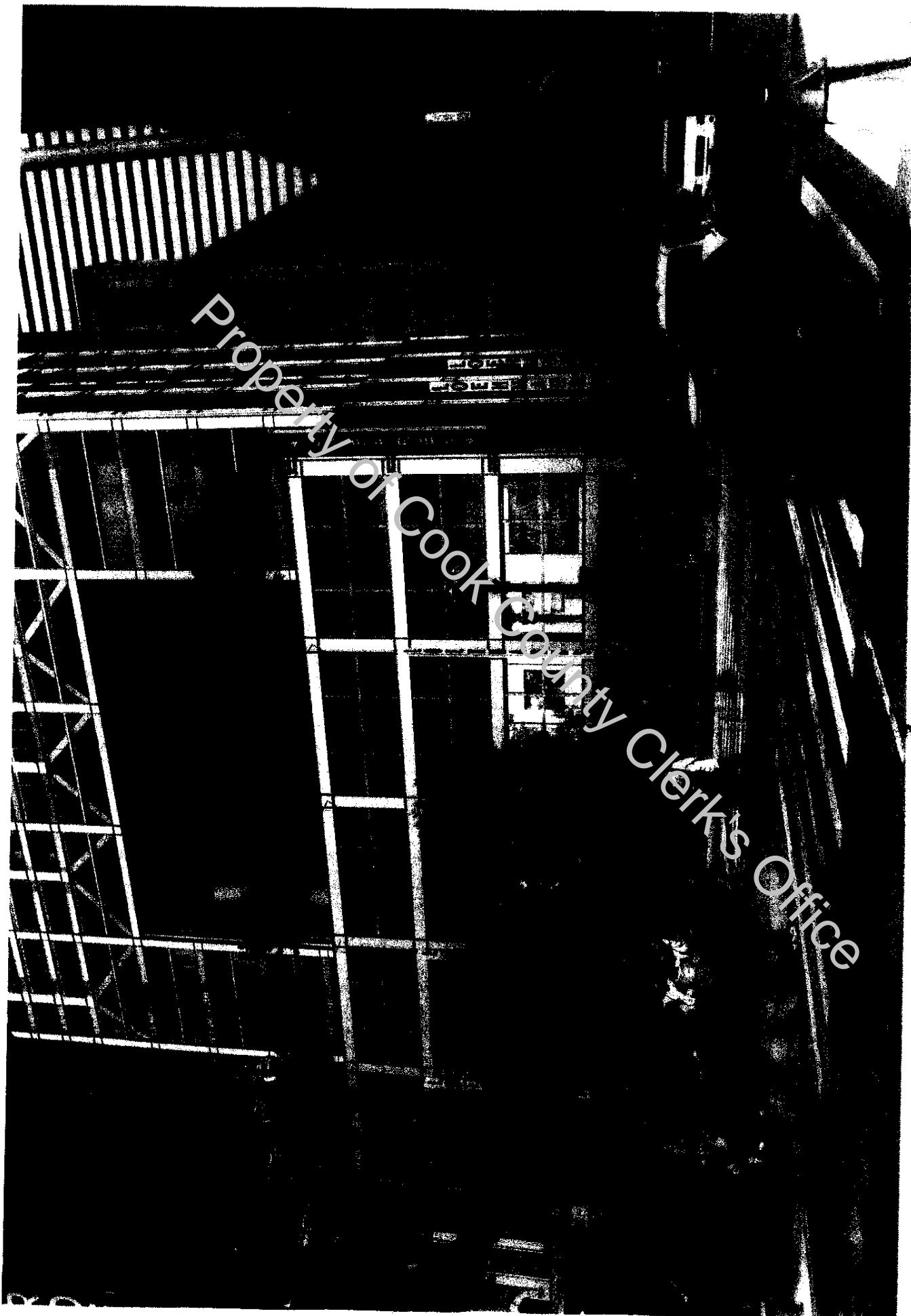
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THE RESIDENCES AT THE JOFFEY TOWER  
PROPOSED OPERATING BUDGET

	Condo	Retail	Joffrey	
Plumbing Repairs/Supplies	X			
Extermination (1)	77.5%	9.5%	13.0%	Allocation based on gross square footage. See line item break down of cost in Condo Budget.
Gas	X	77.5%	13.0%	Allocation based on gross square footage. See line item break down of cost in Condo Budget.
Water/Sewer (1)	X	88.0%	N/A	All gas required by Joffrey will be separately metered to Joffrey. Allocation based on approximate usage. Retail will use very little heating gas and no potable hot water.
Sidewalk Maintenance	X	77.5%	13.0%	Allocation based on gross square footage. See line item break down of cost in Condo Budget.
Loading Dock Maintenance and Repair	X	9.2%	7.9%	Sidewalk has total linear feet of approximately 200' (168' on State and 112' on Randolph). 26' (9.2%) is entrance to condo. 22' (7.9%) is entrance to Joffrey. Estimated cost is \$11.35 per foot, based on actual expense from 20 N. State (\$2,700/year inflated to 2008 \$ on 238'), on 280' for total of \$3,200 per year.
Trash Room Deodorizer	X	20.0%	20.0%	Allocation based on approximate usage. Estimated at \$8,200/year.
Freight Elevator Maintenance	X	77.5%	13.0%	Allocation based on gross square footage. Estimated cost of \$175/mth, or \$2,100/year.
Inspection/License/Fees	X	85.0%	9.0%	Allocation based on percentage of floors in each portion - 33 total floors, including 3rd floor mezzanine in Joffrey Portion. Cost of \$520/month, or \$6,240/year.
Fire Panel Monitoring	X	77.5%	13.0%	Allocation based on gross square footage. Estimated at \$40,935/year broken down into Building Inspection - \$360, Façade Inspection - \$4,000, Sidewalk Inspection - \$150, Underground Vault - \$36,125, and Caissons - \$300.
Fire Safety Supplies/Expenses	X	77.5%	13.0%	Allocation based on gross square footage. Estimated at \$750/quarter, or \$3,100/year.
Green Roof Over 4th Floor	X	77.5%	13.0%	Allocation based on gross square footage. Estimated at \$4,400/year broken down into Annual Expense - \$3,800 and Fire Extinguisher - \$600.
Insurance	X	77.5%	13.0%	Allocation based on gross square footage. Estimated at \$3,500 per year.
		70.0%	15.0%	Based on approximate cost allocation. Estimated at total of \$60,000/year for general, property, mechanical, and umbrella insurance. Workmen's Comp and Directors and Officers insurance is 100% chargeable to Condo and paid directly by the Condo.

(1) In the event there is ever a food service tenant in the Retail Portion, these items will be reallocated by mutual agreement of the owners of each Portion in the Building.

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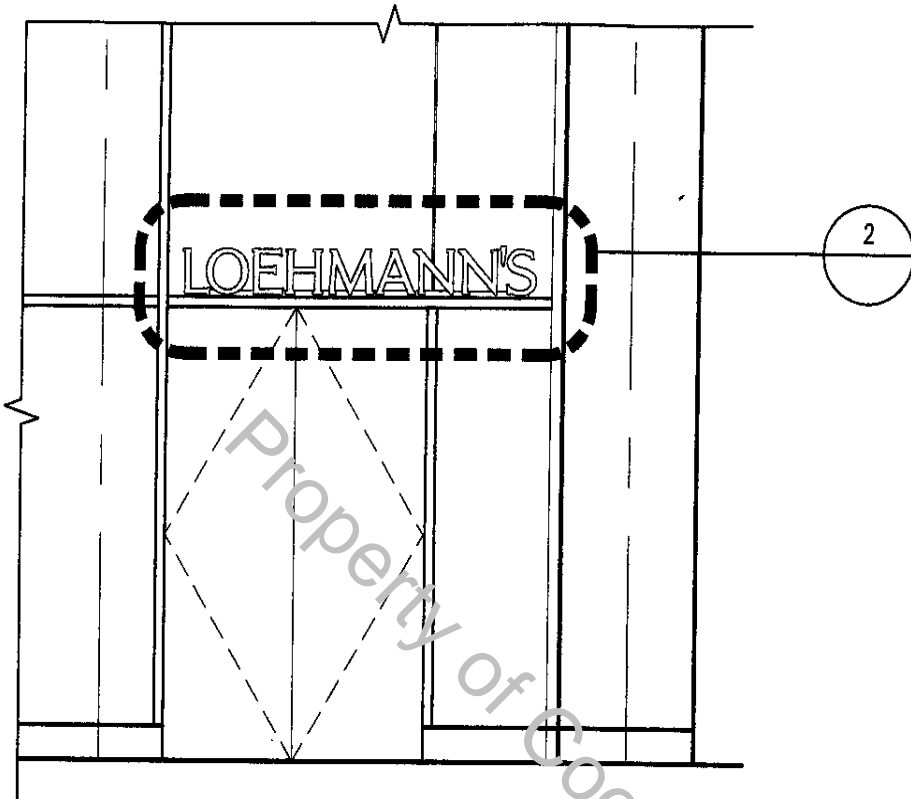


Property of Cook County Clerk's Office

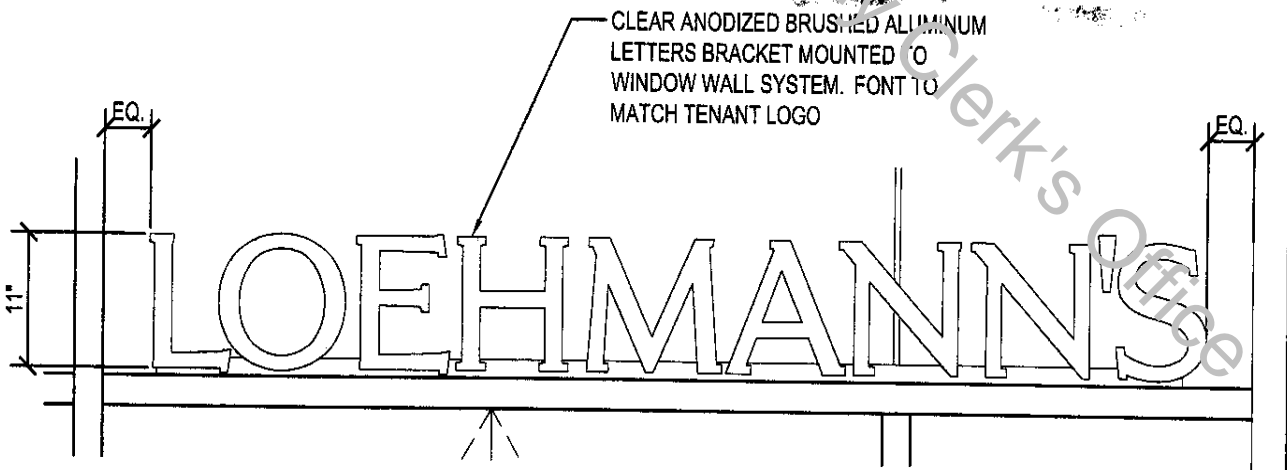
LOEHMANN'S SIGNAGE CONCEPT  
31 JULY 2006

800 P. HANSEN

# UNOFFICIAL COPY



1 STATE ST. ENTRANCE ELEVATION (RANDOLPH ST. ELEVATION SIM.)  
SCALE: N.T.S.



2 ENLARGED SIGNAGE ELEVATION  
SCALE: N.T.S.

BOOTH HANSEN

Architecture • Interiors • Planning  
333 South Des Plaines Street  
Chicago, Illinois 60661

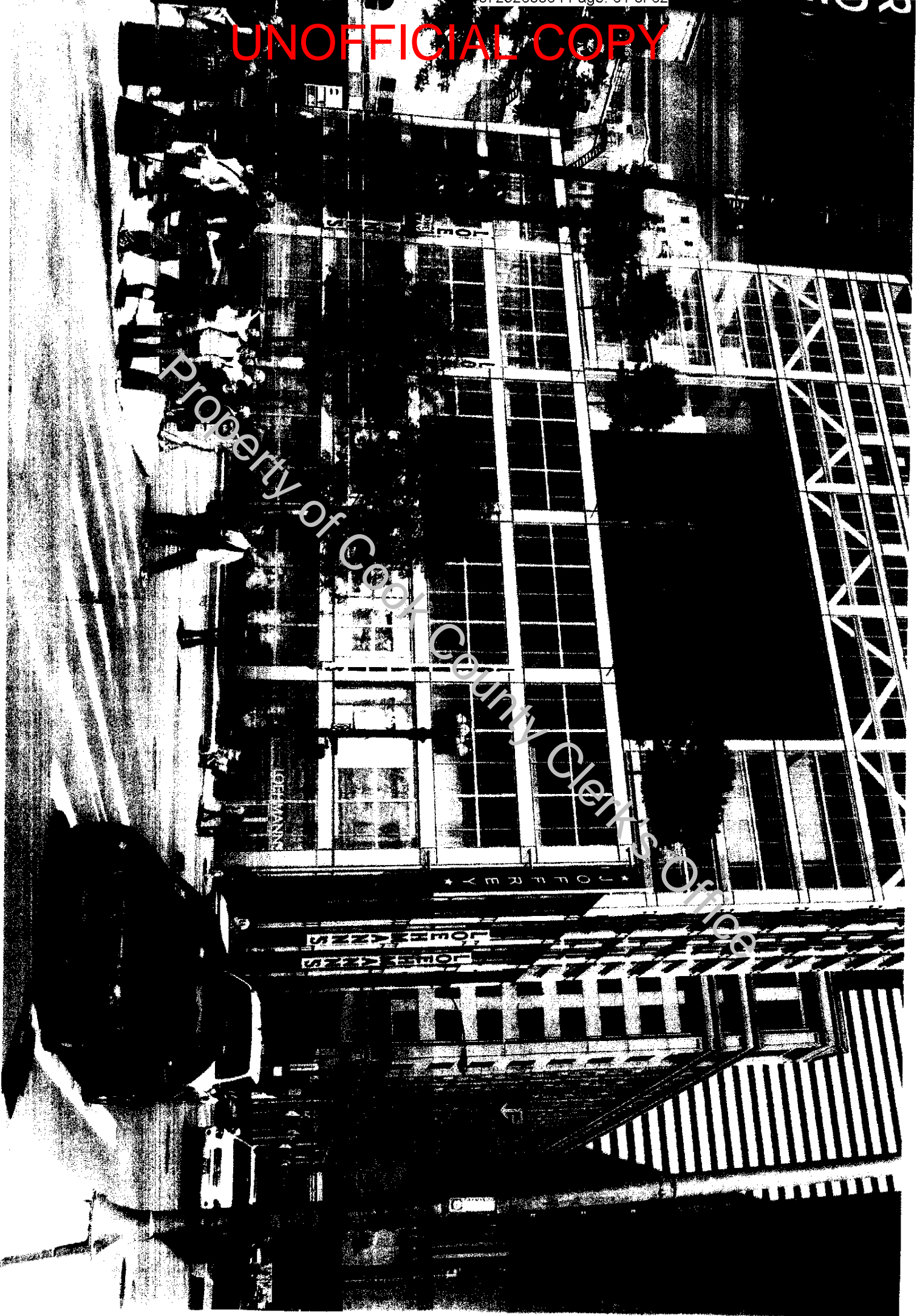
LOEHMANN'S ENTRANCE  
SIGNAGE CONCEPT SKETCH

PROJECT NO.	0342.06
DRAWN BY	T.S.
CHECKED BY	C.S.
SCALE	N.T.S.
DATE	31 JULY 2006



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## EXHIBIT Z

### Rooftop Work Requirements

The following provisions shall be applicable at any time that any work or other alterations to be made by the Owner of a Parcel (the "**Altering Owner**") will require (1) penetration of either roof (there are 2 – a low roof over the fourth floor and a high roof on the top) of the Building (a "**Roof**"), or (2) the addition of any load to a Roof, or (3) any other installation of any satellite dish, antenna or other communications devices on a Roof (the foregoing items (1), (2) and (3) being collectively, "**Roof Work**").

1. The Altering Owner shall be required to hire the roofing contractor or subcontractor of the Owner of the Retail Portion ("**Approved Roofer**") to perform any Roof Work involving the penetration of a Roof for any reason.

2. In the event an Altering Owner desires to add any load to a Roof in excess of 500 pounds, including without limitation any consideration for any drift loading, such Altering Owner shall be required to hire the structural engineer of the Owner of the Retail Portion ("**Approved Engineer**") to determine whether any modifications to the structure of the Building will be required to accommodate any such additional load to a Roof. In such event such Altering Owner shall be required to submit for approval to, and obtain the written approval from, such Approved Engineer before any such Roof Work can be commenced.

3. Access to a Roof and all Roof Work undertaken by or on behalf of an Altering Owner shall be in accordance with the required procedures and regulations of the Owner of the Retail Portion.

4. An Altering Owner shall secure all necessary permits and approvals of any federal, state or local agency or government authority required for all Roof Work, if applicable, shall provide copies of same to the Owner of the Retail Portion.

5. All Roof Work shall be performed so as to cause no structural damage to the Building. Any damage to the Building caused by such Roof Work shall be repaired by such Altering Owner immediately. Notwithstanding anything contained herein, no Altering Owner shall remove, and shall not be reimbursed for the cost of, any equipment which is affixed to, embedded in or permanently attached in or to the Building including, but not limited to, cables and other wiring, unless the Owner of the Retail Portion so directs otherwise.

6. An Altering Owner shall bear all costs relating to any Roof Work, including without limitation any costs payable to the Approved Roofer or Approved Engineer as a result of any Roof Work. All such costs for which the Owner of the Retail Portion is to be reimbursed shall be payable promptly by the Altering Owner on written demand from the Owner of the Retail Portion, but in any event prior to and as a condition of the approval of any Roof Work by the Owner of the Retail Portion.