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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made and entered into as of the 1<sup>st</sup> day of March, 2010, by HAIRPIN LOFTS, LLC, an Illinois limited liability company ("Hairpin Lofts") and HAIRPIN RETAIL, LLC, an Illinois limited liability company ("Hairpin Retail"). Hairpin Lofts and Hairpin Retail are referred to collectively herein as the "Declarants."

### RECITALS

A. The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meanings set forth in Article 2 (Definitions) hereof.

B. Hairpin Lofts and Hairpin Retail each own a portion of a parcel and building situated at the northwest intersection of North Milwaukee Avenue and West Diversey Avenue, in Chicago, Cook County, Illinois and legally described in Exhibit A (the "Total Parcel"). The Total Parcel is improved with a six story building and a two story building with multiple common addresses of 2808, 2810 and 2812 North Milwaukee Avenue and 3406, 3414 and 3416 West Diversey Avenue, Chicago, Illinois (the "Building").

C. Hairpin Lofts is the fee owner of the Residential Parcel, which generally includes the basement, some lobby area on the first floor, the second floor roof deck, the majority of the space on floors three through six and on the roof of the Building, all as more particularly and legally described in Exhibit B (the "Residential Parcel").

D. Hairpin Retail is the fee owner of the Commercial Parcel, which generally includes the majority of the first floor and second floor interior space of the Building, an elevator shaft on all floors of the building, and some small spaces on the sixth floor and the roof of the Building, all as more particularly and legally described in Exhibit C (the "Commercial Parcel").

E. The Residential Property includes: (i) the basement of the Building; (ii)

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approximately 998 square feet of space on the first (1<sup>st</sup>) floor of the Building, containing a lobby entrance, storage areas, utility and mechanical equipment, as well as entrances, stairwells and an elevator to and throughout all floors of the Building (the "Residential Entrances and Access"), (iii) the outdoor deck area on the second (2<sup>nd</sup>) floor of the Building (which is also the roof of the two-story portion of the Building), (iv) the foundation, the exterior walls of the Building, the majority of the roof and all of the Common Walls, Floors and Ceilings. The Residential Parcel is improved with, among other things, a residential rental development containing twenty-eight (28) residential rental units located on the third through sixth floors of the Building.

F. The Commercial Property includes: (i) approximately 7,888 square feet of the first (1st) floor of the Building, excluding the Residential Entrances and Access, the exterior walls and foundation, (ii) certain stairwell and elevator access to and throughout all floors of the Building, (iii) approximately 7,395 square feet of the second (2<sup>nd</sup>) floor of the Building, and (iv) approximately 1,043 square feet of space on the roof of the Building. The Commercial Parcel is to be used for commercial and/or retail uses (including, without limitation, restaurant uses).

G. The Residential Property and the Commercial Property will be functionally dependent on each other, to some extent, for structural support, enclosure, utility services or other facilities and components necessary for the efficient operation and intended use of the Residential Property and the Commercial Property.

H. The Residential Property is subject to the terms, conditions, and covenants of a City of Chicago ("City") redevelopment agreement ("Residential Property RDA") for the redevelopment and rehabilitation of that portion of the Total Property for residential purposes.

I. The Commercial Property is subject to the terms, conditions, and covenants of a City of Chicago ("City") redevelopment agreement ("Commercial Property RDA") for the redevelopment and rehabilitation of that portion of the Total Property for commercial purposes.

J. The Declarants desire by this Declaration to provide for the efficient operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective portion, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total Property, by providing for, declaring and creating certain easements, covenants and restrictions against and affecting the Total Property, to the extent provided herein.

NOW, THEREFORE, the Declarants hereby declare that the Total Property and any part thereof is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to this Declaration, the Residential Property RDA, and the Commercial Property RDA, and declares that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder, and under the Residential Property RDA, and the Commercial Property RDA 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 Property and each of the foregoing shall run with the land subject to this Declaration, the Residential Property RDA, and the Commercial Property RDA.

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## ARTICLE I

### INCORPORATION OF RECITALS

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

## ARTICLE 2

### DEFINITIONS

“Alterations” shall have the meaning set forth in Article 20 (Alterations) hereof.

“Architect” shall have the meaning set forth in Article 15 (Architect) hereof.

“Building” shall have the meaning set forth in Paragraph B of the Recitals of this Declaration.

“Commercial Improvements” means all improvements now or hereafter constructed within and upon the Commercial Parcel. In the event of any reconstruction of the Commercial Improvements pursuant to Article 10 (Maintenance And Repair; Damage To The Improvements) or Article 14 (Condemnation), the Commercial Improvements shall include any such improvements reconstructed on the Commercial Parcel.

“Commercial Parcel” means that portion of the Total Parcel legally described on Exhibit C attached hereto.

“Commercial Property” means the Commercial Parcel and the Commercial Improvements.

“Common Walls, Floors and Ceilings” means all common structural and partition walls, floors and ceilings now or hereafter separating the Commercial Property from the Residential Property.

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

“Damaged Parcel” shall have the meaning set forth in Section 16.2 hereof.

“Declarants” means, collectively, Hairpin Lofts and Hairpin Retail, their successors and assigns (including, without limitation, any Mortgagee succeeding to the rights of either party under this Declaration pursuant to a mortgage or a collateral assignment of its rights hereunder) and any other person or entity designated by a Declarant to be a Declarant.

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“Declaration” means this Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, amendments and supplements hereto.

“Default Rate” means the interest rate applicable to any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration as further described in Section 11.3 hereof.

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

“Depository” means the person or entity from time to time acting pursuant to Article 16 (Depository) of this Declaration.

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

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

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

“Improvements” means collectively, the Commercial Improvements and the Residential Improvements.

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

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“Mechanical Equipment” shall have the meaning set forth in Section 4.1(g) hereof.

“Mechanical Equipment Easement Area” shall have the meaning set forth in Section 4.1(g) hereof.

“Mortgage” means a first mortgage or first trust deed in the nature of a mortgage on the Commercial Property or the Residential Property.

“Mortgagee” means the holder of a Mortgage.

“Owner” means either the Owner of the Commercial Property or the Owner of the Residential Property, as the context requires. “Owners” means collectively, the Owner of the Commercial Property and the Owner of the Residential Property, as the context may require.

“Owner of the Commercial Property” means the person or entity (or persons or entities if more than one) at any time in question, holding fee title to the Commercial Property.

“Owner of the Residential Property” means the person or entity (or persons or entities if more than one) at any time in question, holding fee title to the Residential Property.

“Recorder” means the Recorder of Deeds of Cook County, Illinois.

“Residential Improvements” means all improvements now or hereafter constructed within, upon and over the Residential Parcel, including, without limitation, the foundation and exterior walls for the Building. In the event of any reconstruction of the Residential Improvements pursuant to Article 10 (Maintenance And Repair, Damage To The Improvements) or Article 14 (Condemnation), the Residential Improvements shall include any such improvements reconstructed on the Residential Parcel.

“Residential Parcel” means that portion of the Total Parcel legally described on Exhibit B attached hereto.

“Residential Property” means the Residential Parcel and the Residential Improvements.

“Rooftop Equipment” means (i) communications and telecommunications facilities and equipment (or other equipment which may now or hereafter exist as an advancement, evolution or replacement of satellite or other communications systems and technology existing as of the date hereof), including, without limitation: cell phone towers, antennas, cables, conduits, wires, satellite dishes, and the like, and (ii) any other facilities or equipment now or hereafter located in on the rooftop portion of the Commercial Property (and any replacements thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property.

“Shared Expenses” means the cost of cold water service to the Total Property (subject to Section 5.4 hereof), furnishing necessary maintenance, repairs and replacements to the Common



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Walls, Floors and Ceilings and the Shared Facilities and Improvements. Unless otherwise set forth specifically herein, Shared Expenses shall be allocated seventy-seven percent (77%) to the Owner of the Residential Property and twenty-three percent (23%) to the Owner of the Commercial Property; provided, however, that if one of the Owners uses a disproportionate share of the Shared Facilities and Improvements or consumes a disproportionate share of any services provided hereunder, then the percentages for those particular expenses shall be modified to reflect the relative percentage use as reasonably agreed upon by the Owners. If no such agreement is reached between the Owners, then the Owner of the Residential Property shall reasonably determine the relative percentage use (which determination may only be subject to the Arbitration provisions set forth in Article 12 hereof).

“Shared Facilities and Improvements” means any Facilities and Improvements (such as the roof, elevators, trash chute, exterior walls, foundations, curbs, sidewalks and other street level pavement on or adjacent to the Total Property and landscaping) that serve both the Commercial Property and the Residential Property.

“Total Parcel” means the land, property and space legally described on Exhibit A attached hereto.

“Total Property” means collectively, the Commercial Property and the Residential Property.

“Unavoidable Delay” shall have the meaning set forth in Article 13 hereof.

## ARTICLE 3

### EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY

3.1 The following perpetual Easements in, to, under, over, upon, through and about portions of the Commercial Property in favor of the Residential Property are hereby granted, reserved, declared and created (the term “Granted” or “granted” as hereinafter used in describing Easements shall be deemed to mean “granted, reserved, declared and created”).

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

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

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enjoyment of the Residential Property.

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

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

(e) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons, material and equipment over, on, across and through the Commercial Property, to the extent reasonably necessary to permit construction, equipping, fixturing and furnishing of the Residential Property and the Maintenance, restoration or reconstruction of the Residential Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article 6 (Structural Support) hereof or to assist in providing the services required under Article 5 (Services) hereof.

(f) A non-exclusive Easement for ingress and egress (and, where reasonably necessary, Maintenance) for persons and furnishings over, on, across and through the Commercial Property, to the extent reasonably necessary to permit use of the elevator located on the Commercial Property.

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 Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Commercial Property may, from time to time after consultation with the Owner of the Residential Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Commercial Property and in order to assure the reasonable security of the applicable portion of the Commercial Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement and provided further that Section 3.1(d) shall not be subject to any such limitation.

3.3 If the Residential Parcel is now or hereafter divided into two or more parts by separation of ownership or by lease, all such parts shall enjoy the benefits of the Easements granted in Section 3.1 hereof.

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

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portion thereof.

## ARTICLE 4

### EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY AND GENERAL EASEMENT PROVISIONS

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

(a) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components now or hereafter located in or constituting a part of the Residential Property and now or hereafter providing support for (i) the Commercial Improvements, (ii) any Facilities located in the Residential Property with respect to which the Owner of the Commercial Property is granted an Easement under this Declaration, and (iii) any Rooftop Equipment and any Mechanical Equipment (as defined in Section 4.1(g) below).

(b) A non-exclusive Easement for the use for their intended purposes of all Facilities now or hereafter located in the Residential Property and now or hereafter connected to Facilities now or hereafter located in the Commercial Property (and any replacements thereof) and the curbs, sidewalks and other street level pavement adjacent to the Commercial Property (exclusive of the parking areas) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property, including the use as an outdoor seating area or sidewalk café area as permitted by the Chicago Zoning Ordinance, as said ordinance may be amended from time to time, and used in such a manner as to not unreasonably interfere with the use and enjoyment of the Residential Property.

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

(d) A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, and through the Residential Property.

(e) A non-exclusive Easement for ingress and egress (and where reasonably necessary, Maintenance) for authorized persons, materials and equipment over, on, across and through the Residential Property to the extent necessary to permit the construction, equipping, fixturing and furnishing of the Commercial Property, and the Maintenance, restoration or reconstruction of the Commercial Property as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements set forth in this Section 4.1 or to



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provide structural support required by Article 6 (Structural Support) hereof or to assist in providing the services required under Article 5 (Services) hereof.

(f) An Easement (i) in and to all Common Walls, Floors and Ceilings now or hereafter serving the Commercial Property, and (ii) for the use of such Common Walls, Floors and Ceilings.

(g) A non-exclusive Easement over, upon, through and about those portions of the basement of the Building indicated by cross-hatching on Exhibit D attached hereto (the "Mechanical Equipment Easement Area") for the installation, use and Maintenance of: (i) heating, ventilating, air conditioning and other mechanical equipment (including, without limitation, condenser units, cooling towers, flues and ducts) now or hereafter located in the Mechanical Equipment Easement Area (and any replacements thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property, (ii) communications and telecommunications facilities and equipment (or other equipment which may now or hereafter exist as an advancement, evolution or replacement of satellite or other communications systems and technology existing as of the date hereof), including, without limitation: antennas, cables, conduits, wires, satellite dishes, and the like, and (iii) any other facilities or equipment now or hereafter located in the Mechanical Equipment Easement Area (and any replacements thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be necessary or desirable to the operation and use and enjoyment of the Commercial Property (collectively, the "Mechanical Equipment"), together with a perpetual, non-exclusive Easement for ingress and egress for authorized persons, material and equipment over, on, across and through the Residential Property (excluding the residential units, but including, without limitation, over, on, across and through the basement of the Building and any entrances, corridors, hallways, and staircases located on or within the Residential Property) to the extent necessary to exercise the Easements granted in this subsection (g).

(h) A non-exclusive Easement in, to and through any shafts, pipes or ducts located in or passing through the Residential Property for the use and Maintenance of boxes, brackets, cables, chutes, coils, conduits, controls, devices, junctions, lines, meters, risers, switches, switchboards, wiring and the like providing connections between or among (i) any Facilities and equipment now or hereafter located in the Commercial Property, (ii) the Rooftop Equipment, and/or (iii) the Mechanical Equipment.

(i) A non-exclusive Easement in, to and through any windows, doors or entryways servicing the Commercial Property.

4.2 The Owner of the Residential Property shall provide the Owner of the Commercial Property with such keys, key cards, access codes and combinations and solutions to any other security-related devices as may be necessary, from time to time, for the Owner of the Commercial Property to exercise the Easements granted in Section 4.1 hereof.

4.3 Each Easement created under this Article 4 which provides or requires, for its

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enjoyment, ingress and egress on, over, across or through the Residential Property shall be subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the Residential Property may, from time to time after consultation with the Owner of the Commercial Property, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Residential Property and in order to assure the reasonable security of the applicable portion of the Residential Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement and provided further that Section 4.1(d) shall not be subject to any such limitation.

4.4 If the Commercial Parcel is now or hereafter divided into two or more parts by separation of ownership or by lease, all such parts shall enjoy the benefits of the Easements granted in Section 4.1 hereof.

4.5 Use of the Easements granted Section 4.1 hereof are not confined to the present or any particular future use of the Commercial Property or the present Commercial Improvements.

4.6 Easements provided for, declared or created under this Article 4 shall be binding upon the Residential Property and the Owner of the Residential Property, and shall run in favor of and inure to the benefit of and be appurtenant to the Commercial Property and each portion thereof.

4.7 With regard to any portion of the Total Property over which Easements have been granted pursuant to Articles 3 and 4 hereof, the Owner of that portion of the Total Property burdened by such Easement shall have the right, after consultation with the Owner benefited by such Easements, to relocate any such Easements in the event comparable alternative means can be substituted to insure the continuation of the benefits granted and such relocation will not result in any cost to or adverse affect on the Owner benefited by such Easement.

4.8 With regard to any portion of the Total Property over which Easements have been granted pursuant to Articles 3 and 4 hereof for ingress and egress in an Emergency Situation, such Easements shall not be deemed to include (a) any portion of a dwelling unit, or (b) the interior of any portions of the Total Property intended to be leased to tenants.

4.9 The grantee of any Easement hereunder affecting the Total Property or any portion thereof shall perform any construction, reconstruction, restoration, installation and/or Maintenance pursuant to such Easement in a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Total Property and surrounding areas as may be practical under the circumstances. Notwithstanding anything to the contrary herein, the grantee of any Easement affecting the Total Property or any portion thereof shall restore or replace, at its sole cost and expense, the adversely affected portion of the Total Property to substantially the same condition as existed immediately prior to such construction, reconstruction, restoration, installation and/or Maintenance. In the event any grantee of an Easement does not perform the foregoing restoration or replacement within sixty (60) days after written notice from an Owner, the Creditor Owner may, at its option, perform, or cause to be performed, the necessary

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restoration or replacement work, and shall be entitled to recover from the Defaulting Owner all costs and expenses incurred in connection therewith plus interest thereon as described in Section 11.3 hereof, and the Creditor Owner shall obtain a lien against that portion of the Total Property owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

4.10 The Easements granted, declared or created pursuant to Articles 3 and 4 hereof shall benefit the applicable Owner and its tenants, guests and invitees.

## ARTICLE 5

### SERVICES

5.1 Except as otherwise set forth in Section 5.3 hereof, the Owner of the Residential Property shall furnish or cause to be furnished maintenance, repair and replacement of Shared Facilities and Improvements, including, the following services, at a reasonable cost:

(a) Street level Pavement. Maintenance of the curbs, sidewalks and other street level pavement adjacent to the Total Property (excluding removal of snow from sidewalks leading to all street level entrances to the Total Property), and keeping such sidewalks, and street level entrances to the Total Property free from debris and obstructions to pedestrian traffic; and

(b) Landscaping. Maintenance of all planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials now or hereafter located or planted in front of the Property, as necessary to maintain such items in a neat, healthy and slightly condition consistent with a mixed-use building.

The cost of furnishing all such services shall be Shared Expenses hereunder. The Owner of the Residential Property, by furnishing or causing to be furnished the maintenance, repair and replacement of Shared Facilities and Improvements or the services described immediately above, in no way assumes any liability for failure to perform such maintenance, repair, replacement, or services and the Owner of the Commercial Property hereby explicitly waives any and all rights and claims it or its tenants may now or in the future have on such basis. The remedies of the Owner of the Commercial Property for failure by the Owner of the Residential Property to perform the services set forth herein shall be limited to those set forth in Article 11 hereof.

5.2 The Owner of the Residential Property shall furnish or cause to be furnished the following services, at its sole cost and expense, to the extent required: snow and ice removal in front of its entrance to the Building only (located at 3414 W. Diversey; the "Residential Entrance"), heating, ventilating, air conditioning, lighting, electricity and the Facilities therefor, in the interior portions of the Residential Property in, on or over which Easements are granted under this Agreement. The Owner of the Commercial Property shall furnish or cause to be furnished the following services, at its sole cost and expense, to the extent required: snow and ice removal on all sidewalks adjacent to the Building (except the sidewalk adjacent to the Residential Entrance), heating, ventilating, air conditioning, lighting, electricity and the Facilities therefor, in the interior portions of the Commercial Property in, on or over which Easements are

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granted under this Agreement.

5.3 The Owner of the Commercial Property shall furnish or cause to be furnished, at its sole cost and expense, maintenance, repair and replacement of the following:

(a) Windows, Doors and Entryways. Windows, doors and entryways adjacent to and servicing the Commercial Property, provided, however, that any replacements or repairs that will materially alter the façade of the Building shall be subject to the prior written approval of the Owner of the Residential Property;

(b) Signs and Awnings. Any signs or awnings installed by the Owner of the Commercial Property; and

(c) Outdoor Seating and Sidewalk Café Areas. All curbs, sidewalks and other street level pavement adjacent to the Total Property and used by the Owner of the Commercial Property as an outdoor seating area or sidewalk café pursuant to Section 4.1(b) hereof, including keeping such sidewalks, and street level entrances to the Total Property free from debris and obstructions to pedestrian traffic and maintenance of all planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials now or hereafter located or planted in or around the area, as necessary to maintain such items in a neat, healthy and slightly condition consistent with a mixed-use building.

5.4 As of the date hereof, there is one water meter for the Total Property and a sub-meter for the Commercial Property. As long as there is one water meter for the Total Property, the Owner of the Residential Property shall pay each water bill for the Total Property prior to its due date, and shall promptly provide evidence of such timely payment to the Owner of the Commercial Property on a monthly basis. The Owner of the Commercial Property shall be responsible for and shall pay or reimburse the Owner of the Residential Property, within thirty (30) days after the Owner of the Residential Property's demand therefor (which demand shall be accompanied by a copy of the water bill for which payment or reimbursement is requested), for the portion of each water bill to the Commercial Property, based on actual rates and usage, as measured by the sub-meter for Commercial Property. Interest shall accrue at the Default Rate on any amounts due under the immediately preceding sentence from the date such water bill is paid by the Owner of the Residential Property until such amounts are paid by the Owner of the Commercial Property to the Owner of the Residential Property, and the Owner of the Residential Property shall obtain a lien against the Commercial Property to the extent of such unpaid amounts and interest, subject to and in accordance with Section 11.1 hereof. If the Owner of the Residential Property fails to pay any water bill for the Total Property prior to its due date, the Owner of the Commercial Property may, but shall not be obligated to, pay such water bill. If the Owner of the Commercial Property pays a water bill in accordance with the immediately preceding sentence, the Owner of the Residential Property shall, upon demand, pay the Owner of the Commercial Property an amount equal to the total amount of such water bill, less the portion of such water bill attributable to the Commercial Property, based on actual rates and usage, as measured by the sub-meter for the Commercial Property. Interest shall accrue at the Default Rate on any amounts due under the immediately preceding sentence from the date such water bill is paid by the Owner of the Commercial Property until such amounts are paid by the Owner of



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the Residential Property to the Owner of the Commercial Property, and the Owner of the Commercial Property shall obtain a lien against the Residential Property to the extent of such unpaid amounts and interest, subject to and in accordance with Section 11.1 hereof.

5.5 Except as it relates to snow removal as set forth in Section 5.6, if either Owner fails to perform its obligations under this Article 5 (except when such failure is caused by an Unavoidable Delay [as defined in Article 13 hereof]), and such failure shall continue for a period of thirty (30) days after written notice thereof to the Defaulting Owner, the Creditor Owner shall have the right to operate, maintain, repair and replace the portion of the Total Property and the Facilities (wherever located) required for the furnishing of such service until such time as the Defaulting Owner cures its failure to perform. The Creditor Owner shall use reasonable efforts to avoid any interference with the use and enjoyment of the Total Property by Defaulting Owner and its tenants, invitees, and licensees. Such notice shall not be required in an Emergency Situation resulting from such failure. For any period in which a Creditor Owner is performing pursuant to this Section 5.5, the Defaulting Owner shall pay the Creditor Owner the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance plus interest thereon as described in Section 11.3 hereof, and the Creditor Owner shall obtain a lien against that portion of the Total Property owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

5.6 If the Owner of the Commercial Property fails to perform its obligations to remove snow and ice from the sidewalks under this Article 5, and such failure shall continue for a period of twenty-four (24) hours (or earlier in case of an Emergency Situation), the Owner of the Residential Property shall have the right to remove the snow and ice and the Owner of the Commercial Property shall pay the Owner of the Residential Property 120% of the actual out-of-pocket costs and expenses paid or incurred by the Owner of the Residential Property in connection with such snow removal, and the Owner of the Residential Property shall obtain a lien against the Commercial Property to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

## ARTICLE 6

### STRUCTURAL SUPPORT

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

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

(a) In the event the Owner or Owners responsible for the reduction or endangerment cannot be determined, which determination shall be made by the Architect, then the Owner or



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Owners benefited by the structural support shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 20 (Alterations) would not require such approval) the Owners of the portions of the Total Property affected thereby, the Architect and Mortgagees under any Mortgage encumbering the portions of the Total Property affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners benefited thereby in proportion to the relative benefits to be derived by such Owner(s) from such substitute or additional support, as determined by the Architect and expressed as a percentage for each such Owner.

(b) In the event the Owner or Owners responsible for the reduction or endangerment can be determined, either by the agreement of the Owners or the determination of the Architect, then the responsible Owner or Owners shall perform such construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 20 (Alterations) would not require such approval) the Owners of the portions of the Total Property affected thereby, the Architect and the Mortgagees under any Mortgage encumbering the portions of the Total Property affected thereby. The costs and expenses incurred in connection with the construction of such substitute or additional support shall be allocated to the Owner or Owners responsible for the reduction or endangerment in proportion to the relative degree of culpability of such Owner(s) in causing the reduction or endangerment, as determined by the Architect and expressed as a percentage for each such Owner.

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

6.4 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portions of the Improvements, then, without regard to which Owner or Owners shall be determined as responsible for such construction, either Owner may, 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 or Owners shall be liable for and pay all costs and expenses incurred as a result of any Owner's providing any required substitute or additional support. If the Owners cannot within thirty (30) days agree on the allocation of responsibility among the Owners for substitute or additional support, then the dispute shall be submitted to the Architect for a determination. Notwithstanding anything herein to the contrary, no Owner shall be responsible for nor have any liability in connection with the loss of use of any portion of the Total Property during any period of reconstruction.

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## ARTICLE 7

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

#### 7.1 The Owners:

(a) Shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago and any other entity or agency now or hereafter having jurisdiction of the Total Property or any portion thereof, if non-compliance by it with respect to its portion of the Total Property 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 utilize beneficially its portion of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of the other Owner or would increase costs of insurance of the other Owner or would impose any threat or danger to any person or property; and

(b) Shall each comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction of the Total Property or any portion thereof or the requirements of any insurance policy affecting insurance coverage on the other Owner's portion of the Total Property if non-compliance by it with respect to its portion of the Total Property or any portion thereof would (i) increase the premiums of any policy of insurance maintained by the other Owner or the premiums of any policy of insurance maintained by both Owners, or (ii) render the other Owner's portion of the Total Property uninsurable, or (iii) create a valid defense to the other Owner's right to collect insurance proceeds under policies insuring the Total Property or the other Owner's portion of the Total Property; provided, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in either Owner's portion of the Total Property, such Owner shall be liable for the cost and expense of such compliance. If at any time an Owner so obligated to comply shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect the other Owner, then the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which the cure of such non-compliance is not proceeding diligently and if upon expiration of ten (10) days after the receipt of such notice, any such cure of the non-compliance is still not proceeding diligently, then the Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. The Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in connection with causing any such compliance to occur, together with interest at the Default Rate from the date of payment of such costs and expenses by Creditor Owner to the date of reimbursement to the Creditor Owner as described in Section 11.3 hereof, and the Creditor Owner shall obtain a lien against that portion of the Total Property owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

7.2 An Owner shall remove, within thirty (30) days after the filing thereof, any mechanics, material men or any other like lien arising by reason of its acts or any work or

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materials which it has ordered, on the other Owner's portion of the Total Property, or on its portion of the Total Property if the existence or foreclosure of such lien on its portion of the Total Property would adversely affect any Easement hereunder or services to be furnished pursuant to Article 5 (Services) hereof. Notice of the filing of any such lien shall be served upon the Mortgagee under any Mortgage encumbering the portion of the Total Property subject to such lien. An Owner which has caused such a lien to be filed shall be deemed a Defaulting Owner hereunder. In the event a Defaulting Owner fails to remove any such lien within such thirty (30) day period, the Creditor Owner may (but is not required to) take such action as the Creditor Owner may deem necessary to remove, insure or bond over such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses reasonably incurred by the Creditor Owner in removing or attempting to remove such lien, plus interest at the Default Rate from the date after payment of such costs and expenses by the Creditor Owner to the date of reimbursement to the Creditor Owner as described in Section 11.3 hereof, and the Creditor Owner shall obtain a lien against that portion of the Total Property owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof. However, the Defaulting Owner shall not be required to remove such lien within thirty (30) days after the filing thereof (and the Creditor Owner shall not be entitled to remove such lien), if (i) the continuance of such lien shall not constitute a default under any Mortgage encumbering the portion of the Total Property subject to such lien; (ii) within said thirty (30) day period, foreclosure proceedings relating to such lien cannot be completed; and (iii) the Defaulting Owner (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the Creditor Owner and to the Creditor Owner's Mortgagees, if required by applicable loan documents, of its intention to contest the validity or amount of such lien, and (B) shall deliver to the Creditor Owner or, if the applicable loan documents so provide, to the Creditor Owner's Mortgagees, either: (1) cash or a surety bond from a responsible surety company acceptable to the Creditor Owner and the Mortgagees, if applicable, in an amount equal to one hundred fifty percent (150%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (2) other security reasonably acceptable to the Creditor Owner and the Mortgagees, if applicable. The rights of the Defaulting Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Defaulting Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under any Mortgage encumbering the portion of the Total Property subject to such lien, and in such event the Defaulting Owner shall cause such lien to be discharged or removed within ten (10) days after the occurrence of any of the events in clauses (i), (ii) or (iii) in this sentence and the Creditor Owner shall have the right (but not the obligation) at any time after the end of said 10-day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable provisions hereunder.

7.3 Each Owner (hereinafter in this Section 7.3, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner (hereinafter in this Section 7.3, the "Indemnitee") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any actions or proceedings arising therefrom, by or on behalf of any person, firm, corporation or

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governmental authority arising from: (i) the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein, or (ii) the use, exercise or enjoyment of an Easement by the Indemnifying Owner or its tenants, guests or invitees, and from and against all costs, 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.

7.4 Without limiting the provisions of Section 7.1(a), neither the Owner of the Residential Property nor the Owner of the Commercial Property shall make any Alterations (as that term is herein below defined in Section 20.1) or allow any use of their respective portions of the Total Property or take or fail to take any action which would violate the provisions of the Residential Property RDA, the Commercial Property RDA, or 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 Property or any portion thereof. The Total Property shall continue to be 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 Property without the consent of the other Owner, which consent shall not be unreasonably withheld.

## ARTICLE 8

### REAL ESTATE TAXES

8.1 The Owners shall make good faith efforts and cooperate with each other so that the Residential Property and the Commercial Property shall, as soon as possible, receive any available real estate tax abatements and be assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor of Cook County, Illinois ("Assessor"). From and after the recordation of this Declaration, either Declarant may file a petition for tax division with, and consequently obtain from, the Assessor, separate real estate tax bills and real estate tax index numbers for each of the Commercial Property and the Residential Property. From and after the time that the Residential Property and the Commercial Property have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, the Owner of the Residential Property shall pay the real estate tax bills for the Residential Property and the Owner of the Commercial Property shall pay the real estate tax bill for the Commercial Property.

8.2 Until such time as the Residential Property and the Commercial Property have been assigned separate real estate tax index numbers and received separate real estate tax bills from the Assessor, or the Owners have agreed upon a different percentage allocation of the real



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estate taxes as set forth in Section 8.1, the Owner of the Residential Property shall be responsible for thirty percent (30%) of the real estate tax bills for the Total Property, and the Owner of the Commercial Property shall be responsible for seventy percent (70%) of the real estate tax bills for the Total Property. The Owner of the Residential Property shall pay the combined tax bills for the Total Property prior to their due date. The Owner of the Commercial Property shall be responsible for and shall pay or reimburse the Owner of the Residential Property (within thirty (30) days after the demand of the Owner of the Residential Property therefore whether or not the Owner of the Residential Property has theretofore paid such bill) for seventy percent (70%) of the total real estate taxes levied in the combined tax bill or bills for the Total Property.

8.3 If an Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such Defaulting Owner is obligated to pay pursuant to Section 8.2 hereof, then the Creditor Owner may, after at least thirty (30) days written notice to the Defaulting Owner, pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty payments thereon, plus interest thereon as provided in Section 11.3 hereof, and shall also have a lien against the portion of the Total Property owned by the Defaulting Owner in accordance with Article 11 (Liens, Rights and Remedies) hereof.

8.4 Except as set forth in the Residential Property RDA, and the Commercial Property RDA, an Owner may, if it shall so desire, endeavor at any time or times to obtain a lowering of the assessed valuation upon the Total Property for the purpose of reducing taxes thereon ("Protesting Owner"); provided, however, that all taxes must be paid when due, although such payment may be made under protest. In the event such protest shall be made by a Protesting Owner prior to the time that the Residential Property and the Commercial Property are separately assessed and taxed, the Protesting Owner shall be required to serve written notice to the other Owner at least ten (10) days prior to the filing of the objection. Any non-Protesting Owner may elect within ten (10) days after receipt of the notice described above to join the Protesting Owner in effecting such a reduction. In the event the other Owner fails to join the Protesting Owner in obtaining the reduction, the Protesting Owner shall be authorized to collect any tax refund payable as a result of any proceeding Protesting Owner may institute for that purpose, and any such tax refund shall be the property of the Protesting Owner. If the other Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and shares in the legal fees incurred in proportion to its share of the real estate taxes reflecting the reduction in or refund of such taxes, the Owners shall apportion the tax refund in accordance with their respective portions of such real estate taxes. If the other Owner joins the Protesting Owner in seeking a lowering of the assessed valuation and such Owner receives a reduction in taxes for future years, such Owner shall be and remain liable for its proportionate share of the legal fees incurred in connection therewith in accordance with the immediately preceding sentence.

## ARTICLE 9

### INSURANCE

9.1 The Owners shall procure and maintain the following insurance:



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

(b) The Owners shall maintain separate Commercial General Liability Insurance policies, covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about its portion of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of similar mixed-use 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, and shall also include non-owned and hired automobile liability insurance for limits of not less than \$1,000,000.

9.2 The Owner of the Residential Property shall be responsible for seventy-seven and percent (77%) of the premium on the insurance policy described in Section 9.1(a). The Owner of the Commercial Property shall be responsible for twenty-three percent (23%) of the premium on the insurance policy described in Section 9.1(a). In the event the Owners cannot agree upon the insurance companies to provide the insurance required under Section 9.1(a) hereof, the question of selection of an insurance company or apportionment of premium shall be submitted to arbitration as provided in Article 12 (Arbitration) hereof. Notwithstanding anything contained in this Article 9 to the contrary, as long as Hairpin Lofts or any of its affiliates owns the Residential Property or any portion thereof, Hairpin Lofts or such affiliate shall: (i) select the insurance companies to provide the insurance required under Section 9.1(a), (ii) select the insurance agent or consultant described in Section 9.4 hereof, and (iii) make the decisions and determinations described in Section 9.4 hereof; provided, however, that the insurance companies selected by Hairpin Lofts or such affiliate and the insurance policies issued by such companies shall at all times comply with the requirements of this Article 9. Insurance policies required by Section 9.1 hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphanumeric and Financial Size Category Rating of not less than A-XII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. Each of the Owners agrees to cooperate to procure and maintain the insurance policies described in Section 9.1 hereof. The Owner of the Residential Property shall pay the bill(s) for the insurance policies described in Section 9.1(a) hereof, provided that the Owner of the Commercial Property shall be responsible for and shall pay or reimburse the Owner of the Residential Property (within thirty (30) days after the demand of the Owner of the Residential Property therefore whether or not the Owner of the Residential Property has theretofore paid such bill) for the Owner of the Commercial Property's applicable portion of such bill(s) as determined in accordance with this Section 9.2.

9.3 Each policy described in Section 9.1 hereof: (i) shall provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any

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such policy; (ii) shall provide, except for liability insurance described in Section 9.1(b) by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iii) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder, unless such cancellation is for non-payment of premium, in which case only ten (10) days' advance written notice shall be sufficient and (iv) shall, if available, provide, except for the liability insurance required under Section 9.1(b) hereof, that all amounts payable thereunder shall be paid to the Depository in accordance with Articles 16 (Depository) and 11 (Alterations) hereof. Nothing contained in this Section 9.3 shall prevent the naming of any person as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of mortgage clause; provided, however, that a Mortgagee receiving any proceeds of any insurance policy described in Section 9.1(a) shall deposit the insurance proceeds with the Depository in accordance with Articles 16 (Depository) and 17 (Disbursements of Funds By Depository) to the extent that the Owner of the portion of the Total Property subject to such Mortgage receiving such proceeds would be required to do so, except that such obligation for such deposit by a Mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then-uncured default under the applicable Mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depository a sufficient amount, which when added to the proceeds to be deposited by the Mortgagee, will be at least equal to the cost, as estimated by the Mortgagee, to complete the work, and (c) the insurers do not deny liability as to the insureds.

9.4 Limits of liability or types of insurance shall be reasonable and prudent for an Owner of a mixed-use development similar to the Building and shall be in such amounts as required by the Residential Property RDA, the Commercial Property RDA, and any Mortgagee. Subject to Hairpin Lofts' rights under Section 9.2 hereof, the limits of liability or types of insurance specified in Section 9.1 shall be jointly reviewed by the Owners at least annually to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverage or endorsements should be deleted. Deductible amounts for insurance required under Section 9.1 shall be in such amounts as are customary or prevalent for an Owner of a mixed-use development similar to the Building. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon 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 either Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance agent or consultant to perform such review periodically on their behalf and the cost of employing any such agent or

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consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker, or any employee thereof, through which the insurance policies are obtained hereunder.

9.5 Certificates delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner and to the Mortgagees, 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. Should an Owner fail to pay its share of the premiums or other costs for any joint policies, then such Owner shall be a Defaulting Owner and the other Owner may pay the Defaulting Owner's share of such premiums or costs and the Defaulting Owner shall reimburse the Creditor Owner for any such amounts paid by the Creditor Owner upon the Creditor Owner's written demand therefor plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner as described in Section 11.3 hereof, and the Creditor Owner shall obtain a lien against that portion of the Total Property owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

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

9.7 In the event an Owner is subject to any loads, including, without limitation, any restaurant load, general liability load or umbrella liability load as a result of any use or operation of the other Owner's portion of the Total Property in connection with any insurance policy maintained pursuant to this Section 9.1, then the Owner whose use or operation results in such loads shall be liable for the reimbursement to the Owner subject to such loads for such increased amounts.

## ARTICLE 10

### MAINTENANCE AND REPAIR; DAMAGE TO THE IMPROVEMENTS

10.1 Subject to Article 6 (Structural Support) and Section 5.3 hereof, the Owner of the Residential Property, at its sole cost and expense (except to the extent of Shared Expenses required to be paid by the Owner of the Commercial Property pursuant to this Declaration), shall keep the Residential Property and all Facilities located therein or thereon (other than the Mechanical Equipment) or for which the Owner of the Residential Property is assigned Maintenance responsibility in this Declaration (including, without limitation, the Shared Facilities and Improvements) in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components

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thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Residential Property further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property. Except as otherwise expressly provided in this Declaration, any such costs incurred in accordance with this Section 10.1 shall be paid for by the Owner of the Residential Property.

10.2 Subject to Article 6 (Structural Support) hereof, the Owner of the Commercial Property, at its sole cost and expense, shall keep (a) the Commercial Property and all Facilities located therein or for which the Owner of the Commercial Property is assigned Maintenance responsibility in this Declaration (including, without limitation, the Rooftop Equipment), (b) the Mechanical Equipment Easement Area, and (c) the items described in Section 5.3 hereof, in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior and exterior thereof, or structural and non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. The Owner of the Commercial Property further agrees that it shall not suffer or commit, and shall use all reasonable precautions to prevent, waste to such property. Except as otherwise expressly provided in this Declaration, any such costs incurred in accordance with this Section 10.2 shall be paid for by the Owner of the Commercial Property.

10.3 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Residential Improvements only, or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Improvements only, any such damage shall be repaired and restored by the Owner of the portion of the Improvements in which any such damage occurs in as timely a manner as practicable under the circumstances (subject to the availability of insurance proceeds pursuant to the terms of any Mortgages on the Damaged Parcels), and such Owner shall, in accordance with the provisions of Article 17 (Disbursements Of Funds By Depositary) hereof, be entitled to withdraw any insurance proceeds held by the Depositary by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time an Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of the other Owner or services to be furnished the other Owner under Article 5 (Services) hereof, then (i) the Creditor Owner may give written notice to the Defaulting Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article 17 (Disbursements Of Funds By Depositary) hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depositary as a result of any



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such damage for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds, plus interest at the Default Rate from the date of payment by the Creditor Owner of the costs and expenses to the date of reimbursement to the Creditor Owner as described in Section 11.3 hereof, and the Creditor Owner shall obtain a lien to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

10.4 If the Improvements are damaged by fire or other casualty and if the provisions of Section 10.3 are not applicable because the nature of the damage is such that it does not fall within either of the categories set forth in clauses (a) or (b) of Section 10.3, then the repair and restoration of such damage to Residential Property shall be the responsibility of the Owner of the Residential Property (subject to the availability of insurance proceeds pursuant to the terms of any Mortgages on the Residential Property) and, upon completion of the repair and restoration of the Residential Property, the repair and restoration of such damage to the Commercial Property shall be the responsibility of the Owner of the Commercial Property. Repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on behalf of each Owner for its portion of the repair and restoration work. Said repair and restoration shall be performed on behalf of each Owner by a contractor or contractors of its choice. The plans and specifications for such repair and reconstruction shall provide for the Improvements to be rebuilt as nearly as commercially practicable to the Improvements as constructed prior to the damage unless prohibited by law or unless the Owners otherwise agree, subject to the approval of the Mortgagees pursuant to the terms of the Mortgages.

10.5 If the cost and expense of performing any repair and restoration to any Improvements provided for in Section 10.4 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Improvements, then such excess cost and expense shall be paid by each Owner for the cost and expense of repairing and restoring such Owner's portion of the Total Property; provided, however, that any cost and expense of repairing and restoring any Shared Facilities and Improvements shall be a Shared Expense.

10.6 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Improvements shall be refunded to the respective Owner or, if applicable, to the Mortgagee holding a Mortgage encumbering such Owner's portion of the Improvements in accordance with the terms of such encumbrance.

10.7 If any or all of the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Mortgagees, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's Improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner, or, if applicable, to the Mortgagee holding a Mortgage encumbering such Owner's



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respective portion of the Total Property in accordance with the terms of such encumbrance. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 10.3-10.6 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition to a sightly and safe condition (including weatherproofing any exposed portions thereof) and in such manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any violations of the applicable ordinances of the City of Chicago caused by the other party's failure to rebuild.

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

## ARTICLE 11

### LIENS, RIGHTS AND REMEDIES

11.1 Except as otherwise permitted or not prohibited pursuant to or under the terms of the Residential Property RDA and/or the Commercial Property RDA, if, at any time, any Owner fails within thirty (30) days after notice or demand to pay any sum of money due the other Owner, as Creditor Owner, under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) in the event of a default under Articles 10 (Maintenance And Repair; Damage To The Improvements) or 14 (Condemnation), a lien against any condemnation award or insurance proceeds payable to the Defaulting Owner for loss or damage to such portion of the Total Property or otherwise under insurance policies carried pursuant to Article 9 (Insurance) hereof, or (ii) in the event of a default under any other Section of this Declaration, a lien against the portion of the Total Property owned by the Defaulting Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 11 or to secure performance of a covenant or obligation. Any such lien shall arise immediately upon the recording of a notice thereof by the Creditor Owner with the Recorder stating that it is a lien created by this Section of the Declaration. Any such lien 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 11.1 shall be superior to and take precedence over any mortgage, trust deed or other encumbrance constituting a lien on a portion of the Total Property or other interest of the Defaulting Owner, other than a bona fide mortgage or trust deed which is a mortgage or trust deed in favor of an institutional lender, commercial bank, HUD-approved lender, or governmental agency (including, without limitation, the City of Chicago), against such portion of the Total Property at the time of the recording of the notice of lien described above. Any lien arising under this Section 11.1 may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

11.2 No conveyance or other divestiture of title (other than foreclosure of a lien which

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

No conveyance, foreclosure, other divestiture of title shall in any way affect, diminish, or defeat the terms, conditions and covenants of the Residential Property RDA and/or the Commercial Property RDA

11.3 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall be payable from the date any such sum first is due hereunder until paid in full, at a rate of interest (the "Default Rate") equal to the lesser of (i) the floating rate which is equal to four percent (4%) per annum in excess of the annual rate of interest from time to time announced by JPMorgan Chase Bank, N.A. at Chicago, Illinois (or other major bank in the City of Chicago if JPMorgan Chase Bank, N.A. ceases to exist) as its "prime rate" or "corporate base rate" of interest or a reasonable substitute therefor in the event a "prime rate" or "corporate base rate" is no longer announced, or (b) the then maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt.

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

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

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

11.7 A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration, and such fees and costs shall be added to the amount of any applicable lien created under this Article 11.

## ARTICLE 12

### ARBITRATION

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

(a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$50,000, which \$50,000 shall mean \$50,000 in 2010 equivalent dollars, which shall not be resolved within sixty (60) days after same has arisen; and

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

Any such dispute, claim, controversy or matter is referred to herein as a "Matter". Arbitration of any Matter shall be initiated by an Owner making a written demand therefor by giving written notice thereof to the other Owner and by filing a copy of such demand with the AAA. The AAA shall have jurisdiction upon the giving of such notice and the filing of such demand. Any such arbitration shall be held in Chicago, Illinois, and shall be conducted and completed in an expeditious manner and without delay. The applicable Mortgagees shall be parties to any arbitration of a Matter involving a matter which requires the consent or approval of the Mortgagees hereunder.

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

12.3 The arbitrators shall commence hearings within sixty (60) days of selection, unless the Owners and the arbitrators agree upon an expedited or delayed schedule of hearings. Prior to the hearings, either Owner may send out requests to compel document production from the other Owner. Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by the Owners or may be ordered by the arbitrators to the extent reasonable. The arbitrators may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrators in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Declaration. Subject to the other terms hereof, if an 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 Owner. The arbitration costs shall be borne equally by the Owners, except that each Owner shall be responsible for its own expenses.

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12.4 Unless otherwise agreed in writing, the Owners shall continue to perform all obligations and make all payments due under this Declaration in accordance with this Declaration during the course of any arbitration constituted or conducted under the provisions of this Article 12. The obligation of the Owners to continue performance and make payments despite the existence of an arbitration hereunder shall be enforceable by application to any court of competent jurisdiction for an injunctive order requiring the immediate performance of such obligations as provided in the preceding sentence until such time as any Matter is resolved as provided in this Article 12.

12.5 With respect to any Matter subject to arbitration under this Article 12, it is agreed that the arbitration provisions of this Article 12 shall be the sole remedy of the Owners under this Declaration. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter not described in this Article 12 or with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article 12 may, at the request of either Owner, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrators shall be final and binding upon the Owners and the Mortgagees and judgment thereon shall be entered by any court having jurisdiction.

12.6 For purposes of this Article 12, "2010 equivalent dollars" means the equivalent purchasing power at any time of the value of One Dollar (\$1.00) in calendar year 2010. The 2010 equivalent dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the difference between (x) the monthly Consumer Price Index (as hereinafter defined) last published prior to the date of such determination and (y) the Consumer Price Index for March 2010, and the denominator of which is the Consumer Price Index for March 2010. As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and the Clerical Workers, City of Chicago, All Items (Base Year 1982-84 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available.

## ARTICLE 13

### UNAVOIDABLE DELAYS

13.1 No Owner shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials, war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner (other than inability to make payment of money) ("Unavoidable Delay"),



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and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Owner unable to perform (hereafter in this Article the "Non-Performing Owner") shall notify the other Owner in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of the other Owner, keep the other Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

## ARTICLE 14

### CONDEMNATION

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

14.2 All Awards resulting from the taking of all or any part of the Residential Property or the Commercial Property, other than damages resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depository and disbursed by the Depository as hereinafter provided. In the event of a taking of a temporary use of any space not affecting services described in Article 5 (Services) hereof, each Owner shall be entitled to receive directly from the taking authority any Award resulting from such temporary taking within its respective portion of the Total Property.

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

14.4 In the event of a taking other than (a) a temporary taking described in Section 14.2 hereof, (b) a taking described in Section 14.3 hereof, or (c) a taking of all or substantially all of the Total Property, then the Owners shall cooperate to repair and restore the remainder of the Improvements in accordance with plans and specifications (hereinafter described) jointly approved by the Owners and the Mortgagees, if required by the terms of the Mortgages. The

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plans and specifications for such repair and restoration shall be prepared by the Architect. Such plans and specifications shall provide for repair and restoration of the remainder of the Improvements to form an architectural and functional whole with such changes in the Improvements as shall be required by reason of such taking. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and the costs of such work shall be paid by the Owners in such shares as the Owners may agree between themselves and shall be performed on behalf of the Owners by a contractor jointly selected by the Owners. The selection of such contractors shall be subject to the approval of the Mortgagees, if required. In the event the Owners and the Mortgagees, if required, fail to agree upon the selection of a contractor, then the selection shall be made by arbitration pursuant to Article 12 (Arbitration) hereof. If such repair and restoration is to be performed solely in the portion of the Total Property owned by one of the Owners, then, provided that the plans and specifications do not require an Alteration, as such term is hereinafter defined in Article 20 (Alterations), the approval of the Owner of, and any Mortgagees with respect to, the other portions of the Total Property shall not be required with respect to the plans and specifications therefor, nor shall the consent of the Owner of, and any Mortgagees with respect to, the other portions of the Total Property be required with respect to selection of a contractor therefor. If as a result of such taking, any Easements or covenants under this Declaration are extinguished or materially impaired, then changes shall be made to provide for Easements of access, ingress and egress and use of Shared Facilities and Improvements and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles 3 and 4 hereof and for the furnishing of services under Article 5 (Services) hereof.

14.5 The Award for any taking described in Section 14.4 shall first be used to pay for the repair and restoration. Each portion of the Award attributable to the Residential Property or the Commercial Property alone shall only be utilized to repair and restore that portion of the Total Property to which it is attributed. Any excess of the Award attributed to a particular portion of the Total Property over the cost of repair and restoration to that portion of the Total Property shall then be allocated to the Owner of that portion of the Total Property, or, if applicable, to the Mortgagee of a Mortgage encumbering such Owner's portion of the Total Property in accordance with the terms of such encumbrance.

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

## ARTICLE 15

### ARCHITECT

15.1 The appointment of an architect in accordance with this Article 15 shall be for the purpose of resolving disputes and other differences arising under this Declaration during the operation of the Total Property. The Owners shall jointly appoint a firm consisting of both

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architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Improvements to serve under and pursuant to the terms and provisions of this Declaration (the "Architect"). In the event the Owners cannot agree upon the appointment of the Architect, the matter shall be submitted to arbitration in accordance with the provisions of Article 12 (Arbitration). The Architect shall, upon its appointment, execute an agreement (the "Owner-Architect Agreement") with the Owners substantially in the form of or comparable to The American Institute of Architects ("AIA"), AIA Document B141 (the then current edition), entitled "Standard Form Agreement between Owner and Architect." An Owner may cause any Architect to be replaced if it demonstrates to the other Owner that such then-serving Architect has failed to perform its duties hereunder fairly, diligently or competently in accordance with the Owner-Architect Agreement. In such event, the Owner desiring replacement of the Architect shall serve notice upon the other Owner requesting the removal of the then serving Architect, which notice shall set forth with specificity the respect or respects in which such Architect shall have failed to perform diligently or competently in accordance with the Owner-Architect Agreement. If, in the opinion of an Owner receiving such notice the Owner desiring to replace the Architect is not entitled to require the appointment of a new Architect pursuant to this Section 15.1, the Owner receiving such notice and objecting to the appointment of a new Architect shall notify the other Owner of its objection in writing within fifteen (15) days after receipt of such notice from the other Owner. If, within ten (10) days after receipt by the Owner desiring to replace the Architect of such objection, the Owners do not resolve their differences, then the dispute shall be settled by arbitration pursuant to Article 12 (Arbitration) hereof.

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

15.3 The Architect shall be paid a reasonable fee for any services rendered hereunder and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and the Owners shall each pay their equitable share of such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If either Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then the other Owner may pay the same and the Defaulting Owner shall, within ten (10) days after written demand for reimbursement, reimburse the Creditor Owner for any such payment, plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner as described in Section 11.3 hereof, and the

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Creditor Owner shall obtain a lien against that portion of the Total Property owned by the Defaulting Owner to the extent of such unpaid costs and expenses and interest, subject to and in accordance with Section 11.1 hereof.

## ARTICLE 16

### DEPOSITARY

16.1 Subject to the rights of any Mortgagees of the Damaged Parcels, a depositary (the "Depositary") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policy required to be carried pursuant to Section 9.1(a) hereof and Awards arising in connection with this Declaration shall be paid to the Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then five (5) largest banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

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

16.3 In the event of any casualty loss which affects more than one portion of the Total Property and if each Damaged Parcel is subject to a Mortgage, then the Mortgagees of the Damaged Parcels shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, acting jointly, to appoint the Depositary with regard to such funds.

16.4 In the event of any casualty loss which affects more than one portion of the Total Property and if one but not both of the Damaged Parcels is encumbered by a Mortgage, then the Mortgagee of such Mortgage and the Owner of the unencumbered Damaged Parcel shall have the right, within thirty (30) days after such casualty loss, acting jointly, to appoint the Depositary with regard to such funds.

16.5 If none of the provisions of Sections 16.3 or 16.4 are applicable, or if none of the rights of election or appointment conferred by said Sections are exercised within thirty (30) days after the casualty loss has been finally adjusted, then the Owners of the Damaged Parcels shall mutually appoint the Depositary. Upon the failure of such Owners to appoint the Depositary within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration in accordance with Article 12 (Arbitration) hereof and the arbitrators shall appoint the Depositary.



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

16.7 The Depositary shall have no affirmative obligation to prosecute a determination of the amount of or to effect the collection of, any insurance proceeds or Award or Awards unless the Depositary shall have been given an express written authorization from the Owners, provided that, if only one Owner claims said insurance proceeds or Award or Awards, then said Owner alone may authorize the Depositary to so proceed; provided further, however, that if the Residential Property or the Commercial Property is in any material way affected by the disbursement of any such insurance proceeds or Award or Awards, then the consent of the Mortgagee of the appropriate Mortgage shall be required.

16.8 The monies on deposit shall be held in an interest-bearing account pursuant to an agreement among the Depositary and the Owners whose portion of the Total Property has been the subject of any casualty loss or condemnation. The Depositary shall, at the direction of the Owners whose portion of the Total Property is the subject of any casualty loss or condemnation, purchase with such monies, to the extent feasible, United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depositary, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depositary expects to make shortly thereafter, and the Depositary shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depositary on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depositary. Unless the Depositary shall have undertaken to pay interest thereon, monies received by the Depositary pursuant to any of the provisions of this Declaration shall not be mingled with the Depositary's own funds and shall be held by the Depositary in trust for the uses and purposes herein provided.

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

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16.10 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policy required to be carried pursuant to Section 9.1(a) hereof of less than \$50,000 or Awards of less than \$50,000 shall be paid directly to the party so entitled rather than to the Depository.

## ARTICLE 17

### DISBURSEMENTS OF FUNDS BY DEPOSITARY

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

- (i) That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of both Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, material men, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to each of said persons in respect thereof and shall state the progress of the Work up to the date of said certificate and any other information required by the Mechanics Lien Act set forth in 770 ILCS 60/0.01 *et seq.* (the "Mechanics lien Act") and any title insurer affording coverage against mechanics liens;
- (ii) That the sum requested, plus all sums previously disbursed, does not exceed the cost of the Work actually in place up to the date of such certificate, plus the cost of materials supplied and actually stored on site (which materials shall be adequately insured against fire, theft and other casualties);
- (iii) That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and
- (iv) That the cost to complete the unfinished Work will not exceed the funds or security therefor held by the Depository after payment of the then-current request.

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- (b) Upon compliance with the provisions of Section 17.1(a) (but not more frequently than once in any thirty (30) day period); and
- (i) upon receipt of contractors' and subcontractors' sworn statements required under the Mechanics Lien Act accompanied by partial or final waivers of lien as appropriate, and any other information required by any title insurer affording coverage against mechanics liens from the persons named in the sworn statement; and
  - (ii) approval by the title insurer, the Owner or Owners requesting disbursement, the Mortgagees of the Mortgages on portions of the Total Property on which or for the benefit of which Work has been or will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics lien claims relating to Work in place and the continued priority of the lien of the Mortgages securing the Mortgagees whose approval is required above;

the Depositary shall, out of the monies so held by the Depositary and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, material men, engineers, architects and other persons named in the owner's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, either or both of the Owners requesting disbursement or the Mortgagees or the Depositary may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depositary may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner or the Architect to the Depositary in accordance with the provisions of Section 17.1(a) hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

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

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said funds in accordance with said instructions.

## ARTICLE 18

### ESTOPPEL CERTIFICATES

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

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

(b) whether there is any existing default hereunder (or, to the responding Owner's knowledge, grounds therefor after giving the requisite notice hereunder) by the requesting Owner and, if so, specifying the nature and extent thereof;

(c) whether there are any sums which the responding Owner is entitled to receive or demand from the requesting Owner, and if there is any such sum, specifying the nature and amount thereof;

(d) whether the responding Owner has performed or is performing Work other than services pursuant to Article 5 (Services) hereof, the cost of which such Owner is or will be entitled to charge in whole or in part to the requesting Owner under the provisions hereof, but has not yet charged to such other Owner, and if there is any such Work, specifying the nature and extent thereof;

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

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

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

(h) the nature of any arbitration proceeding or finding under Article 12 (Arbitration) made within the ninety (90) days preceding the date of such Estoppel Certificate;



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- (i) the current address or addresses to which notices given to the responding Owner are required to be mailed under Article 21 (Notices) hereof; and
- (j) such other facts or conclusions as may be reasonably requested.

## ARTICLE 19

### AMENDMENTS TO DECLARATION

Hairpin Lofts reserves for itself the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time. A Special Amendment shall mean an amendment to: (i) correct clerical or typographical errors; (ii) revise and/or add to the exhibits attached to this Declaration to reflect "as built" conditions; (iii) grant additional Easements, as may be necessary, in order to effectuate Maintenance, operation and administration of the Total Property or any portion thereof, so long as such additional Easement does not impose additional financial obligations or undue burdens on the Owner of the Commercial Property; or (iv) provide for additional services to be furnished by one Owner to the other Owner, so long as such additional services do not impose additional financial obligations or undue burdens on the Owner of the Commercial Property and provided that the percentages set forth in this Declaration for each Owner's share of the costs for such services shall not be modified without the consent of the Mortgagees. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Hairpin Lofts to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Total Property, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Hairpin Lofts to vote in favor of, make, execute and record Special Amendments. Each Special Amendment shall be recorded with the Recorder and shall be effective from and after the date of recording. The right of Hairpin Lofts to act pursuant to rights reserved or granted under this Section 19.1 shall terminate at such time as neither Hairpin Lofts nor any of its affiliates holds or controls title to any portion of the Total Property.

## ARTICLE 20

### ALTERATIONS

20.1 (a) The Owner of the Residential Property may, at any time, at its sole cost and expense, make additional improvements or alterations (hereinafter in this Article 20, "Alterations") to the Residential Improvements, provided that such Alterations comply with the balance of this Section 20.1 and all of the other provisions of this Article 20. Any plans and specifications for any restoration of the Residential Improvements which contain substantially the same architectural features as the Residential Improvements which existed prior to the necessity of restoration and any plans and specifications for any improvements, modifications, or restoration that are necessary to comply with any law or regulatory scheme governing the Residential Property shall not be deemed to be Alterations within the meaning of this Article 20.

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(b) Unless otherwise provided in Section 20.1(a) and this Section 20.1(b), Alterations shall not be made to the Residential Property without the prior written consent of the Owner of the Commercial Property, if such Alterations will:

- (i) materially diminish the benefits afforded to the Owner of the Commercial Property by any Easement or interrupt the Owner of the Commercial Property's use or enjoyment of any Easement;
- (ii) materially alter the facade or exterior appearance of the Improvements;
- (iii) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Property;
- (iv) materially adversely affect the Rooftop Equipment or its intended use, the Mechanical Equipment Easement Area, or any Shared Facilities and Improvements benefiting the Owner of the Commercial Property; or
- (v) materially impair or otherwise materially adversely affect the traffic pattern for ingress and egress to and from any entrances to the Building.

(c) If, at any time, the Owner of the Residential Property proposes to make any Alterations which require the consent of the Owner of the Commercial Property, then before commencing or proceeding with such Alterations, the Owner of the Residential Property shall deliver to the Owner of the Commercial Property and the Owner of the Commercial Property's Mortgagee, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 20.1. If the Owner of the Commercial Property and its Mortgagee consent to such Alterations or state that their consents are not required, the Owner of the Residential Property may proceed to make its Alterations substantially in accordance with said plans and specifications. If the Owner of the Residential Property has not requested the Owner of the Commercial Property's consent to the proposed Alterations, and if, in the reasonable and good faith opinion of the Owner of the Commercial Property or its Mortgagee, the Owner of the Residential Property has violated or will violate the provisions of Section 20.1(a) or (b), the Owner of the Commercial Property or its Mortgagee (an "Objecting Party") shall notify the Owner of the Residential Property of its reasonable and good faith opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 20.1(a) or (b) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party reasonably and in good faith asserts a violation of Section 20.1(a) or (b), then the Owner of the Residential Property shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of the Owner of the Residential Property's violation or imminent violation of the provisions of this Section 20.1(c), the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

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(d) If any matter arises between the Owners with respect to whether any Alterations or proposed Alterations by the Owner of the Residential Property violate the provisions of Section 20.1(a) or (b) then either Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 20.1(a) or (b) hereof.

(e) The Owner of the Residential Property, in making Alterations, shall (i) perform all Work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code and Zoning Ordinance, and (iii) comply with all of the applicable provisions of this Declaration. The Owner of the Residential Property shall make Alterations in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the Commercial Property.

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

20.3 The Owner of the Residential Property shall include in any construction contract relating to Alterations or Work a provision pursuant to which the contractor (i) recognizes the separate ownership of the various parcels which comprise the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics Lien Act shall only be enforceable against the Residential Property, and (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against any portion of the Commercial Property and agrees to comply with the provisions of Section 21 of the Mechanics Lien Act in connection with giving notice of such "no lien" provision.

20.4 (a) The Owner of the Commercial Property may, at any time, at its sole cost and expense, make additional improvements or alterations (hereinafter in this Article 20, "Alterations") to the Commercial Improvements, provided that such Alterations comply with the balance of this Section 20.4 and all of the other provisions of this Article 20. Any plans and specifications for any restoration of the Commercial Improvements which contain substantially the same architectural features as the Commercial Improvements which existed prior to the necessity of restoration, any plans and specifications for any improvements, modifications, restoration, construction, fixturing, equipping or furnishing on or within the walls of the Commercial Property (i.e. tenant build-out), and any plans and specifications for any improvements, modifications, or restoration that are necessary to comply with any law or regulatory scheme governing the Commercial Property shall not be deemed to be Alterations

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within the meaning of this Article 20.

(b) Unless otherwise provided in Section 20.4(a) and this Section 20.4(b), Alterations shall not be made to the Commercial Property without the prior written consent of the Owner of the Residential Property, if such Alterations will:

- (i) materially diminish the benefits afforded to the Owner of the Residential Property by any Easement or interrupt the Owner of the Residential Property's use or enjoyment of any Easement;
- (ii) impair the structural integrity of the Improvements (or any portion thereof) or necessitate the erection of additional columns, bearing walls, or other structures upon or within the Total Property;
- (iii) expand the use in a manner that would materially adversely affect the use of the roof by the Owner of the Residential Property;
- (iv) materially adversely affect any Shared Facilities and Improvements benefiting the Owner of the Residential Property; or
- (v) materially impair or otherwise materially adversely affect the traffic pattern for ingress and egress to and from any entrances to the Building.

(c) If, at any time, the Owner of the Commercial Property proposes to make any Alterations which require the consent of the Owner of the Residential Property, then before commencing or proceeding with such Alterations, the Owner of the Commercial Property shall deliver to the Owner of the Residential Property and the Owner of the Residential Property's Mortgagee, a copy of the plans and specifications showing the proposed Alterations and a reference to this Section 20.4. If the Owner of the Residential Property and its Mortgagee consent to such Alterations or state that their consents are not required, the Owner of the Commercial Property may proceed to make its Alterations substantially in accordance with said plans and specifications. If the Owner of the Commercial Property has not requested the Owner of the Residential Property's consent to the proposed Alterations, and if, in the reasonable and good faith opinion of the Owner of the Residential Property or its Mortgagee, the Owner of the Commercial Property has violated or will violate the provisions of Section 20.4(a) or (b), the Owner of the Residential Property or its Mortgagee (an "Objecting Party") shall notify the Owner of the Commercial Property of its reasonable and good faith opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 20.4(a) or (b) hereof, and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party reasonably and in good faith asserts a violation of Section 20.4(a) or (b), then the Owner of the Commercial Property shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of the Owner of the Commercial Property's violation or imminent violation of the provisions of this Section 20.4(c), the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.



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(d) If any matter arises between the Owners with respect to whether any Alterations or proposed Alterations by the Owner of the Commercial Property violate the provisions of Section 20.4(a) or (b) then either Owner may submit such matter to the Architect for its advice, and the Architect shall render its opinion whether the Alterations or proposed Alterations violate the provisions of Section 20.4(a) or (b) hereof.

(e) The Owner of the Commercial Property, in making Alterations, shall (i) perform all Work in a good and workmanlike manner and in accordance with good construction practices, (ii) comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders, including, without limitation, the City of Chicago Building Code and Zoning Ordinance, and (iii) comply with all of the applicable provisions of this Declaration. The Owner of the Commercial Property shall make Alterations in such a manner as to minimize any noise, vibration, particulate and dust infiltration or other interference or disturbance which would interfere with or disturb an occupant or occupants of the Residential Property.

(f) Notwithstanding anything contained in this Declaration to the contrary, the terms, provisions and restrictions set forth in this Article 20 shall not apply to the construction, installation and Maintenance of any signs and/or awnings (including, without limitation, advertising and identification signs and awnings) now or hereafter constructed, installed or located on Total Property and shall instead be governed by Section 23.11 hereof.

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

20.6 The Owner of the Commercial Property shall include in any construction contract relating to Alterations or Work a provision pursuant to which the contractor (i) recognizes the separate ownership of the various parcels which comprise the Total Property and agrees that any lien rights which the contractor or subcontractors have under the Mechanics Lien Act shall only be enforceable against the Commercial Property, and (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors against any portion of the Residential Property and agrees to comply with the provisions of Section 21 of the Mechanics Lien Act in connection with giving notice of such "no lien" provision.

## ARTICLE 21

### NOTICES

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

For Notices to the Owner  
of the Residential Property:

Hairpin Lofts, LLC  
c/o Brinshore Development, L.L.C.  
666 Dundee Road, Suite 1102  
Northbrook, Illinois 60062  
Attention: Richard J. Sciortino

For Notices to the Owner of the  
Commercial Property:

Hairpin Retail, LLC  
c/o Brinshore Development, L.L.C.  
666 Dundee Road, Suite 1102  
Northbrook, Illinois 60062  
Attention: Richard J. Sciortino

Concurrently with the giving of any default notification required hereunder to be given, or which any other party hereto may desire to give to the Owner of the Commercial Property, a duplicate original of such notification shall be given to the Mortgagee under any Mortgage encumbering the Residential Property or the Commercial Property at the address for the giving of notice set forth in the Mortgage. Additionally, (i) so long as the Owner of the Residential Property has an investor member ("Residential Investor Member"), a copy of any notice of default shall be sent to USA 71 Hairpin Lofts LLC, 340 Pemberwick Road, Greenwich, Connecticut 06831, Attention: Joanne D. Flanagan, Esq., (ii) so long as the Owner of the Commercial Property has an investor member ("Commercial Investor Member"), a copy of any notice of default shall be sent to CRF Projects LLC Series V-5, Community Reinvestment Fund, Inc., 850 West Jackson Boulevard, Suite 825, Chicago, Illinois 60607, Attention: Nicholas J. Shapiro, President, and (iii) so long as the Residential Property RDA or the Commercial Property RDA encumbers either the Residential Parcel or the Commercial Parcel, a copy of any notice of default shall be sent to City of Chicago, Department of Community Development, 121 North LaSalle Street, Room 1000, Chicago, Illinois 60602, Attention: Commissioner and to City of Chicago, Department of Law, Finance and Economic Development Division, 121 North LaSalle Street, Room 600, Chicago, Illinois 60602. Any such Mortgagee shall have the right and the Residential Investor Member or Commercial Investor Member, respectively, shall have the right to cure any default by the Owner of the Residential Property or the Owner of the Commercial Property and such right to cure shall continue for sixty (60) days following the receipt by such Mortgagee, Residential Investor Member, or Commercial Investor Member of the notice of such default.

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

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## ARTICLE 22

### LIMITATION OF LIABILITY

22.1 Each Owner shall use reasonable diligence in performing the services required of such Owner, but shall not be liable for interruption or inadequacy of service, or for loss or damage to property or injury (including death) to any person as a result of interruption or inadequacy of service other than in the case of gross negligence or willful misconduct. Each Owner obligated to furnish services hereunder is reserved the right to curtail or halt the performance of any services hereunder at any time in reasonable respects for a reasonable period to time to make necessary repairs or in the case of an Emergency Situation.

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

## ARTICLE 23

### GENERAL

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

23.2 The illegality, invalidity or unenforceability under law of any covenant, restriction or condition or any other provision of this Declaration shall not impair or affect in any manner

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the validity, enforceability or effect of the remaining provisions of this Declaration.

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

23.4 Except as otherwise provided herein (including, without limitation, Article 19 hereof [Amendments To Declaration]), this Declaration may be amended or terminated only by an instrument signed by the Owners and the Mortgagees. Any amendment to or termination of this Declaration shall be recorded with the Recorder.

23.5 The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of ninety-nine (99) years from the date this Declaration is recorded, subject to amendment or termination as hereinabove set forth in Article 19 (Amendments To Declaration) or Section 23.4; provided, however, that this Declaration, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the date of the last to survive of the class of persons consisting of all of the lawful descendants of Richard M. Daley, Mayor of the City of Chicago, living at the date of this Declaration.

23.6 All the Easements, covenants, restrictions and conditions herein contained shall run with the estate of each Owner and shall inure to the benefit of and be binding upon Declarants and each subsequent holder of any interest in any portion of such estates 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 deed or lease creating a fee or leasehold estate in the Total Property or any part thereof or interest therein.

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

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

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



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

23.11 (a) The Owner of the Residential Property shall have the right to install and maintain signs and/or awnings (including, without limitation, marketing and identification signs and awnings) on the Residential Property, without the consent of the Owner of the Commercial Property, provided, that all signs and/or awnings (i) are installed in a good and workmanlike manner in compliance with all applicable laws and ordinances, consistent and in compliance with the landmark and historic nature and designation of the Building, and in a manner as to cause minimal noise, vibration and dust, (ii) are of quality and content consistent with the signage of a mixed-use development similar to the Building, and (iii) do not illuminate in such a manner as to unreasonably interfere with the use and enjoyment of the Commercial Property.

(b) The Owner of the Commercial Property shall have the right to install and maintain signs and/or awnings (including, without limitation, marketing and identification signs and awnings) on the Commercial Property and on portions of the Residential Property as follows:

- (i) Without the consent of the Owner of the Residential Property, within the Commercial Property, provided that signs do not illuminate in such a manner as to unreasonably interfere with the use and enjoyment of the Residential Property;
- (ii) Without the consent of the Owner of the Residential Property, on the first floor façade of the Building located adjacent to the interior Commercial Property (i.e. the store front window areas and other areas that appear from the main street entrances to be part of the Commercial Property) ("Retail Façade") and on the doors and entryways to the Commercial Property, provided that all signs and/or awnings (A) are installed in a good and workmanlike manner in compliance with all applicable laws and ordinances, consistent and in compliance with the landmark and historic nature and designation of the Building, and in a manner as to cause minimal noise, vibration and dust, (B) are of quality and content consistent with the signage of a mixed-use development similar to the Building, and (C) do not illuminate in such a manner as to unreasonably interfere with the use and enjoyment of the Residential Property;

(c) Except as may be specifically set forth in subsection (b) above, the Owner of the Commercial Property shall not have the right to install signs and/or awnings on the Residential Property without the prior written consent of the Owner of the Residential Property, which consent may be granted or denied by the Owner of the Residential Property in its sole and absolute discretion.

(d) The Owner of the Residential Property shall not have the right to install signs

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and/or awnings on the Commercial Property or on the Retail Façade without the prior written consent of the Owner of the Commercial Property, which consent may be granted or denied by the Owner of the Commercial Property in its sole and absolute discretion.

## ARTICLE 24

### RIGHTS OF MORTGAGEES

24.1 No breach of any covenant and/or restriction, nor the enforcement of any lien provision contained in this Declaration shall render invalid the lien of any Mortgage made in good faith and for value. Except only as set forth herein, all of the covenants, conditions and restrictions herein contained shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee sale, deed in lieu thereof, or otherwise.

24.2 A Mortgagee that takes title to the Residential Parcel or the Commercial Parcel pursuant to a foreclosure of its Mortgage or deed in lieu of foreclosure, or any purchaser at a foreclosure or trustee sale under a Mortgage, shall take title to the Residential Parcel or Commercial Parcel (as applicable), free of any claims or liens for unpaid Shared Expenses or other unpaid amounts and any other obligations, against the encumbered Residential Parcel or Commercial Parcel (as applicable) arising under this Declaration which became due and payable prior to the time the Mortgagee or such purchaser takes title thereto. After such Mortgagee or purchaser therefrom takes title to the Residential Parcel or Commercial Parcel (as applicable), a lien may be created thereon to secure payment of any amounts that first become due hereunder after such Mortgagee or purchaser therefrom takes title. A Mortgagee that takes title to the Residential Parcel or Commercial Parcel pursuant to a foreclosure of its Mortgage or deed in lieu of foreclosure, or any purchaser at a foreclosure or trustee sale under a Mortgage, shall have no obligation hereunder with respect to any indemnities, representations or warranties arising under this Declaration and related to or resulting from acts, omissions, circumstances or events occurring before or existing at the time Mortgagee that takes title to the Residential Parcel or Commercial Parcel (as applicable). Notwithstanding the foregoing, no conveyance, foreclosure or other divestiture of title shall in any way affect, diminish or defeat the terms, conditions and covenants of the Residential Property RDA and/or the Commercial Property RDA.

24.3 Mortgagees may jointly or singly pay any amounts due hereunder which are in default and take any action reasonably necessary to cure any other default of any Owner hereunder with the same effect as such cure by the mortgagor itself.

24.4 The foregoing covenants and subordinations shall be deemed self executing and no further documents shall be required for such covenants and subordinations to be effective. Owners shall, however, execute and record any documents and instruments reasonably requested by Mortgagees to evidence the foregoing, without limitation, estoppels and subordinations.

24.5 The parties hereto acknowledge that Citibank, N.A., as the assignee of the City of Chicago with respect to the Residential Parcel and as direct mortgagee on the Commercial

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Parcel, is a "Mortgagee" and an "institutional lender" and has all of the rights of such parties hereunder.

[Signature Page to Follow]

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Declarants have executed this Declaration as of the 1<sup>st</sup> day of March, 2010.

HAIRPIN LOFTS, LLC,  
an Illinois limited liability company

By: Hairpin Lofts Manager, LLC,  
an Illinois limited liability company,  
its Manager

By: Brinshore 2800 Corp.,  
an Illinois corporation,  
its Managing Member

By: David Brint  
David Brint, President

HAIRPIN RETAIL, LLC,  
an Illinois limited liability company

By: Brinshore 2800 Corp.,  
an Illinois corporation,  
its Manager

By: David Brint  
David Brint, President

COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_



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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, Notary Public in and for the County and State aforesaid. DO HEREBY CERTIFY, that David Brint, the President of Brinshore 2800 Corp., the managing member of Hairpin Lofts Manager, LLC, the manager of **HAIRPIN LOFTS, LLC**, an Illinois limited liability company, personally known to me to me the same person whose name is subscribed to the foregoing instrument as such President appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26<sup>th</sup> day of March, 2010.

Margaret A Grassano  
Notary Public

My Commission Expires:



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, Notary Public in and for the County and State aforesaid. DO HEREBY CERTIFY, that David Brint, the President of Brinshore 2800 Corp., the manager of **HAIRPIN RETAIL, LLC**, an Illinois limited liability company, personally known to me to me the same person whose name is subscribed to the foregoing instrument as such President appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26<sup>th</sup> day of March, 2010.

Margaret A Grassano  
Notary Public

My Commission Expires:



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## SUBORDINATION OF MORTGAGES

Citibank NA, a national banking association, as holder of mortgages on the Residential Parcel (through assignment of the City of Chicago) and the Commercial Parcel (directly) dated March 1, 2010 and recorded March 31, 2010 with the Cook County, Illinois Recorder of Deeds (the "Recorder") as Documents No. \_\_\_\_\_ and \_\_\_\_\_, respectively (the "Mortgages"), hereby consents to the execution and recording of the attached Declaration of Covenants, Conditions, Restrictions and Easements and agrees that the Mortgages are subject and subordinate to all of the provisions thereof.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its duly authorized officers, at Chicago, Illinois, on this 27<sup>th</sup> day of March, 2010.

Citibank, NA,  
a national banking association

By: [Signature]  
Name: Mark Risch  
Title: Vice President

STATE OF ILLINOIS        )  
  )  
  )        SS  
COUNTY OF COOK        )

I, Margaret A. Grassano, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Mark Risch, personally known to me to be the Vice President of Citibank, NA, a national banking association and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as Vice President of said banking association, pursuant to authority given by the Board of Directors of said banking association, as his free and voluntary act and as the free and voluntary act and deed of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 27<sup>th</sup> day of March, 2010.

Margaret A. Grassano  
NOTARY PUBLIC



My Commission expires: \_\_\_\_\_

# UNOFFICIAL COPY

## SUBORDINATION OF MORTGAGE

Brinshore 2800 Corp., an Illinois corporation, as holder of a mortgage on the Residential Parcel dated March, 2010 and recorded March 3, 2010 with the Recorder Cook County, Illinois Recorder of Deeds (the "Recorder") as Document No. \_\_\_\_\_, (the "Mortgage"), hereby consents to the execution and recording of the attached Declaration of Covenants, Conditions, Restrictions and Easements and agrees that the Mortgage is subject and subordinate to all of the provisions thereof.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its duly authorized officers, at Chicago, Illinois, on this 20<sup>th</sup> day of March, 2010.

BRINSHORE 2800 CORP.,  
an Illinois corporation

By: [Signature]  
David Brint, President

STATE OF ILLINOIS        )  
                                      )  
COUNTY OF COOK        )

SS

I, Margaret A. Grassano, a Notary Public in and for said County, in the State aforesaid, do hereby certify that David Brint, personally known to me to be the President of Brinshore 2800 Corp. and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as President of Brinshore 2800 Corp., as his free and voluntary act and as the free and voluntary act and deed of Brinshore 2800 Corp, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20<sup>th</sup> day of March, 2010.  
[Signature]  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_



# UNOFFICIAL COPY

## SUBORDINATION OF MORTGAGE

Lester and Rosalie Anixter Center, an Illinois not-for-profit corporation, as holder of a mortgage on the Residential Parcel dated March 1, 2010 and recorded March 31, 2010 with the Recorder Cook County, Illinois Recorder of Deeds (the "Recorder") as Document No. \_\_\_\_\_, (the "Mortgage"), hereby consents to the execution and recording of the attached Declaration of Covenants, Conditions, Restrictions and Easements and agrees that the Mortgage is subject and subordinate to all of the provisions thereof.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its duly authorized officers at Chicago, Illinois, on this 26<sup>th</sup> day of March, 2010.

LESTER AND ROSALIE ANIXTER CENTER,  
an Illinois not-for-profit corporation

By: Paul Finnell  
Name: Paul Finnell  
Title: Vice President, Admin. Services

STATE OF ILLINOIS        )  
  )  
  )        SS  
COUNTY OF COOK        )

I, Margaret A. Grassano, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Paul Finnell, personally known to me to be the Vice Pres. of Admin. Serv. of Lester and Rosalie Anixter Center and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as Vice Pres. of Admin. Services of Lester and Rosalie Anixter Center, as his/her free and voluntary act and as the free and voluntary act and deed of Lester and Rosalie Anixter Center, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26<sup>th</sup> day of March, 2010.  
Margaret A. Grassano  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_  
"OFFICIAL SEAL"  
Margaret A. Grassano  
Notary Public, State of Illinois  
My Commission Expires 07/18/2010



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## EXHIBIT A

### Legal Description of the Total Parcel

LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Nos.: 13-26-225-015 and 13-26-225-016

Property Addresses: 2808 N. Milwaukee Avenue, Chicago, Illinois  
2810 N. Milwaukee Avenue, Chicago, Illinois  
2812 N. Milwaukee Avenue, Chicago, Illinois  
3406 W. Diversey Avenue, Chicago, Illinois  
3414 W. Diversey Avenue, Chicago, Illinois  
3416 W. Diversey Avenue, Chicago, Illinois

— COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_

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## EXHIBIT B

### Legal Description of the Residential Parcel

LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, TAKEN AS A TRACT, LESS AND EXCEPT THAT PART THEREOF DESCRIBED BELOW:

#### COMMERCIAL PARCEL C1

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 19.49 FEET; THENCE NORTH 00°25'27" EAST, 18.03 FEET; THENCE NORTH 89°34'33" WEST, 7.63 FEET; THENCE NORTH 00°25'27" EAST, 11.99 FEET; THENCE NORTH 89°34'33" WEST, 4.00 FEET; THENCE NORTH 00°25'27" EAST, 10.76 FEET; THENCE NORTH 40°25'27" EAST, 3.79 FEET; THENCE NORTH 44°28'25" WEST, 0.33 FEET; THENCE NORTH 40°25'27" EAST, 13.46 FEET; THENCE SOUTH 49°34'33" EAST, 9.98 FEET; THENCE NORTH 41°06'29" EAST, 47.07 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THE REMAINING COURSES BEING ALONG THE PERIMETER LINES OF SAID TRACT; THENCE NORTH 49°29'35" WEST, 25.94 FEET; THENCE SOUTH 40°30'25" WEST, 58.83 FEET; THENCE SOUTH 00°17'06" EAST, 55.21 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

#### COMMERCIAL PARCEL C2A

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84

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FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH 00°17'06" WEST, ALONG THE WESTERLY LINE OF SAID TRACT, 55.21 FEET; THENCE NORTH 40°30'25" EAST, ALONG THE WESTERLY LINE OF SAID TRACT, 58.83 FEET TO THE NORTHERLY MOST CORNER THEREOF; THENCE SOUTH 49°29'35" EAST, ALONG THE NORTHEASTERLY LINE OF SAID TRACT, 32.27 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 41°06'29" WEST, 40.46 FEET; THENCE NORTH 49°23'47" WEST, 6.33 FEET; THENCE NORTH 41°06'29" EAST, 40.45 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 49°29'35" EAST, 6.33 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

## COMMERCIAL PARCEL C2B

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +48.77 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 25.86 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°05'28" WEST, 24.09 FEET; THENCE SOUTH 89°34'33" EAST, 9.20 FEET; THENCE NORTH 17°06'59" EAST, 9.12 FEET; THENCE NORTH 72°20'59" WEST, 0.42 FEET; THENCE NORTH 17°06'59" EAST, 4.52 FEET; THENCE NORTH 17°06'59" EAST, 8.10 FEET; THENCE NORTH 73°36'04" WEST, 1.25 FEET; THENCE NORTH 49°23'47" WEST, 11.54 FEET; THENCE SOUTH 41°06'29" WEST, 6.62 FEET; THENCE NORTH 49°34'33" WEST, 9.98 FEET; THENCE SOUTH 40°25'27" WEST, 12.54 FEET; THENCE NORTH 44°28'25" WEST, 15.54 FEET TO THE WESTERLY LINE OF SAID TRACT; THE REMAINING COURSES BEING ALONG THE PERIMETER LINES OF SAID TRACT; THENCE NORTH 40°30'25" EAST, 58.26 FEET; THENCE SOUTH 49°29'35" EAST, 155.53 FEET; THENCE NORTH 89°36'08" WEST, 130.34 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

## COMMERCIAL PARCEL C3A

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THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH 00°17'06" WEST, ALONG THE WESTERLY LINE OF SAID TRACT, 55.21 FEET; THENCE NORTH 40°30'25" EAST ALONG THE WESTERLY LINE OF SAID TRACT, 58.83 FEET TO THE NORTHERLY MOST CORNER THEREOF; THENCE SOUTH 49°29'35" EAST, ALONG THE NORTHEASTERLY LINE OF SAID TRACT, 32.27 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 41°06'29" WEST, 40.46 FEET; THENCE NORTH 49°23'47" WEST, 6.33 FEET; THENCE SOUTH 41°06'29" WEST, 8.10 FEET; THENCE SOUTH 00°05'32" EAST, 3.58 FEET; THENCE SOUTH 72°19'30" EAST, 8.06 FEET; THENCE SOUTH 17°19'36" WEST, 1.77 FEET; THENCE SOUTH 72°38'41" EAST, 6.43 FEET; THENCE NORTH 17°06'59" EAST, 9.02 FEET; THENCE NORTH 41°06'29" EAST, 38.96 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE NORTH 49°29'35" WEST, 6.36 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

## COMMERCIAL PARCEL C3B

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +81.82 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 25.86 FEET; THENCE NORTH 00°05'28" WEST, 24.09 FEET; THENCE SOUTH 89°34'33" EAST, 9.20 FEET; THENCE NORTH 17°06'59" EAST, 9.12 FEET; THENCE NORTH 72°20'59" WEST, 0.42 FEET; THENCE NORTH 17°06'59" EAST, 4.52 FEET TO THE POINT OF BEGINNING; THENCE NORTH 17°06'59" EAST, 8.10 FEET; THENCE NORTH 73°36'04" WEST, 1.25 FEET; THENCE NORTH 49°23'47" WEST, 11.54 FEET; THENCE SOUTH 41°06'29" WEST, 6.62 FEET; THENCE SOUTH 41°06'29" WEST, 1.48 FEET; THENCE SOUTH 00°05'32" EAST, 3.58 FEET; THENCE SOUTH



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72°19'30" EAST, 8.06 FEET; THENCE SOUTH 17°19'36" WEST, 1.77 FEET; THENCE SOUTH 72°38'41" EAST, 6.02 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

## COMMERCIAL PARCEL C3C

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +96.24 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +81.82 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 38.38 FEET; THENCE NORTH 00°23'52" EAST, 37.27 FEET TO THE POINT OF BEGINNING; THENCE NORTH 72°38'41" WEST, 6.02 FEET; THENCE NORTH 17°19'36" EAST, 1.77 FEET; THENCE NORTH 72°19'30" WEST, 8.06 FEET; THENCE NORTH 00°05'32" WEST, 3.58 FEET; THENCE NORTH 41°06'29" EAST, 24.57 FEET; THENCE SOUTH 49°23'45" EAST, 10.92 FEET; THENCE SOUTH 41°06'29" WEST, 12.00 FEET; THENCE SOUTH 17°06'59" WEST, 12.42 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

## COMMERCIAL PARCEL C3D

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +126.00 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +96.24 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 26.04 FEET; THENCE NORTH 00°06'39" WEST, 39.51 FEET; THENCE NORTH 89°53'21" EAST, 20.59 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 79°14'48" EAST, 11.05 FEET; THENCE NORTH 40°25'27" EAST, 11.95 FEET; THENCE NORTH 49°23'47" WEST, 17.53 FEET; THENCE SOUTH 41°06'29" WEST, 17.48 FEET; THENCE NORTH

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49°23'47" WEST, 12.24 FEET; THENCE NORTH 41°06'29" EAST, 22.48 FEET; THENCE SOUTH 49°23'47" EAST, 29.70 FEET; THENCE NORTH 40°25'27" EAST, 3.98 FEET; THENCE SOUTH 49°34'33" EAST, 22.00 FEET; THENCE SOUTH 40°25'27" WEST, 13.01 FEET; THENCE NORTH 79°14'48" WEST, 33.32 FEET; THENCE NORTH 00°05'28" WEST, 4.07 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

## COMMERCIAL PARCEL C3E

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +126.00 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +108.66 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 26.04 FEET; THENCE NORTH 00°06'39" WEST, 19.23 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°34'33" EAST, 20.58 FEET; THENCE NORTH 00°05'28" WEST, 20.47 FEET; THENCE SOUTH 89°53'21" WEST, 20.59 FEET; THENCE SOUTH 00°06'39" EAST, 20.28 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT,

## COMMERCIAL PARCEL C3F

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +126.00 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +96.24 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 26.04 FEET; THENCE NORTH 00°06'39" WEST, 19.23 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°34'33" EAST, 22.56 FEET; THENCE SOUTH 00°25'27" WEST, 9.67 FEET; THENCE NORTH 89°34'33" WEST, 22.47 FEET; THENCE NORTH 00°06'39" WEST, 9.67 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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ALSO EXCEPT,

COMMERCIAL PARCEL C4

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 34.39 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°05'28" WEST, 10.27 FEET; THENCE NORTH 89°34'33" WEST, 1.08 FEET; THENCE NORTH 01°20'08" WEST, 7.60 FEET; THENCE NORTH 17°06'59" EAST, 29.15 FEET; THENCE NORTH 41°06'29" EAST, 38.96 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 49°29'35" EAST, ALONG THE NORTHEASTERLY LINE OF SAID TRACT, 116.90 FEET TO THE EAST MOST CORNER OF SAID TRACT; THENCE NORTH 89°36'08" WEST, ALONG THE SOUTH LINE OF SAID TRACT, 121.81 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Permanent Index Nos.: 13-26-225-015 and 13-26-225-016

Property Addresses: 3414 W. Diversey Avenue, Chicago, Illinois

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## EXHIBIT C

### Legal Description of the Commercial Parcel

#### COMMERCIAL PARCEL C1

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 19.49 FEET; THENCE NORTH 00°25'27" EAST, 18.03 FEET; THENCE NORTH 89°34'33" WEST, 7.63 FEET; THENCE NORTH 00°25'27" EAST, 11.99 FEET; THENCE NORTH 89°34'33" WEST, 4.00 FEET; THENCE NORTH 00°25'27" EAST, 10.76 FEET; THENCE NORTH 40°25'27" EAST, 3.79 FEET; THENCE NORTH 44°28'25" WEST, 0.33 FEET; THENCE NORTH 40°25'27" EAST, 13.46 FEET; THENCE SOUTH 49°34'33" EAST, 9.98 FEET; THENCE NORTH 41°06'29" EAST, 47.07 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THE REMAINING COURSES BEING ALONG THE PERIMETER LINES OF SAID TRACT; THENCE NORTH 49°29'35" WEST, 25.94 FEET; THENCE SOUTH 40°30'25" WEST, 58.83 FEET; THENCE SOUTH 00°17'06" EAST, 55.21 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

#### COMMERCIAL PARCEL C2A

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH 00°17'06" WEST, ALONG THE WESTERLY LINE OF SAID TRACT, 55.21 FEET; THENCE NORTH 40°30'25" EAST, ALONG THE WESTERLY LINE OF SAID TRACT, 58.83 FEET TO THE NORTHERLY MOST CORNER THEREOF; THENCE SOUTH 49°29'35" EAST, ALONG THE NORTHEASTERLY LINE OF SAID TRACT, 32.27 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 41°06'29" WEST, 40.46 FEET; THENCE NORTH 49°23'47" WEST, 6.33 FEET; THENCE NORTH 41°06'29" EAST, 40.45 FEET TO THE



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NORTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 49°29'35" EAST, 6.33 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C2B

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +48.77 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 25.86 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°05'28" WEST, 24.09 FEET; THENCE SOUTH 89°34'33" EAST, 9.20 FEET; THENCE NORTH 17°06'59" EAST, 9.12 FEET; THENCE NORTH 72°20'59" WEST, 0.42 FEET; THENCE NORTH 17°06'59" EAST, 4.52 FEET; THENCE NORTH 17°06'59" EAST, 8.10 FEET; THENCE NORTH 73°36'04" WEST, 1.25 FEET; THENCE NORTH 49°23'47" WEST, 11.54 FEET; THENCE SOUTH 41°06'29" WEST, 6.62 FEET; THENCE NORTH 49°34'33" WEST, 9.98 FEET; THENCE SOUTH 40°25'27" WEST, 12.54 FEET; THENCE NORTH 44°28'25" WEST, 15.54 FEET TO THE WESTERLY LINE OF SAID TRACT; THE REMAINING COURSES BEING ALONG THE PERIMETER LINES OF SAID TRACT; THENCE NORTH 40°30'25" EAST, 58.26 FEET; THENCE SOUTH 49°29'35" EAST, 155.53 FEET; THENCE NORTH 89°36'08" WEST, 130.34 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C3A

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH 00°17'06" WEST, ALONG THE WESTERLY LINE OF SAID TRACT, 55.21 FEET; THENCE NORTH 40°30'25" EAST, ALONG THE WESTERLY LINE OF SAID TRACT, 58.83 FEET TO THE NORTHERLY MOST CORNER THEREOF; THENCE SOUTH 49°29'35" EAST, ALONG THE NORTHEASTERLY LINE OF SAID TRACT, 32.27 FEET TO THE POINT OF

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BEGINNING; THENCE SOUTH 41°06'29" WEST, 40.46 FEET; THENCE NORTH 49°23'47" WEST, 6.33 FEET; THENCE SOUTH 41°06'29" WEST, 8.10 FEET; THENCE SOUTH 00°05'32" EAST, 3.58 FEET; THENCE SOUTH 72°19'30" EAST, 8.06 FEET; THENCE SOUTH 17°19'36" WEST, 1.77 FEET; THENCE SOUTH 72°38'41" EAST, 6.43 FEET; THENCE NORTH 17°06'59" EAST, 9.02 FEET; THENCE NORTH 41°06'29" EAST, 38.96 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE NORTH 49°29'35" WEST, 6.36 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C3B

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +81.82 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 25.86 FEET; THENCE NORTH 00°05'28" WEST, 24.09 FEET; THENCE SOUTH 89°34'33" EAST, 9.20 FEET; THENCE NORTH 17°06'59" EAST, 9.12 FEET; THENCE NORTH 72°20'59" WEST, 0.42 FEET; THENCE NORTH 17°06'59" EAST, 4.52 FEET TO THE POINT OF BEGINNING; THENCE NORTH 17°06'59" EAST, 8.10 FEET; THENCE NORTH 73°36'04" WEST, 1.25 FEET; THENCE NORTH 49°23'47" WEST, 11.54 FEET; THENCE SOUTH 41°06'29" WEST, 6.62 FEET; THENCE SOUTH 41°06'29" WEST, 1.48 FEET; THENCE SOUTH 00°05'32" EAST, 3.58 FEET; THENCE SOUTH 72°19'30" EAST, 8.06 FEET; THENCE SOUTH 17°19'36" WEST, 1.77 FEET; THENCE SOUTH 72°38'41" EAST, 6.02 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C3C

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +96.24 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +81.82 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 38.38 FEET; THENCE NORTH 00°23'52"

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EAST, 37.27 FEET TO THE POINT OF BEGINNING; THENCE NORTH 72°38'41" WEST, 6.02 FEET; THENCE NORTH 17°19'36" EAST, 1.77 FEET; THENCE NORTH 72°19'30" WEST, 8.06 FEET; THENCE NORTH 00°05'32" WEST, 3.58 FEET; THENCE NORTH 41°06'29" EAST, 24.57 FEET; THENCE SOUTH 49°23'45" EAST, 10.92 FEET; THENCE SOUTH 41°06'29" WEST, 12.00 FEET; THENCE SOUTH 17°06'59" WEST, 12.42 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C3D

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +126.00 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +96.24 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 26.04 FEET; THENCE NORTH 00°06'39" WEST, 39.51 FEET; THENCE NORTH 89°53'21" EAST, 20.59 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 79°14'48" EAST, 11.05 FEET; THENCE NORTH 40°25'27" EAST, 11.95 FEET; THENCE NORTH 49°23'47" WEST, 17.53 FEET; THENCE SOUTH 41°06'29" WEST, 17.48 FEET; THENCE NORTH 49°23'47" WEST, 12.24 FEET; THENCE NORTH 41°06'29" EAST, 22.48 FEET; THENCE SOUTH 49°23'47" EAST, 29.70 FEET; THENCE NORTH 40°25'27" EAST, 3.98 FEET; THENCE SOUTH 49°34'33" EAST, 22.00 FEET; THENCE SOUTH 40°25'27" WEST, 13.01 FEET; THENCE NORTH 79°14'48" WEST, 33.32 FEET; THENCE NORTH 00°05'28" WEST, 4.07 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C3E

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +126.00 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +108.66 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 26.04 FEET; THENCE NORTH 00°06'39" WEST, 19.23 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°34'33" EAST,

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20.58 FEET; THENCE NORTH 00°05'28" WEST, 20.47 FEET; THENCE SOUTH 89°53'21" WEST, 20.59 FEET; THENCE SOUTH 00°06'39" EAST, 20.28 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C3F

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +126.00 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +96.24 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 26.04 FEET; THENCE NORTH 00°06'39" WEST, 19.23 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°34'33" EAST, 22.56 FEET; THENCE SOUTH 00°25'27" WEST, 9.67 FEET; THENCE NORTH 89°34'33" WEST, 22.47 FEET; THENCE NORTH 00°06'39" WEST, 9.67 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AND

## COMMERCIAL PARCEL C4

THAT PART OF LOTS 18, 19 AND 20 IN BLOCK 3 IN WILLIAM E HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION, BEING A SUBDIVISION OF LOTS 15 AND 16 IN BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +33.85 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +18.84 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 18 BEING THE SOUTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89°36'08" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 34.39 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°05'28" WEST, 10.27 FEET; THENCE NORTH 89°34'33" WEST, 1.08 FEET; THENCE NORTH 01°20'08" WEST, 7.60 FEET; THENCE NORTH 17°06'59" EAST, 29.15 FEET; THENCE NORTH 41°06'29" EAST, 38.96 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT; THENCE SOUTH 49°29'35" EAST, ALONG THE NORTHEASTERLY LINE OF SAID TRACT, 116.90 FEET TO THE EAST MOST CORNER OF SAID TRACT; THENCE NORTH 89°36'08" WEST, ALONG THE SOUTH LINE OF SAID TRACT, 121.81 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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Permanent Index Nos.: 13-26-225-015 and 13-26-225-016

Property Addresses: 3406 W. Diversey Avenue, Chicago, Illinois  
3416 W. Diversey Avenue, Chicago, Illinois  
2808 N. Milwaukee Avenue, Chicago, Illinois  
2810 N. Milwaukee Avenue, Chicago, Illinois  
2812 N. Milwaukee Avenue, Chicago, Illinois

Property of Cook County Clerk's Office

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**



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## EXHIBIT D

### Mechanical Equipment Easement Area

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**

Property of Cook County Clerk's Office

CHICAGO-#95619-v6-REA\_(Reciprocal\_Easement\_Agreement)\_for\_Hairpin\_Lofts\_(Sachs\_Building).DOC

**COOK COUNTY  
RECORDER OF DEEDS  
SCANNED BY \_\_\_\_\_**