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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RECIPROCAL EASEMENTS  
FOR 565 W. QUINCY STREET,  
CHICAGO, ILLINOIS**

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565 W. Quincy Street  
Chicago, Illinois 60661  
PINs: 17-16-113-010-000

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RECIPROCAL EASEMENTS  
FOR 565 W. QUINCY STREET,  
CHICAGO, ILLINOIS**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS** (this "Agreement") is made and entered into as of the 9<sup>th</sup> day of April, 2009 by Quincy Condominium LLC ("Declarant"), an Illinois limited liability company.

**RECITALS:**

A. Capitalized terms used and not otherwise defined in the Recitals shall have the meanings set forth in Article I hereof.

B. Declarant is the owner of the Parcel, which is situated in Chicago, Cook County, Illinois and is legally described in Exhibit A, attached hereto and made a part hereof.

C. Declarant intends to convert the existing seven (7) story building on the Parcel and construct an additional eleven (11) stories on top of the existing building for a total building containing eighteen (18) stories which will include certain commercial space on floor 1, parking on floors 1 through 4, and condominium residences on floors 5 through 18.

D. Declarant intends either to hold title to the Commercial Parcel itself or to convey title to the Commercial Parcel to a third party, which may be an affiliate of Declarant.

E. The Residential Parcel and the Commercial Parcel are functionally dependent on the other, to some extent, for structural support, enclosure, ingress and egress, utility services or other facilities and components necessary to the efficient operation and intended use of the Residential Parcel and the Commercial Parcel.

F. Declarant has submitted or will submit the Residential Parcel to the Act. The Commercial Parcel has not been submitted to the Act and Declarant does not intend to submit the Commercial Parcel to the Act, however, in the Declaration, Declarant reserved the right to add all or a portion of the Commercial Parcel to the Condominium and submit it to the Act.

G. Declarant desires by this Agreement to provide for the efficient operation of each respective portion, estate and interest in the Total Parcel, to assure the harmonious relationship of the Owners of each such respective portion, estates 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 certain easements, covenants and restrictions against and affecting the Residential Parcel and the Commercial Parcel which will be binding upon each present and future Owner of the Residential Parcel and of the Commercial Parcel, or of any portion thereof or interest or estate therein.

**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 Agreement, and declares that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges, and charges created hereunder shall exist at all times hereafter amongst, and be binding upon and inure, to the extent provided herein, to the benefit of, all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Total Parcel and each of the foregoing shall run with the land subjected to this Agreement.

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## ARTICLE 1 DEFINITIONS

As used herein, the following terms shall have the following meanings:

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

1.2 "Building" means that certain eighteen (18) story building commonly known as 565 W. Quincy, Chicago, Illinois.

1.3 "Commercial Parcel" means all improvements and Facilities constructed or reconstructed within or exclusively serving the commercial space on the ground floor of the Building, but excluding any Facilities exclusively serving the Residential Parcel, which Commercial Parcel is legally described in Exhibit C, attached hereto and made a part hereof.

1.4 "Common Elements" means all portions of the Residential Parcel submitted from time to time to the Act pursuant to the Condominium Declaration except the Units.

1.5 "Common Walls, Floors and Ceilings" means all common structural and partition walls, floors and ceilings situated on or adjoining the Residential Parcel and the Commercial Parcel, or located on one such property but forming the walls, floors or ceilings of the other property.

1.6 "Condominium Association" means an Illinois not-for profit corporation formed for the purpose of administering the Residential Parcel pursuant to the Act. The Condominium Association shall be the agent and representative of the Owners of the Residential Parcel whenever there is more than one Owner of the Residential Parcel. In such instances, whenever this Agreement requires or allows for actions to be taken by the Owner of the Residential Parcel, the Condominium Association shall be the party to act for and on behalf of the Owners of the Residential Parcel.

1.7 "Condominium Declaration" means that certain Declaration of Condominium Pursuant to the Illinois Condominium Property Act for 565 W. Quincy Condominium dated December 22, 2008 and recorded December 23, 2008 in the Office of the Recorder of Deeds of Cook County, Illinois as Document Number 0835831047, as amended by that certain First Amendment dated February 20, 2009 and recorded February 24, 2009 as Document Number 0905531047, and any additional amendments thereto, or any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits the Residential Parcel to the provisions of the Act, together with any amendments and supplements thereto.

1.8 "Condominium Property" means those portions of the Residential Parcel which from time to time are subject to the Condominium Declaration.

1.9 "Declarant" means Quincy Condominium LLC, its successors and assigns and any other person or entity designated by Declarant to be Declarant.

1.10 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements, including all exhibits, amendments and supplement thereto.

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

1.12 "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

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Parcel 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.

1.13 "Facilities" means all components of the domestic water, sanitary waste, storm water, electrical, telephone, cable or satellite television, gas, heating and air conditioning and all other utility systems forming a part of the Building and designed or used to furnish utility and other services to any portion of the Building, including but not limited to the following components of such systems: antennae, boilers, boxes, brackets, cabinets, cables, chutes, coils, compressors, conduits, connections, controls, control centers, couplers, dampers, devices, ducts, equipment, fans, fixtures, flues, furnaces, generators, hangers, heat exchangers, intake devices, junctions, junction boxes, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, satellite dishes, switches, systems, transformers, valves, vents, wiring and the like.

1.14 "Improvements" means the Residential Improvements and the Commercial Parcel.

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

1.16 "Mortgage" means a mortgage or trust deed in the nature of a mortgage on the Common Elements of the Residential Parcel or on the Commercial Parcel, but shall not include a mortgage or trust deed on a Unit in the Residential Parcel.

1.17 "Mortgagee" means the holder of a Mortgage.

1.18 "Non-Condominium Property" means those portions of the Total Parcel which, from time to time, are not part of the Condominium Property, including, without limitation, the Commercial Parcel.

1.19 "Non-Condominium Property Owner" means the record title holder, whether one or more persons, of fee simple title to the Non-Condominium Property, including, without limitation, Commercial Property which is not part of the Condominium Property.

1.20 "Owner" means either the Owner of the Residential Parcel or the Owner of the Commercial Parcel, as the context requires. "Owners" means the Owner of the Residential Parcel and the Owner of the Commercial Parcel. If and so long as any portion of the Residential Parcel constitutes Condominium Property subject to the Act, the Owner of such Residential Parcel shall mean collectively all of the Unit Owners in and to such Condominium Property and not individually, and the rights of such Owner shall be exercised by the Condominium Association by its Board of Managers administering such Condominium Property on behalf of its Unit Owners, except for such rights or benefits expressly granted to its Unit Owners, and except for Easements which by their nature are exercisable only by Unit Owners. In the event of any action taken by the Condominium Association's Board of Managers, the Unit Owners shall be bound as if such Unit Owners had expressly consented and agreed to such actions by the Condominium Association. All obligations under this Agreement of the Owner of the Condominium Property shall be obligations jointly and severally of both the Condominium Association and all Unit Owners in such Condominium Property and any lien arising against the Owner of the Condominium Property may be imposed against the Units of all such Unit Owners based upon their percentages of interest in the Common Elements appurtenant to such Condominium Property.

1.21 "Owner of the Residential 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 Residential Parcel. Whenever there is more than one Owner of the Residential Parcel and actions are or must be taken by or on behalf of the Owners of the Residential Parcel, the

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Condominium Association shall act for and on behalf of the Owners of the Residential Parcel and shall be the sole authorized representative and agent of the Owners of the Residential Parcel in connection with this Agreement.

1.22 "Owner of the Commercial 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 Commercial Parcel. In the event the Commercial Parcel is divided into more than one (1) parcel under separate ownership, for purposes of this Declaration the Owner of the Commercial Parcel shall be deemed to be the representative of all such owners, as determined by such owners.

1.23 "Parcel" means the parcel of real estate legally described on Exhibit A attached hereto.

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

1.25 "Residential Improvements" means all improvements constructed or reconstructed upon and within the Parcel, including, without limitation, the Building, the Facilities, parking areas, private balconies and decks, sidewalks and landscaping located in, on or under the Parcel, but excluding the Commercial Parcel.

1.26 "Residential Parcel" means the portion of the Parcel containing the Residential Improvements, as legally described in Exhibit B, attached hereto and made a part hereof.

1.27 "Total Parcel" means the Residential Parcel and the Commercial Parcel.

1.28 "Unavoidable Delay" means fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of an Owner (other than inability to make payment of money) which excuses the timely performance of any obligation created hereunder. 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 shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. Such non-performing Owner shall, from time to time upon written request of the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

1.29 "Unit" means any portion of the Residential Parcel submitted to the Act and described as a "Unit" in the Condominium Declaration.

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

1.31 "Unit Ownership" means a part of any portion of the Residential Parcel consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

## ARTICLE 2 EASEMENTS IN FAVOR OF COMMERCIAL PARCEL

2.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Residential Parcel in favor of the Commercial 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, column and beams and any other supporting components located in or constituting a part of the Residential Parcel, for the support and Maintenance of (i) the Commercial Parcel and (ii) any Facilities located in the

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Residential Parcel with respect to which the Owner of the Commercial Parcel is granted an Easement under this Agreement.

(b) A non-exclusive Easement for access to and the use for their intended purposes and Maintenance of all Facilities located in the Residential Parcel and connected to Facilities located in the Commercial Parcel (and any replacement thereof), including without limitation, exhaust, toilet, plumbing and other vents and furnace, hot water heater and other flues, the HVAC systems serving the Commercial Parcel, the loading docks, any trash room (including use of and storage of any trash containers/bins serving the Commercial Parcel), and the mechanical, plumbing, cable and electrical systems in the Building which provide the Commercial Parcel with any utilities or other services.

(c) A non-exclusive Easement, permitting encroachments if and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Agreement of any part of the Commercial Parcel or the subsequent settlement or shifting of any part of the Commercial Parcel, any part of the Commercial Parcel encroaches or shall hereafter encroach upon any part of the Residential Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Commercial Parcel continues to exist.

(d) An Easement (i) in and to all Common Walls, Floors and Ceilings and (ii) for the use of such Common Walls, Floors and Ceilings

(e) A non-exclusive Easement for access to and the use and maintenance of the air conditioning compressors which serve the Commercial Parcel and all other areas of the Residential Parcel necessary or appropriate to provide the Owner of the Commercial Parcel use and Maintenance of all utility services for the Commercial Parcel, which Easement shall include ingress and egress over, on, across and through the parking area of the Residential Parcel. The Owner of the Commercial Parcel shall contract or otherwise make arrangements with third parties for the such maintenance unless both parties agree otherwise in accordance with Article 4.

2.2 Each Easement created under this Article 2 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Parcel shall be subject (except in an Emergency Situation) to such reasonable limitations, including, without limitation, rules and regulations, as the Owner of the Residential Parcel may, from time to time, impose with respect to the use of such Easements, including, without limitation, the establishment of limited hours of the day or days of the week during which such Easement may be used to prevent any unreasonable interference with the use and operation of the Residential Parcel and in order to assure the reasonable security of the Residential Parcel; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement

2.3 Easements provided for, declared or created under this Article 2 shall be binding upon the Residential Parcel and each Owner of the Residential Parcel and shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Parcel and each portion thereof.

## ARTICLE 3 EASEMENTS IN FAVOR OF RESIDENTIAL PARCEL

3.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Commercial Parcel in favor of the Residential Parcel are hereby granted:

(a) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, column and beams and any other supporting components located in or constituting a part of the Commercial Parcel for the support and Maintenance of (i) the Residential Improvements and (ii) any Facilities located in the

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Commercial Parcel with respect to which the Owner of the Residential Parcel is granted an Easement under this Agreement.

(b) A non-exclusive Easement for access to and the use for their intended purposes and Maintenance of all Facilities located in the Commercial Parcel and connected to Facilities located in the Residential Parcel (and any replacement, repair, renewal, alteration of settings and/or upgrading thereof), including without limitation, exhaust, toilet, plumbing and other vents and furnace, hot water heater and other flues, the HVAC systems serving the Residential Parcel and the mechanical, plumbing, cable and electrical systems in the Building which provide the Residential Parcel with any utilities or other services.

(c) A non-exclusive Easement permitting encroachments if and to the extent that, by reason of the original construction, any construction between the date of original construction and the date hereof or any reconstruction or replacement authorized by the terms of this Agreement of the Residential Improvements or the subsequent settlement or shifting of any part of the Residential Improvements, any part of the Residential Improvement encroaches or shall hereafter encroach upon any part of the Commercial Parcel. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Residential Improvements continues to exist.

(d) An Easement (i) in and to all Common Walls, Floors and Ceilings serving the Residential Parcel and (ii) for the use of such Common Walls, Floors and Ceilings.

3.2 Each Easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Parcel shall be subject (except in an Emergency Situation) to such reasonable limitations, to prevent any unreasonable interference with the use and operation of the Commercial Parcel and in order to assure the reasonable security of the Commercial Parcel; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

3.3 Easements provided for, declared or created under this Article 3 shall be binding upon the Commercial Parcel and the Owner of the Commercial Parcel and shall run in favor of and inure to the benefit of and be appurtenant to the Residential Parcel.

## ARTICLE 4 SERVICES BY OWNER OF RESIDENTIAL PARCEL AND BY OWNER OF COMMERCIAL PARCEL

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

- (a) Landscaping. Maintenance of exterior landscaping in front of the Building.
- (b) Utilities and Other Similar Services. Maintenance of all Facilities located in the Residential Parcel and connected to and shared with Facilities located in the Commercial Parcel, including without limitation, the exhaust, toilet, plumbing and other vents, furnace, hot water heater and other flues and the mechanical, plumbing, cable and electrical systems in the Building. Included in such obligation is the Maintenance of any trash rooms, utility or submeter rooms or areas and other areas of the Building with shared Facilities and the Maintenance of Facilities prior to and at the point where such Facilities have been divided, separated or submetered between the Commercial Parcel and the Residential Parcel.
- (c) City Water Supply System. Paying for the supply of city water, subject to the Owner of the Commercial Parcel's obligation to reimburse the Owner of the Residential Parcel for the Commercial Parcel's share of

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such payments based on periodic water submeter readings (which periodic readings shall coincide with the Owner of the Residential Parcel's receipt and payment of water bills from the municipal entity responsible for collecting such bills). The Owners shall jointly arrange for such submeter readings in good faith, but in no event later than thirty (30) days after the Owner of the Residential Parcel receives each such water bill. The Owner of the Residential Parcel also shall have the Maintenance obligations of all water lines from the Parcel's boundary line to the point of connection to the submeters.

From the point of connection to such submeters forward to the tap or other end point, Maintenance of such water system shall be the responsibility of the party served by such submeter; provided, however, that each such party shall have an Easement for the Maintenance of such submeter and the other Facilities necessary for supplying hot and cold water to such party's portion of the Total Parcel.

(d) **Snow and Ice Removal.** Removal of snow and ice from sidewalks leading to all street level entrances to the Building immediately in front of or adjacent to the exterior ground floor portions of the Building comprising a part of each party's respective portion of the Total Parcel.

(e) **Building Exterior.** Maintenance, repair and replacement of the exterior of the Building, including tuck pointing but excluding the glass store front system which comprises the street side windows for the Commercial Parcel ("Glass Storefront System"), which Glass Storefront System shall be the sole responsibility of the Commercial Parcel, unless such maintenance, repair or replacement is required due to activity conducted on Commercial Parcel.

(f) **Roof.** Maintenance, repair and replacement of all the portions of the roof of the Building independent of where located; provided, however, that if and to the extent the other Owner causes or permits damage to any portion of an Owner's roof, pursuant to (i) the exercise of access to such portion of the roof for Maintenance, (ii) the use of an Owner of the Residential Parcel's terrace, normal wear and tear excluded or (iii) otherwise, the Owner causing or permitting such damage shall be responsible for and pay the cost and expense of repairing such damage.

(g) **Property Manager.** The Owner of the Commercial Parcel and the Owner of the Residential Parcel shall contract with the same property manager (the "Property Manager") for purposes of administrating Submission and Payment of Statements as set forth below, and to obtain competitive building service contracts, where applicable as set forth in this document, or as the Owner of the Commercial Parcel and the Owner of the Residential Parcel may decide in the future. The Owner of the Residential Parcel shall select the Property Manager and the Property Manager shall bill the Owner of the Commercial Parcel separately.

(h) **Trash.** The Owner of the Residential Parcel shall contract for trash and refuse collection and the owner of the Commercial Parcel and the Owner of the Residential Parcel shall each be responsible for its equitable share of the cost of such trash and refuse collection based on volume of use. Notwithstanding the foregoing, upon the mutual agreement of each Owner, the Owner of the Residential Parcel and the Owner of the Commercial Property may contract for trash and refuse collection separately and pay for such trash and refuse collection separately.

4.2 The Owner of the Commercial Parcel shall cooperate with the Owner of the Residential Parcel in its efforts to secure and furnish the foregoing services.

4.3 The submission of statements for services rendered pursuant to this Article 4, provisions for payment thereof, and provisions for additional payments incurred in connection with such services and the operation, maintenance, repair and replacement of shared Facilities shall be made as follows:

(a) **Allocation of Costs.** Owner of the Commercial Parcel shall bear 2.25%, and the Owner of the Residential Parcel shall bear 97.75% (such percentages based on the estimated total square footage of the Commercial Parcel and the Residential Parcel, respectively, in relation to the total square footage of the Building), of the total cost of the services to be furnished, or caused to be furnished, by the Owner of the Residential Parcel as described in Paragraph 4.1 of this Agreement.



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(b) **Submission and Payment of Statements.** Owner of the Residential Parcel shall submit statements on or about the first day of each month to the Owner of the Commercial Parcel for services rendered pursuant to Paragraph 4.1 of this Agreement, and said statements shall be paid by the Owner of the Commercial Parcel within thirty (30) days.

(c) **Additional Agreed Upon Services.** Nothing in this section shall prevent the Owner of the Commercial Parcel and the Owner of the Residential Parcel from mutually agreeing to additional shared services and the appropriate cost sharing arrangements for the same.

4.4 If the Owner of the Residential Parcel shall fail to render the services described in Section 4.1 above to the Owner of the Commercial Parcel (except when such failure is caused by the Owner of the Commercial Parcel or Unavoidable Delay) and such failure shall continue for a period of thirty (30) days after written notice thereof to the Owner of the Residential Parcel, the sole remedy therefor available to the Owner of the Commercial Parcel shall be the right to undertake the performance of such services on its own for its own benefit and at its own cost and expense and thereafter to seek compensation from the Owner of the Residential Parcel. Such notice shall not be required in an Emergency Situation resulting from such failure.

4.5 If, at any time, the Owner of the Commercial Parcel shall fail to pay to the Owner of the Residential Parcel any sum of money payable to it pursuant to the terms of this Agreement for thirty (30) days after written notice from the Owner of the Residential Parcel demanding payment of said sum of money, then, subject to Section 11.4, the Owner of the Residential Parcel may, in addition to any other rights or remedies hereunder, discontinue furnishing of the services for which payment has not been received until said sum of money is paid.

4.6 In addition to the foregoing provisions of this Article 4, the Owner of the Commercial Parcel shall be solely responsible for all of the cost of the maintenance, repair and replacement of the exterior lighting (if and to the extent permitted), doors, and windows, adjacent to and serving exclusively the Commercial Parcel, as well as the separate Commercial Parcel management fee, or other costs directly attributable to the Commercial Parcel.

4.7 The Owner of the Residential Parcel and the Owner of the Commercial Parcel each shall be responsible for, and each shall furnish, or cause to be furnished, as and when necessary and at their own respective cost and expense, the following:

(a) **Walls, Floors and Ceilings.** Maintenance, repair and replacement of the portions of the Building interior walls, floors and ceilings exclusively appurtenant to their respective portions of the Building. Where such walls, floors and ceilings are shared in common, each party shall be responsible for such Maintenance, repair and replacement to the midpoint of such walls, floors and ceilings except where the legal description of the Commercial Parcel or the Residential Parcel, respectively, incorporates all or a different portion of such walls, floors and ceilings.

(b) **Extermination.** Each Owner shall at all times keep in full force and effect a written contract for regular professional extermination. Each Owner shall further be required to produce evidence of the same upon request of the other Owner.

## ARTICLE 5 STRUCTURAL SUPPORT

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

5.2 Except in the case in which Article 9 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 Owner benefited by such structural support shall be

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responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 14 would not require such approval) the Owner on whose property such structural support is located and, subject to the provisions of Article 10 hereof, the Owner or Owners responsible for such reduction or endangerment shall pay all costs and expenses, including any architect's and other fees, in connection with construction of substitute or additional support. However, (a) if the responsible Owner cannot be determined, the Owner benefited by such structural support shall pay such costs and expenses and (b) if the reduction in structural support giving use to the need for such construction results from ordinary wear and tear, the Owner responsible pursuant to Article 9 for maintaining the Improvements requiring such repair shall pay such costs and expenses.

5.3 The Owner or Owners responsible for construction 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.

5.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then the Owner of the portion of the Total Parcel benefited thereby shall, upon not less than thirty (30) days' advance written notice to the other Owner (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 the Owners may jointly undertake to provide substitute or additional structural support; provided, however, the responsible Owner shall be liable for and pay all costs and expenses incurred as a result of any Owners provisions of any required substitute or additional support.

5.5 If the Owners cannot within thirty (30) days agree on the allocation of responsibility among them, then the dispute shall be submitted to arbitration as provided for herein; provided, that, the party responsible for performing the required structural repairs shall continue to perform all necessary repair work during the pendency of such arbitration proceeding. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of the other portion of the Total Parcel during any period of reconstruction.

## ARTICLE 6

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

6.1 The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Total Parcel or any portion thereof, if noncompliance by it with respect to its portion of the Total Parcel or any part thereof would subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for the Improvements themselves or would jeopardize the other Owner's right to occupy or use 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 the other Owner or would impose any threat or danger to any person or property. Neither Owner shall take any action or omit to take any action which could adversely affect (including, without limitation, increase the cost of) any of the insurance maintained by the other Owner.

6.2 No Owner shall permit the filing of any mechanic's, materialmen's or any other like lien 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 4 hereof, arising by reason of its act or any work or materials which it has ordered. If an Owner fails to remove any such lien within thirty (30) days after the filing thereof, the other Owner may (but is not required to) take such action as the other Owner may deem necessary to remove such lien. Such Owner shall be entitled to reimbursement from the Owner who has failed to remove such lien for all costs and expenses incurred by such Owner in removing or attempting to remove such lien, plus interest at the Default Rate (defined below) from the date of payment of such costs and expenses by such Owner to the date of reimbursement to the other Owner. However, the Owner who has not paid such lien shall

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not be required to remove such lien within said thirty (30) day-period (and the other 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 a Mortgagee under the Mortgage; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed; and (iii) the Owner responsible for the filing of such lien (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the other Owner, and to a Mortgagee if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the other Owner or, if loan documents so provide, to a Mortgagee, either: (x) cash or a surety bond from a responsible surety company acceptable to the other Owner and a Mortgagee, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim, (y) an endorsement to the other Owner's or Mortgagee's title insurance policy over such lien, or (z) other security reasonably acceptable to the other Owner and each Mortgagee, if applicable. The rights of an Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (1) the Owner fails to contest diligently and continuously, (2) final judgment is entered on behalf of the lien claimant or (3) the existence of such liens shall constitute a default under the Mortgage, and in such event the Owner responsible for the filing of such lien shall cause such lien to be discharged or removed within ten (10) days after the occurrence of either of the events in clauses (1), (2) or (3) in this sentence and the other Owner shall have the right (but not the obligation) at any time after said ten (10)-day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder. The costs and expenses referred to in this Section 6.2 shall include but not be limited to reasonable attorneys' fees.

6.3 Each Owner (hereinafter in this Section 6.3, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner (hereinafter in this Section 6.3, the "Indemnitee") from and against any and all claims against the Indemnitees for losses liabilities, damages, judgments, costs and expenses and any action or proceedings arising therefrom, by or on behalf of any person firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Parcel or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, 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.

6.4 Without limiting the provisions of Section 6.1, neither Owner shall make any Alterations (as that term is hereinbelow defined in Section 14.1) or allow any use of their respective portions of the Total Parcel or take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Total Parcel or any portions thereof. The Residential Parcel and Commercial Parcel shall continue to be combined and treated as one zoning lot for the purposes of complying with the Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning Ordinance as applicable to any portions of the Total Parcel without the written consent of the other Owner.

## ARTICLE 7 REAL ESTATE TAXES

7.1 In the event that a real estate tax bill ("Undivided Tax Bill") is issued for a particular year (the "Tax Year") with respect to portions of the Total Parcel consists of (i) Non-Condominium Property and Condominium Property; (ii) more than one Unit, and/or (iii) Common Elements and no Units, then the following provisions shall apply:

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(a) If the Undivided Tax Bill for the Tax Year covers Non-Condominium Property and Condominium Property, the Undivided Tax Bill shall be apportioned among the Condominium Property and each portion of the Non-Condominium Property by the Declarant, in its judgment, upon review of the relevant records of the County Assessor, to the extent available;

(b) Each Non-Condominium Property Owner shall be responsible for the payment of that portion, if any, of the Undivided Tax Bill for the Tax Year which is apportioned to Non-Condominium Property owned by such Non-Condominium Property Owner;

(c) The portion of the Undivided Tax Bill for the Tax Year which is apportioned to Condominium Property ("Undivided Condominium Property Tax Bill") shall be paid by the Declarant and the Declarant shall be reimbursed by each Unit Owner of a Unit (other than the Declarant) which is covered by the Undivided Condominium Property Tax Bill as more fully provided in this subparagraph. For purposes of this subparagraph (c), the following terms shall have the following meanings:

"Land Portion" shall mean an amount equal to the "land" portion of the Undivided Condominium Property Tax Bill (being the portion attributable to the assessed valuation of the land as determined by the Declarant upon review of the relevant records of the County Assessor, to the extent available, multiplied by the state equalization factor for Cook County and multiplied by the tax rate shown on the Undivided Tax Bills).

"Improvement Portion" shall mean an amount equal to the "improvements" portion (which shall be the remainder of the taxes allocated to the Undivided Condominium Property Tax Bill after deducting the "land" portion of such Undivided Condominium Property Tax Bill).

"Unit's Share of Land Portion" shall mean the Land Portion multiplied by the ratio of the percentage interest in the Common Elements attributable to the Unit (as shown in the Declaration) to the percentage interest of all Units covered by the Undivided Condominium Property Tax Bill (as shown in the Declaration).

"Unit's Share of Improvement Portion" shall mean an amount calculated by (i) multiplying the Purchase Price by the number of days in the Closing Year after the Closing Date, and divided by the number of days in the Closing Year, then (ii) dividing such product by the total of all such products (price times applicable portion of Closing Year) pertaining to all Units, including the Unit, which are covered by the Undivided Condominium Property Tax Bill and were sold and conveyed by Seller during such year, then (iii) multiplying such quotient by the Improvement Portion.

"Final Proration" shall mean the sum of the Unit's Share of Land Portion, multiplied by the number of days in the Closing Year after the Closing Date, and divided by the number of days in the Closing Year, plus the Unit's Share of Improvement Portion.

Declarant shall determine the Final Proration for each Unit which is covered by the Undivided Condominium Tax Bill and shall notify each owner of a Unit Owner of a Unit which is covered by the Undivided Condominium Property Tax Bill, in writing, of the Final Proration, together with Declarant's calculation thereof, and each such Owner shall pay the Final Proration to the Declarant within thirty (30) days after receipt of such notice.

(d) Any amounts due from an Owner or Unit Owner to the Declarant under this Section shall give rise to a lien therefor against the Unit in favor of the Declarant, and the provisions of Article Ten hereof shall apply.

7.2 The Owners shall make good faith efforts and cooperate with each other so that the Units and the Commercial 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 of Cook County, Illinois (the "Assessor"). From and after submission of

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the a portion of the Residential 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 Residential Parcel which is submitted to the Act.

## ARTICLE 8 INSURANCE

8.1 The Owner of the Residential Parcel and the Commercial Parcel shall procure and maintain the following insurance:

(a) The Owner of the Residential Parcel shall keep the Residential Improvements and personal property located on the Residential Parcel insured for no less than "all risk" or "special form" coverage on real property and broad form on personal property for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

(b) The Owner of the Residential Parcel shall maintain Commercial General Liability Insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Common Elements of the Residential 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, residential buildings in the City of Chicago, but in all events for limits of not less than \$1,000,000 combined single limit per occurrence with a general policy aggregate of \$2,000,000.00 for personal and bodily injury or property damage with at least additional \$5,000,000 umbrella coverage. The Owner of the Residential Parcel shall be required to maintain such additional coverage as is required pursuant to the Condominium Declaration or the Act. Such coverage shall name the Owner of the Commercial Parcel, or any party reasonably requested by the Owner of the Commercial Parcel, as an additional insured.

(c) The Owner of the Commercial Parcel shall keep improvements & betterments and personal property located in the Commercial Parcel insured for no less than "all risk" or "special form" coverage for an amount not less than one hundred percent (100%) of the insurable replacement cost thereof. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

(d) The Owner of the Commercial Parcel shall maintain Commercial General Liability Insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Commercial 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, buildings in the City of Chicago, but in all events for limits of not less than \$1,000,000 combined single limit per occurrence with a general policy aggregate of \$2,000,000.00 for personal and bodily injury or property damage with at least additional \$5,000,000 umbrella coverage. Such coverage shall name the Owner of the Residential Parcel, or any party reasonably requested by the Owner of the Residential Parcel, as an additional insured. The Owner of the Commercial Parcel shall be solely responsible for insuring any risk associated with its use of the Commercial Parcel or any activities conducted thereon.

(e) The Owner of the Commercial Parcel shall carry Plate Glass Insurance in amounts reasonably satisfactory to the Owner of the Residential Parcel; provided, however, that the Owner of the Commercial Parcel may elect to self-insure against such risks normally covered by Plate Glass Insurance.

(f) (i) Owner of the Commercial Parcel shall bear 2.25% and the Owner of the Residential Parcel shall bear 97.75% of the total cost of insurance to be procured, or caused to be procured, by the Owner of the Residential Parcel as described in Paragraph 8.1(a) of this Agreement.

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(ii) Owner of the Residential Parcel shall submit statements from time to time to the Owner of the Commercial Parcel for insurance procured pursuant to Paragraph 8.1(a) of this Agreement, and said statement shall be paid by the Owner of the Commercial Parcel within thirty (30) days after receipt of such statements.

8.2 Insurance policies required by Section 8.1 above 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/XII according to Best's Insurance Report or a substantially equivalent rating from a nationally-recognized insurance rating service.

8.3 Limits of liability or types of insurance specified in this Article 8 shall be reasonable and prudent for an Owner of a first-class property and shall be jointly reviewed by the Owners at least annually. Policy limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Agreement.

8.4 Certificates delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner at least thirty (30) days prior to the expiration date of any such expiring insurance policy. Copies of such policies shall be delivered upon request. Each Owner shall name the other Owner as an additional insured on such policies.

## ARTICLE 9 MAINTENANCE, REPAIR & DAMAGE TO THE COMMERCIAL PARCEL AND RESIDENTIAL PARCEL

9.1 The Owner of the Commercial Parcel, at its sole cost and expense, shall keep the Commercial Parcel and all Facilities located therein (excluding the pipes, ducts and related equipment and other Facilities located in the portion of the Commercial Parcel below the bottom of the slab forming the floor of the Commercial Parcel and above the ceiling of the Commercial Parcel which serve the Residential Parcel, which Facilities shall be maintained, repaired and replaced by the Owner of the Residential Parcel or for which it is assigned Maintenance responsibility in this Agreement, (except all structural support located in the Commercial Parcel which benefits the Residential Parcel) as well as Easements and other services to the Residential Parcel required in this Agreement 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 involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty, or otherwise. The plans and specifications for such repair and reconstruction shall provide for the Commercial Parcel to be rebuilt as nearly as commercially practicable to the Commercial Parcel as constructed prior to the damage unless prohibited by law or unless the Owner of the Residential Parcel otherwise agrees. Provisions concerning modifications, alterations, or improvements to the interior or exterior of the Commercial Parcel are set forth in Article 14 of this Agreement. Each Owner shall be responsible for reimbursing the other Owner for any costs and expenses incurred in respect to Maintenance for which such Owner is responsible pursuant to this provision to the extent that such Maintenance results from damage caused by the other Owner.

9.2 Except as expressly provided in Section 9.1, the Owner of the Residential Parcel shall at its sole cost and expense, keep all Facilities located in the Residential Parcel (excluding the HVAC system and related equipment and the electrical and mechanical systems not located in the Commercial Parcel portion of the Building which exclusively serve the Commercial Parcel, the Glass Storefront System forming part of the Commercial Parcel which shall be maintained, repaired and replaced by the Owner of the Commercial Parcel), all portions of the Residential Parcel

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necessary to provide structural support, Easements and other services to the Commercial Parcel required in this Agreement, and all portions of the Commercial Parcel necessary to provide structural support to the Residential Parcel, 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 such 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 safe, first-class working order and condition, howsoever the necessary or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty or otherwise. Each Owner shall be responsible for reimbursing the other Owner for any costs and expenses incurred in respect to Maintenance for which such Owner is responsible pursuant to this provision to the extent that such Maintenance results from damage caused by the other Owner.

9.3 If at any time any Owner shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of the other Owner or services to be furnished the other Owner under Article 4 hereto then (i) the Owner benefiting therefrom may give written notice to the other Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then such Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation such Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. Such Owner in so performing such repair and restoration shall be entitled to reimbursement upon demand from the defaulting Owner for all costs and expenses incurred by such Owner and such other rights as provided under Article 10 herein.

9.4 Without limiting the generality of the foregoing, if the Improvements are damaged by fire or other casualty and (a) only the Residential Parcel is damaged or destroyed or (b) only the Commercial Parcel is damaged or destroyed, then any such damage shall be repaired and restored by the Owner of the portion of the Improvements so damaged or destroyed in as timely a manner as practicable under the circumstances, and such Owner shall be entitled to use any insurance proceeds in accordance with Article 18 hereof. If at any time any Owner so obligated to repair or restore its portion of the Improvements (the "Repairing Owner") shall not proceed diligently with such repairs and restoration, then (i) the other Owner may give written notice to the Repairing Owner and, after the expiration of thirty (30) days, if the Repairing Owner still is not proceeding to diligently complete such repairs or restoration, the other Owner may perform such repairs or restoration and may take all appropriate steps to carry out the same and shall have a lien on the insurance proceeds to pay the costs and expenses of such repair and restoration work; or (ii) in an Emergency Situation, the other Owner may immediately perform such repair or restoration work and may take all appropriate steps to carry out the same and shall have a lien on the insurance proceeds to pay the costs and expenses of such repair and restoration work. If the Repairing Owner fails to repair and restore its portion of the Improvements as required by this Agreement, then the other Owner shall, in addition to all other rights and remedies under this Agreement, have a lien on any insurance proceeds payable for loss or damage to such portion of the Repairing Owner's Parcel under insurance policies carried pursuant to Article 8 hereof and on any condemnation award pursuant to Article 12, in an amount necessary so that the other Owner shall have sufficient proceeds to repair and restore the Repairing Owner's Parcel to a condition so as adequately to assure:

- (a) the structural integrity and safety of all portions of the other Owner's Parcel;
- (b) the continuous and efficient operation of all electrical, utility, mechanical, plumbing and other systems serving the other Owner's Improvements;
- (c) the Total Parcel's 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

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(d) the architectural unity and aesthetic appearance of the Building and the restored improvements as a first-class, residential and commercial property.

Except in the case that an Owner is using the proceeds of insurance or condemnation to repair or restore damage to such Owner's portion of the Total Parcel, the lien as to proceeds of insurance or condemnation created by this Section shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on any portion of the Total Parcel, except for the lien of a Mortgage. Such lien shall arise immediately upon the recording of a notice by the Owner with the Recorder following the occurrence of the damage to the Improvements stating that it is a lien created by this Section of this Agreement. Such lien shall continue in full force and effect until the sum of money required hereunder shall have been paid to the other Owner. 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.

9.5 If the Improvements are damaged by fire or other casualty and if the provisions of Section 9.4 are not applicable because the nature of the damage does not fall within the categories set forth in clause (a) or (b) of Section 9.4, the then repair and restoration of such damage shall be the joint responsibility of the Owners whose portions of the Total Parcel are in need of such repair or restoration. Such repair or restoration shall be commenced and pursued to completion in as timely a manner as practicable. Said repair and restoration shall be performed by a contractor selected jointly by such Owners. If such Owners cannot agree on the selection of a contractor, the selection shall be made pursuant to the arbitration provisions of Article 11 hereof. The plans and specifications for such repair and restoration shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage or destruction unless prohibited by law or unless the Owners agree otherwise. If the cost and expense of performing the repairs and restoration provided for in this Section 9.5 exceed the amount of available insurance proceeds, 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 their respective Improvements to their former condition; provided, however, that where such insurance was purchased jointly by the Owners, such excess cost and expense shall be borne in proportion to the respective Owner's share of the insurance premiums. If there are excess insurance proceeds available after the completion of repairs and restoration, such proceeds shall be refunded to the respective Owners to the extent such sum exceeds the actual repair or restoration of such Owner's Improvements.

9.6 If the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, codes, ordinances, rules and regulations and requirements of the appropriate governmental entities having jurisdiction over the Improvements. In such event, the available insurance proceeds (after deducting the demolition costs and expenses) shall be paid to each respective Owner shall be refunded to such Owner pursuant to the terms and the amounts stated in each Owner's insurance policies; provided that where such insurance policies were purchased jointly by the Owners, such proceeds shall be distributed to each Owner in proportion to the respective Owner's share of the insurance premiums. If the Improvements are totally destroyed and the Owners agree not to rebuild, the underlying land shall be deemed owned by the Owner of the Commercial Parcel (as to an undivided 2.25% interest) and owned by the Owner of the Residential Parcel (as to an undivided 97.75% interest) as Tenants in Common.



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## ARTICLE 10 LIENS, RIGHTS AND REMEDIES

10.1 If, at any time, an Owner (a "Debtor Owner") fails within thirty (30) days after notice or demand to pay any sum of money due another Owner (a "Creditor Owner") under or pursuant to the provisions of this Agreement, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) in the event of a default under Articles 9 or 12, a lien against any condemnation award or insurance proceeds payable to the Debtor Owner for loss or damage to the portion of the Total Parcel owned by the Debtor Owner or otherwise under insurance policies carried pursuant to Article 8 hereof, or (ii) in the event of a default under any other Section of this Agreement, a lien against the portion of the Total Parcel owned by the Debtor Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 10 or to secure performance of a covenant or obligation. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The liens provided for in this Section 10.1 shall be subordinate to any first mortgage, first trust deed or other encumbrance constituting a first lien on the portion of the Total Parcel owned by the Debtor Owner or other interest of the Debtor Owner including mortgages of Units. Each Owner waives any and all rights to trial by jury in any suit, action or proceeding brought by the other Owner to enforce collection of any monies owed under this Agreement to such other Owner.

10.2 So long as any portion of the Residential Parcel remains subject to the provisions of the Act, each Unit Owner shall be liable only for such portions of any claim against the Owner of the Residential Parcel equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit as set forth in the Condominium Declaration. Upon payment of such amount for which Unit Owner is liable, (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the Owner of the Commercial Parcel shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several.

10.3 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 10, and any lien which would have arisen against any property pursuant to this Article 10 had there been no conveyance or divestiture of title (other than foreclosure of a lien which shall then be and remain superior) shall not be created or otherwise diminished or affected by reason of such conveyance or divestiture of title.

10.4 Interest shall accrue on any sums owed by an Owner to the other Owner pursuant to this Agreement, and shall be payable from the date which is thirty (30) days after demand for any such payment is made until paid in full, at a rate (the "Default Rate") of interest equal to the lesser of: (a) the floating rate which is equal to five percent (5%) per annum in excess of the annual rate of interest from time to time announced by LaSalle Bank NA in Chicago, Illinois, as its "prime rate" of interest or a reasonably equivalent substitute thereof in the event a prime base rate is no longer announced, or (b) the then-maximum lawful rate of interest in Illinois applicable to the defaulting Owner and the nature of the debt. If a "prime rate" or reasonable equivalent thereof is not announced by LaSalle Bank NA, and no maximum lawful rate applies, then interest shall accrue at the annual Default Rate of eighteen percent (18%).

10.5 Except as expressly provided in this Agreement, the rights and remedies of each Owner provided for in this Article 10 or elsewhere in this Agreement 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. Except as expressly provided in this Agreement, each Owner may enforce, by a proceeding in equity for mandatory injunction, the other Owner's obligation to execute or record any document which the other Owner is required to execute under or pursuant to this Agreement. The exercise by an Owner of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

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

10.7 Actions to enforce any right, claim or lien under this Agreement shall be commenced within three (3) years immediately following the date the cause of action occurred, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, each Mortgagee is diligently proceeding to foreclose the Mortgage, then such period in which an action by the Owner of the Residential Parcel or Owner of the Commercial Parcel must be commenced shall be further extended for such additional time as may reasonably be necessary in order for each Mortgagee to obtain possession of the applicable Parcel.

10.8 A defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by the other Owner in successfully enforcing its rights against the defaulting Owner under this Agreement, and such fees and costs shall be added to the amount of any applicable lien created under this Article 10.

## ARTICLE 11 ARBITRATION

11.1 The following matters shall be submitted for arbitration to the American Arbitration Association (the "AAA") pursuant and subject to the provisions of this Article 11:

(a) Any dispute, claim or controversy arising under this Agreement involving an amount not exceeding \$50,000.00 which shall not be resolved within sixty (60) days after same has arisen; and

(b) All other matters which are required under this Agreement 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 Owner and by filing a copy of such demand with the AAA. The AAA shall have jurisdiction upon the giving of such notice and the filing of such demand. Any such arbitration shall be held in Chicago, Illinois, and shall be conducted and completed in an expeditious manner and without delay. Each Mortgagee shall be a party to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagee hereunder.

11.2 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 first-class buildings similar to the Building. The AAA Commercial Arbitration Rules then in effect shall apply to the arbitration of any Matter, unless the parties mutually agree in writing otherwise.

11.3 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 in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Agreement. Subject to the other terms hereof if any Owner fails or refuses to appear at and participate in an arbitration hearing after due notice, the 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, except that each Owner shall be responsible for its own expenses.

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11.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Agreement in accordance with this Agreement during the course of any arbitration constituted or conducted under the provisions of this Article 11. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by any party 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 times as any Matter is resolved as provided in this Article 11.

11.5 With respect to any Matter subject to arbitration under this Article 11, it is agreed that the arbitration provision of this Article 11 shall be the sole remedy of the Owners under this Agreement. Notwithstanding any other provisions of this Agreement, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. Any award of the arbitrator shall be final and binding upon the Owners and each Mortgagee and judgment thereon shall be entered by any court having jurisdiction.

## ARTICLE 12 CONDEMNATION

12.1 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 (hereinafter in this Article 12, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and/or restoration of the Improvements shall be performed, in accordance with the requirements of this Article 12.

12.2 In the event of a taking (whether or not a temporary taking) of a part of the Total Parcel, the Owner of the portion of the Total Parcel taken shall repair and restore the remainder of such Owner's 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 whose portion of the Total Parcel is taken. The Owner of the portion of the Total Parcel taken shall be entitled to receive directly from the taking authority any Award resulting from such taking within such Owner's portion of the Total Parcel for application to the cost of said repair and restoration and to retain any excess not required for such repair and restoration.

12.3 Notwithstanding any other provision of this Agreement to the contrary, if, as a result of a taking (other than a temporary taking), an Owner Reasonably determines that such Owner's portion of the Total Parcel no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore the such Owner's Improvements as may otherwise be required by this Agreement. However, in such case, such Owner shall demolish, repair or restore such Owner's Improvements 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 the Owner of the other portion of the Total Parcel affected thereby request that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of such Owner's portion of the Total Parcel and shall restore such Owner's portion of the Total Parcel to a sightly and safe condition and in such a manner as to safeguard the other Owner's portion of the Total Parcel, and to preserve the use of the Easements granted hereunder.

12.4 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. Absent such an apportionment, the Owner of the Commercial Parcel shall receive 2.25%, and the Owner of the Residential Parcel shall receive 97.75%, of the total Award.

## ARTICLE 13 ESTOPPEL CERTIFICATES

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13.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner, execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate (each, an "Estoppel Certificate") in such form as may be reasonably requested. The Owner of the Commercial Parcel, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may limit the statements made in the Estoppel Certificate to (i) the existence of any defaults hereunder and (ii) the amount of any liens capable of being asserted hereunder.

13.2 So long as the Residential Parcel remains subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of the Residential Parcel 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 the Residential Parcel from the Owner of the Commercial Parcel may only be requested by the Condominium Association on behalf of the Owner of the Residential Parcel.

## ARTICLE 14 ALTERATIONS

14.1 (a) No changes, modifications, alterations, or improvements to the Commercial Parcel ("Alterations") shall be made without the prior written consent of the Owner of the Residential Parcel if such Alterations will:

- (i) adversely affect the benefits afforded to the Owner of the Residential Parcel by any Easement or unreasonably interrupt the Owner of the Residential Parcel's use or enjoyment of any Easement;
- (ii) adversely affect Facilities benefiting the Residential Parcel;
- (iii) except as provided in Section 15.1(e), modify the exterior of the Building, including without limitation, awnings;
- (iv) increase the total square footage of the Improvements; or
- (v) affect the zoning status of the Building or Total Parcel.

(b) If, at any time, the Owner of the Commercial Parcel proposes to make any Alterations which require or could possibly require the consent of the Owner of the Residential Parcel, then before commencing or proceeding with such Alterations, the Owner of the Commercial Parcel shall deliver to the Owner of the Residential Parcel, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 14.1. If the Owner of the Residential Parcel consents in writing to such Alterations, the Owner of the Commercial Parcel may proceed to make its Alterations in accordance with said plans and specifications. The Owner of the Residential Parcel shall make a good faith effort to respond to the Owner of the Commercial Parcel within thirty (30) days after its receipt of said plans and specifications from the Owner of the Commercial Parcel showing proposed Alterations. If the Owner of the Residential Parcel shall not have responded within such thirty (30) day period, the Owner of the Commercial Parcel shall deliver to the Owner of the Residential Parcel an additional request for a response. If the Owner of the Residential Parcel fails to respond within thirty (30) days from receipt of the additional request, the plans and specifications for such Alterations shall be deemed approved. If the Owner of the Commercial Parcel has not requested the Owner of the Residential Parcel's consent to the proposed Alterations, and if, in the good faith opinion of the Owner of the Residential Parcel, the Owner of the Commercial Parcel has violated or will violate the provisions of this Section 14.1, the Owner of the Residential Parcel shall notify the Owner of the Commercial Parcel of its opinion that the

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Alterations or proposed Alterations violate or will violate the provisions of this Section 14.1 hereof, and shall specify the respect or respects in which its provisions are or will be violated. If the Owner of the Residential Parcel in good faith asserts a violation of this Section 14.1, then the Owner of the Commercial Parcel 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 Owner of the Residential Parcel may be entitled by reason of the Owner of the Commercial Parcel's violation or likely violation of the provisions of this Section 14.1, the Owner of the Residential Parcel shall be entitled to seek and obtain injunctive relief to enjoin any such violation. Failure of a Mortgagee to approve such plans and specifications, if such consent is required pursuant to a Mortgage, shall be grounds for the Owner of the Residential Parcel to reject such request.

(c) Each Owner, in making Alterations, shall (i) cause all work to be performed 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 Agreement. Each Owner shall, to the extent Reasonably practicable, make Alterations within the portion of the Total Parcel owned by such Owner, 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 any occupant or occupants of the portion of the Total Parcel of the other Owner.

14.2 Applications for building permits to make Alterations shall be filed and processed by each Owner without the joinder of the other Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the Owner. If joinder by such Owner is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided however, each Owner shall indemnify and hold harmless the other Owner from and against any and all loss, liability, claims, judgments, costs and expenses arising out of the other Owner's execution of the application, permit or other instrument.

14.3 The Owner of the Commercial Parcel and Owner of the Residential Parcel each shall include in any construction contract a provision pursuant to which the contractor (i) recognizes the separate ownership of 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 Owner who employs such contractor, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against the portion of the Total Parcel owned by the other Owner and agrees to comply with the provisions of Section 21 of the Illinois Mechanics Lien Act in connection with giving notice of such "no lien" provision.

14.4 Without the written consent of each of the Owners, no Alterations shall be made to either Parcel which will: (i) adversely affect the benefit afforded to the other Owner by any Easement; (ii) adversely affect Facilities benefiting the other Owner; (iii) increase the total square footage of the Improvements; (iv) alter the Building facade or its appearance.

## ARTICLE 15 ADDITIONAL RESTRICTIONS

15.1 Notwithstanding anything contained herein to the contrary, the Commercial Parcel and the Owner of the Commercial Parcel from time to time shall be subject to the following restrictions as to the use of the Commercial Parcel:

(a) The Owner of the Commercial Parcel shall not use or occupy the Commercial Parcel or permit the use or occupancy of the Commercial Parcel for any purpose or in any manner which (i) is unlawful or in violation of any applicable legal or governmental requirement, ordinance or rule, (ii) is dangerous to persons or property, (iii) invalidates any policy of insurance affecting the Building, and if any additional amounts of

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insurance premiums are incurred, the Owner of the Commercial Parcel shall pay to the Owner of the Residential Parcel the additional amounts on demand, (iv) creates a legal nuisance, (v) causes an offensive odor, noise or vibration to emanate from the Commercial Parcel; provided, however, operation of a restaurant in the Commercial Parcel is expressly permitted and the Building is set up to allow black iron exhaust at the 8<sup>th</sup> floor and such emanation of black iron exhaust shall in no way be construed to violate the terms of this Declaration, (vi) is offensive, disreputable, immoral or illegal, which prohibition shall include, but not be limited to use of all or any portion of the Commercial Parcel as a massage parlor (which does not include and is distinguished from a massage therapist), for the sale of adult entertainment, books, magazines, videos and other adult products, (vii) engages in the business of off-track betting or (viii) operates a bar or nightclub, arcade or amusement facility. The Owner of the Commercial Parcel, at its expense, shall obtain and maintain at all times during the Term, all licenses and permits necessary for the Owner of the Commercial Parcel's operations from the Commercial Parcel and shall post or display in a prominent place in the Commercial Parcel such permits and/or notices as required by law.

(b) The Owner of the Commercial Parcel shall at all times maintain the Commercial Parcel in a first-class, clean and sanitary condition, and the Owner of the Commercial Parcel shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Commercial Parcel and the cleanliness, safety, occupancy and use of same. The Owner of the Commercial Parcel shall comply with all of the requirements of all governmental authorities and the Owner of the Residential Parcel's fire insurance carriers now or hereafter in force pertaining to the use of the Commercial Parcel. The Owner of the Commercial Parcel agrees that all receiving of goods and merchandise and all removal of delivery of merchandise, supplies, equipment, trash and garbage shall be made either through the front of the Commercial Parcel or by way of the rear door of the Commercial Parcel and in accordance with reasonable procedures and at the hours reasonably specified, from time to time, by the Owner of the Residential Parcel. The Owner of the Commercial Parcel agrees that it shall be strictly prohibited to solicit business directly from Owners of the Residential Parcel by putting materials or information under doors or in and around the common areas.

(c) Intentionally Omitted.

(d) The Owner of the Commercial Parcel shall not cause or permit to occur: (i) any violation of any present or future federal, state or local law, ordinance or regulation related to environmental conditions in or about the Commercial Parcel, including, but not limited to, improvements or alterations made to the Commercial Parcel at any time by the Owner of the Commercial Parcel, its agents or contractors, or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any "Hazardous Substances" (as hereinafter defined) in or about the Commercial Parcel, or the transportation to or from the Commercial Parcel of any Hazardous Substances. The Owner of the Commercial Parcel, at its expense, shall comply with each present and future federal, state and local law, ordinance and regulation related to environmental conditions in or about the Commercial Parcel or the Owner of the Commercial Parcel's use of the Commercial Parcel, including, without limitation, all reporting requirements and the performance of any cleanups required by any governmental authorities. The Owner of the Commercial Parcel shall indemnify, defend and hold harmless the Owner of the Residential Parcel and its agents, contractors and employees from and against all fines, suits, claims, actions, damages, liabilities, costs and expenses (including attorneys' and consultants' fees) asserted against or sustained by any such person or entity arising out of or in any way connected with the Owner of the Commercial Parcel's failure to comply with its obligations under this Subsection, which obligations shall survive the expiration or termination of this Agreement. As used in this Subsection, "Hazardous Substances" shall include, without limitation, flammables, explosives, radioactive materials, asbestos containing materials (ACMs), polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, petroleum and petroleum products, chlorofluorocarbons (CFCs) and substances declared to be hazardous or toxic under any present or future federal, state or local law, ordinance or regulation.

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(e) The Owner of the Commercial Parcel or the tenant thereof shall have the right to install exterior signage subject to applicable laws, ordinances and regulations and at all times subject to the approval of the Declarant. Without limiting the generality of the foregoing, no such exterior sign shall contain any strobe lights, moving parts or day-glow colors. In addition, the Owner of the Commercial Parcel or the tenant thereof may display in the windows of the Commercial Parcel such party's hours of operation and other signage consistent with the operation of first-class businesses. All of the aforesaid signage shall be consistent with the aesthetic of the Building. Except for the foregoing, all signs, pictures, advertisements or notices the Owner of the Commercial Parcel or the tenant thereof desires to place outside the Building shall be subject to the approval of the Owner of the Residential Parcel in accordance with the procedures set forth in Article 14 hereof.

## ARTICLE 16 NOTICES

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

If to the Owner of the Residential Parcel:  
565 W. Quincy Condominium Association  
c/o Belgravia Group, Ltd.  
833 N. Orleans Street, Suite 400  
Chicago, Illinois 60610

If to the Owner of the Commercial Parcel:  
Quincy Condominium LLC  
c/o Belgravia Group, Ltd.  
833 N. Orleans Street, Suite 400  
Chicago, Illinois 60610

16.2 Any Notice delivered as aforesaid shall be deemed received when delivered and receipted for or any Notice mailed aforesaid shall be deemed received two (2) business days after deposit in the United States Mail, or upon actual receipt whichever is earlier. Addresses for service of Notice may be changed by written notice served as hereinabove provided at least ten (10) days prior to the effective date of any such change. Nothing herein contained, however, shall be construed to preclude service of any Notice in the same manner that service of a summons or legal process may be made.

## ARTICLE 17 LIMITATION OF LIABILITY

17.1 No Owner shall be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. Each Owner obligated hereunder is reserved the right to curtail or halt the performance of any service hereunder at any time in reasonable respects for a reasonable period of time to make necessary repaired or in case of an Emergency Situation.

17.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Total Parcel: (1) the Owner who is divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself freed and relieved therefrom as hereinabove provided in this Section 17.2, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.

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17.3 The enforcement of any rights or obligations contained in this Agreement 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, or be a lien on any assets of, such Owner other than Owner's interest in the Total Parcel.

## ARTICLE 18 DEPOSITARY

18.1 A depositary (the "Depositary") shall be appointed to receive the insurance proceeds and condemnation awards described above, to disburse such proceeds and awards and to act otherwise in accordance with this Agreement. Except as otherwise provided hereunder, and subject to the rights of Mortgagees, all insurance proceeds under Articles 8 and 9 and condemnation awards under Article 12 shall be paid to the Depositary. The Depositary shall be selected by the Owners jointly and shall be a title insurance company, trust company or bank with offices in the City of Chicago. If the Owners cannot agree on the Depositary within thirty (30) days after a casualty or final agreement as to the amount of a condemnation award, one shall be selected pursuant to Article 11 hereof. If the Depositary resigns, a substitute Depositary shall be selected in the same manner as set forth in this Section 18.1 within thirty (30) days after the resigning Depositary notifies the Owner or Owners affected in writing.

18.2 Each Owner whose portion of the Total Parcel is the subject of any such casualty or condemnation shall be obligated to pay the reasonable fees and expenses of the Depositary in proportion to the proceeds from the applicable insurance policies or condemnation awards. Each such Owner and the Depositary shall execute an agreement (the "Escrow Agreement") regarding the Depositary's rights and obligations and the conditions pursuant to which the Depositary shall act, such agreement in form and content acceptable to the parties thereto and in accordance with the provisions of this Agreement. The Escrow Agreement may be in the form of the customary construction escrow then in use by the Depositary in Chicago, Illinois, with such changes as may be required to conform to this Agreement.

18.3 All funds held by the Depositary shall be held in trust and deposited in an interest bearing account (the "Escrow") for the benefit of the Owner or Owners whose insurance proceeds or condemnation awards are so deposited. Notwithstanding anything contained herein to the contrary, any insurance proceeds or condemnation awards claimed by a Mortgagee shall be paid to such Mortgagee and any proceeds or condemnation awards of less than \$50,000.00 shall be paid directly to the party so entitled rather than to the Depositary unless the proceeds or condemnation awards are paid to more than one Owner.

18.4 Each request by an Owner or its agent (including its contractor) acting pursuant to this Agreement or the Escrow Agreement for disbursement of funds held in the Escrow shall be accompanied by a customary owner's sworn statement, a contractor's sworn statement, supporting lien waivers, together with an architect's (or if the Depositary shall accept, an Owner's) certification that (a) the sum requested has been paid by or on behalf of the Owner or Owners requesting such funds, (b) the sum is justly due to the Owner, Owners, contractors, subcontractors and other parties set forth in said owner's sworn statement, (c) briefly describes the work completed, services rendered and materials supplied and the amounts due for such work, services and materials, (d) states that the sum requested plus sums previously disbursed do not exceed the cost of the work in place, the services rendered and materials supplied and stored at the Total Parcel to date, (e) states that no part of the cost of work, services or materials requested have been the basis of a previous or pending withdrawal from the Escrow and (f) states that the cost to complete the unfinished work will not exceed the funds held by the Depositary after payment of the current request. If the architect (or Owner) cannot or will not certify (f) above, the Owner or Owners who are party to the Escrow Agreement and who accordingly have caused the budget for the repairs and restoration to become out of balance shall first pay or provide a source of payment of such funds in order to bring the budget back in balance again before the Depositary shall be obligated to pay funds from the Escrow pursuant to Section 18.5 hereof.



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18.5 Upon satisfaction of the requirements of Section 18.4 (but not more frequently than once in each calendar month) and upon approval of the Owners, any Mortgagees holding approval rights concerning the repairs or restoration and the title insurer providing title coverage over the work being performed at the Total Parcel, the Depository shall, out of the Escrow and subject to such retention as set forth in the Escrow Agreement, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, service providers and other parties named in the owner's and contractor's sworn statements the respective amounts stated in said statements due such parties. The Depository may rely conclusively, with respect to the information contained therein, on any certificate, authorization or statement furnished the Depository by an Owner in accordance with this Article 18 and the Depository shall not be liable or accountable for any disbursement of funds from the Escrow made by it in reliance upon such certificate, authorization or statement.

## ARTICLE 19 GENERAL

19.1 In fulfilling obligations and exercising rights under this Agreement, each Owner shall cooperate with the other Owner 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 Agreement, except such information as such Owner may reasonably deem confidential or which may be the subject of litigation and which such Owner is prohibited from revealing pursuant to court order. From time to time after the date hereof, each Owner shall furnish, execute and acknowledge, without charge (except where elsewhere provided herein) (i) such other instruments, documents, materials and information as any other Owner hereto may reasonably request in order to confirm to such requesting Owner the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owner hereunder or increase such Owner's burdens hereunder; and (ii) such grants of Easements to and agreements with utility companies as any other Owner hereto may reasonably request in order to enable such utility company to furnish utility services as required by such Owner, provided that any Mortgagee which holds any Mortgage on the portions of the Total Parcel on which such Easement is granted have first consented in writing to such Easements.

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

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

19.4 (a) Except as otherwise provided herein, this Agreement may be amended or terminated only by an instrument signed by the Owners and the Mortgagee. Any amendment to or termination of this Agreement shall be recorded with the Recorder.

(b) Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Agreement at any time and from time to time which amends this Agreement to correct clerical or typographical errors in this Agreement. A Special Amendment may also contain such complementary and supplemental grants and reservations of Easements as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Parcel. Declarant also reserves the right to include, within a Special Amendment, revisions to the legal descriptions of the Residential Parcel and Commercial Parcel. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of the other Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Total 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 Declarant to vote in favor of, make, execute and record Special Amendments. The right of Declarant to act pursuant to rights reserved or

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granted under this Section shall terminate at such time as Declarant no longer holds or controls title to any portion of the Total Parcel.

19.5 The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Agreement 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, subject to amendment or termination as hereinabove set forth in Section 19.4; provided, however, that this Agreement, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated (i) as may be provided in Section 9.5 or (ii) 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 William J. Clinton, President of the United States of America, living at the date of this Agreement.

19.6 If the Owner of the Commercial Parcel is required to obtain the consent of the Owner of the Residential Parcel for any matter hereunder, the Owner of the Commercial Parcel shall deliver to the Owner of the Residential Parcel a written request for such consent together with all information and documentation necessary for the Owner of the Residential Parcel to evaluate such request. If the Owner of the Residential Parcel shall not have responded to such request within thirty (30) days from the date of receipt of such request and all such information and documentation, the Owner of the Commercial Parcel shall deliver to the Owner of the Residential Parcel an additional request for a response. If the Owner of the Residential Parcel fails to respond within thirty (30) days from receipt of the additional request, the matter for which the request was sought shall be deemed approved.

19.7 The provisions of this Agreement shall be construed to the end that the Total Parcel shall remain a first-class property.

19.8 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.

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

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

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

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

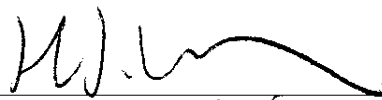
19.13 No charges shall be made for any Easements or rights granted hereunder unless otherwise provided or permitted under the terms of this Agreement.

19.14 No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against Declarant, its agents or employees on account hereof or on account of any covenant, undertaking or agreement herein, either express or implied, all such personal liability, if any, being hereby expressly waived and released by every person now or hereafter claiming any right hereunder. Anything herein contained to the contrary notwithstanding, it is understood and agreed that Declarant shall have no obligation to see to the performance or non-performance of any of the covenants herein contained and shall not be personally liable for any action or non-action taken in violation of any of the covenants herein contained.

**IN WITNESS WHEREOF**, Declarant has caused this Agreement to be executed and sealed as of this 9<sup>th</sup> day of April, 2009.

Quincy Condominium LLC, an Illinois limited liability company

By: Belgravia Group, Ltd., an Illinois corporation, its manager

By:   
Printed Name: Jacob J. Kaufman  
Title: EvP

Property of Cook County Clerk's Office

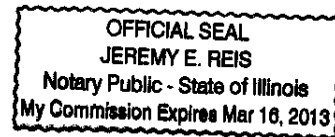
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STATE OF ILLINOIS            )  
  )SS.  
COUNTY OF COOK            )

I, Jeremy E. Reis, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Jacob J. Kaufman, the EVP of Belgravia Group, Ltd., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such EVP, appeared before me this day in person and acknowledged that she signed and delivered said instrument as such EVP of said corporation, as his own free and voluntary act, as the free and voluntary act of said corporation acting in its capacity as manager of Quincy Condominium LLC, an Illinois limited liability company, and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9<sup>th</sup> day of April, ~~2000~~ 2009.

Jeremy E. Reis  
Notary Public  
My Commission Expires: 3/16/2009



Property of Cook County Clerk's Office

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### CONSENT OF MORTGAGEE

The undersigned, Peter Millman, a AVP of Bank of America, N.A., as successor by merger to LaSalle Bank National Association (the "Bank"), as mortgagee under that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases dated April 28, 2006 and recorded with the Cook County Recorder on May 5, 2006 as document number 0612535063 (the "Mortgage"), hereby consents to the execution, delivery and recording of the Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements for 565 W. Quincy Street, Chicago, Illinois (the "Declaration") and subordinates the lien of the Mortgage to the Declaration.

IN WITNESS WHEREOF, the Bank has caused this instrument to be signed by its duly authorized officer on its behalf; all done at Chicago, Illinois on this 9<sup>th</sup> day of April, 2009.

By: Peter Millman  
Title: AVP

STATE OF ILLINOIS     )  
                                   ) SS.  
COUNTY OF COOK     )

I, Audrey M. Jackson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Peter Millman, personally known to me to be the AV President of Bank of America and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AV President, appeared before me this day in person and acknowledged that he / she signed and delivered the said instrument as his / her free and voluntary act and as the free and voluntary act and deed of said Bank, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 9<sup>th</sup> day of April, 2009.



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## EXHIBIT A

### Legal Description of Parcel

THE WEST 10 INCHES OF LOT 15 AND ALL OF LOTS 16, 17, 18, 19, 20 AND 21. IN THE SUBDIVISION OF BLOCK 46 OF SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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## EXHIBIT B

### Legal Description of Residential Parcel

THE WEST 10 INCHES OF LOT 15 AND ALL OF LOTS 16, 17, 18, 19, 20 AND 21 TAKEN AS A SINGLE TRACT OF LAND (EXCEPT THAT PART OF SAID TRACT WHICH LIES ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.48 FEET CHICAGO CITY DATUM AND WHICH LIES BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +29.23 FEET CHICAGO CITY DATUM AND IS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT (THE NORTHWEST CORNER OF SAID TRACT ALSO BEING THE NORTHWEST CORNER OF SAID LOT 18); THENCE NORTH 89°-58'-08" EAST ALONG THE NORTH LINE OF SAID TRACT, A DISTANCE OF 60.93 FEET (THE NORTH LINE OF SAID TRACT ALSO BEING THE SOUTH LINE OF W. QUINCY STREET); THENCE SOUTH 05°-45'-28" WEST, 14.83 FEET; THENCE NORTH 84°-14'-32" WEST, 5.83 FEET; THENCE SOUTH 05°-45'-28" WEST, 4.83 FEET; THENCE NORTH 90°-00'-00" WEST, 2.38 FEET; THENCE SOUTH 00°-00'-00" WEST, 20.63 FEET; THENCE NORTH 90°-00'-00" WEST, 8.93 FEET; THENCE SOUTH 00°-00'-00" WEST, 23.03 FEET; THENCE NORTH 90°-00'-00" WEST, 41.33 FEET TO THE WEST LINE OF SAID TRACT (THE WEST LINE OF SAID TRACT ALSO BEING THE EAST LINE OF S. JEFFERSON STREET); THENCE NORTH 00°-28'-30" WEST ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 62.60 FEET TO THE PLACE OF BEGINNING, ALSO EXCEPT THAT PART OF SAID TRACT WHICH LIES ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.48 FEET CHICAGO CITY DATUM AND WHICH LIES BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +29.10 FEET CHICAGO CITY DATUM AND IS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT (THE SOUTHWEST CORNER OF SAID TRACT ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 19); THENCE NORTH 00°-28'-30" WEST ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 34.63 FEET (THE WEST LINE OF SAID TRACT ALSO BEING THE EAST LINE OF S. JEFFERSON STREET); THENCE SOUTH 90°-00'-00" EAST, 8.83 FEET; THENCE NORTH 00°-00'-00" EAST, 2.32 FEET; THENCE SOUTH 90°-00'-00" EAST, 34.66 FEET; THENCE SOUTH 00°-00'-00" WEST, 3.78 FEET; THENCE SOUTH 90°-00'-00" EAST, 9.91 FEET; THENCE NORTH 00°-00'-00" EAST, 8.04 FEET; THENCE SOUTH 90°-00'-00" EAST, 106.49 FEET TO AN EAST LINE OF SAID TRACT (SAID EAST LINE OF SAID TRACT ALSO BEING THE EAST LINE OF SAID LOT 21); THENCE SOUTH 00°-26'-55" EAST ALONG SAID EAST LINE OF SAID TRACT, A DISTANCE OF 19.25 FEET; THENCE NORTH 90°-00'-00" WEST, 11.14 FEET; THENCE SOUTH 00°-00'-00" WEST, 5.26 FEET; THENCE SOUTH 90°-00'-00" EAST, 5.29 FEET; THENCE SOUTH 00°-00'-00" WEST, 7.71 FEET; THENCE NORTH 90°-00'-00" WEST, 8.94 FEET; THENCE SOUTH 00°-00'-00" WEST, 5.41 FEET; THENCE NORTH 90°-00'-00" WEST, 5.54 FEET; THENCE SOUTH 00°-00'-00" WEST, 3.58 FEET TO THE SOUTH OF SAID TRACT (THE SOUTH LINE OF SAID TRACT ALSO BEING THE NORTH LINE OF W. JACKSON BOULEVARD); THENCE NORTH 90°-00'-00" WEST ALONG THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 139.42 FEET TO THE PLACE OF BEGINNING); ALL IN THE SUBDIVISION OF BLOCK 46 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT C

### Legal Description of Commercial Property

#### **NORTH COMMERCIAL:**

THAT PART OF THE WEST 10 INCHES OF LOT 15 AND ALL OF LOTS 16, 17, 18, 19, 20 AND 21 TAKEN AS A SINGLE TRACT OF LAND WHICH LIES ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.48 FEET CHICAGO CITY DATUM AND WHICH LIES BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +29.23 FEET CHICAGO CITY DATUM AND IS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT (THE NORTHWEST CORNER OF SAID TRACT ALSO BEING THE NORTHWEST CORNER OF SAID LOT 18); THENCE NORTH  $89^{\circ}-58'-08''$  EAST ALONG THE NORTH LINE OF SAID TRACT, A DISTANCE OF 60.93 FEET (THE NORTH LINE OF SAID TRACT ALSO BEING THE SOUTH LINE OF W. QUINCY STREET); THENCE SOUTH  $05^{\circ}-45'-28''$  WEST, 14.83 FEET; THENCE NORTH  $84^{\circ}-14'-32''$  WEST, 5.83 FEET; THENCE SOUTH  $05^{\circ}-45'-28''$  WEST, 4.83 FEET; THENCE NORTH  $90^{\circ}-00'-00''$  WEST, 2.38 FEET; THENCE SOUTH  $00^{\circ}-00'-00''$  WEST, 20.63 FEET; THENCE NORTH  $90^{\circ}-00'-00''$  WEST, 8.93 FEET; THENCE SOUTH  $00^{\circ}-00'-00''$  WEST, 23.03 FEET; THENCE NORTH  $90^{\circ}-00'-00''$  WEST, 41.35 FEET TO THE WEST LINE OF SAID TRACT (THE WEST LINE OF SAID TRACT ALSO BEING THE EAST LINE OF S. JEFFERSON STREET); THENCE NORTH  $00^{\circ}-28'-30''$  WEST ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 62.60 FEET TO THE PLACE OF BEGINNING, ALL IN THE SUBDIVISION OF BLOCK 46 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### **SOUTH COMMERCIAL:**

THAT PART OF THE WEST 10 INCHES OF LOT 15 AND ALL OF LOTS 16, 17, 18, 19, 20 AND 21 TAKEN AS A SINGLE TRACT OF LAND WHICH LIES ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +14.48 FEET CHICAGO CITY DATUM AND WHICH LIES BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +29.10 FEET CHICAGO CITY DATUM AND IS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT (THE SOUTHWEST CORNER OF SAID TRACT ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 19); THENCE NORTH  $00^{\circ}-28'-30''$  WEST ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 34.63 FEET (THE WEST LINE OF SAID TRACT ALSO BEING THE EAST LINE OF S. JEFFERSON STREET); THENCE SOUTH  $90^{\circ}-00'-00''$  EAST, 8.83 FEET; THENCE NORTH  $00^{\circ}-00'-00''$  EAST, 2.32 FEET; THENCE SOUTH  $90^{\circ}-00'-00''$  EAST, 34.66 FEET; THENCE SOUTH  $00^{\circ}-00'-00''$  WEST, 3.78 FEET; THENCE SOUTH  $90^{\circ}-00'-00''$  EAST, 9.91 FEET; THENCE NORTH  $00^{\circ}-00'-00''$  EAST, 8.04 FEET; THENCE SOUTH  $90^{\circ}-00'-00''$  EAST, 106.49 FEET TO AN EAST LINE OF SAID TRACT (SAID EAST LINE OF SAID TRACT ALSO BEING THE EAST LINE OF SAID LOT 21); THENCE SOUTH  $00^{\circ}-26'-55''$  EAST ALONG SAID EAST LINE OF SAID TRACT, A DISTANCE OF 19.25 FEET; THENCE NORTH  $90^{\circ}-00'-00''$  WEST, 11.14 FEET; THENCE SOUTH  $00^{\circ}-00'-00''$  WEST, 5.26 FEET; THENCE SOUTH  $90^{\circ}-00'-00''$  EAST, 5.29 FEET; THENCE SOUTH  $00^{\circ}-00'-00''$  WEST, 7.71 FEET; THENCE NORTH  $90^{\circ}-00'-00''$  WEST, 8.94 FEET; THENCE SOUTH  $00^{\circ}-00'-00''$  WEST, 5.41 FEET; THENCE NORTH  $90^{\circ}-00'-00''$  WEST, 5.54 FEET; THENCE SOUTH  $00^{\circ}-00'-00''$  WEST, 3.58 FEET TO THE SOUTH OF SAID TRACT (THE SOUTH LINE OF SAID TRACT ALSO BEING THE NORTH LINE OF W. JACKSON BOULEVARD); THENCE NORTH  $90^{\circ}-00'-00''$  WEST ALONG THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 139.42 FEET TO THE PLACE OF BEGINNING, ALL IN THE SUBDIVISION OF BLOCK 46 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.