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Doc#: 1014716028 Fee: \$268.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/27/2010 01:28 PM Pg: 1 of 117

## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS: RECIPROCAL EASEMENT AGREEMENT

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS: RECIPROCAL EASEMENT AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of May, 2010, by WALTON ON THE PARK SOUTH, LLC, an Illinois limited liability company ("**Residential Declarant**"), WALTON ON THE PARK COMMERCIAL, LLC, an Illinois limited liability company ("**Commercial Declarant**"), and WALTON ON THE PARK COMMUNITY ASSOCIATION, LLC, an Illinois limited liability company ("**Parking Declarant**") [Residential Declarant, Commercial Declarant and Parking Declarant may be collectively referred to herein as "Declarants"].

### RECITALS:

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

B. Residential Declarant is the owner of the Residential Parcel situated in Chicago, Cook County, Illinois, and legally described on Exhibit "B" attached hereto and made a part hereof. As of the date of this Declaration, Residential Declarant is also the owner of the Commercial Parcel and the Parking Parcel, however it is expected that the Commercial Parcel and the Parking Parcel shall be subsequently conveyed to the Commercial Declarant and the Parking Declarant as provided below.

C. Commercial Declarant is expected to become, after the date of this Declaration, the owner of the Commercial Parcel situated in Chicago, Cook County, Illinois, and legally described on Exhibit "C" attached hereto and made a part hereof.

D. Parking Declarant is expected to become, after the date of this Declaration, the owner of the Parking Parcel situated in Chicago, Cook County, Illinois, and legally described on Exhibit "D" attached hereto and made a part hereof.

E. The Residential Parcel, the Commercial Parcel and the Parking Parcel together make up

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the Total Parcel situated in Chicago, Cook County, Illinois, and legally described on Exhibit "A" attached hereto and made a part hereof.

F. The Total Parcel is improved with a thirty-one (31) story building which contains the Residential Parcel, the Commercial Parcel and the Parking Parcel ("the Building").

G. The Residential Parcel, being a portion of the Total Parcel, includes certain portions of the basement levels, a portion of the first floor and all of the second through thirty-one (31) floors of the Building and contains approximately two hundred one (201) residential condominium units, a multi-level garage containing approximately three hundred twenty-seven (327) parking space condominium units (the "Garage Area"), and ancillary improvements consisting of approximately 524,848 square feet. Residential Declarant intends to submit the Residential Parcel to the Act.

H. The Commercial Parcel, being a portion of the Total Parcel, includes portions of the first floor level of the building and contains approximately 6,688 square feet of commercial space and ancillary amenities and improvements. Commercial Declarant reserves the right for itself or its successors and assigns to record a declaration of condominium in order to make the Commercial Improvements a commercial condominium.

I. The Parking Parcel, being a portion of the Total Parcel, includes portions of the levels B-2, B-1 and 1, and contains approximately 22,508 square feet of garage space and ancillary improvements.

J. Pursuant to this Reciprocal Easement Agreement, Declarants shall vertically and horizontally separate the Residential Parcel, the Commercial Parcel and the Parking Parcel substantially as follows: (i) one or more Lots containing the Residential Parcel and the improvements located therein and thereon; (ii) one or more Lots containing the Commercial Parcel and the improvements located therein and thereon; and (iii) one or more Lots containing the Parking Parcel and the improvements located therein and thereon. After the date hereof, Declarants acting alone, or their respective successors and/or assigns, may, but shall not be required to, record a plat of subdivision reflecting the divisions described in this Reciprocal Easement Agreement.

K. The Residential Property, the Commercial Property and the Parking Property collectively comprise a multi-use, integrated development with each Property being structurally and functionally dependent on the other, to some extent, for structural support, enclosure, ingress and egress, utility services and other facilities and components necessary for the operation and use of the Residential Property, the Commercial Property and the Parking Property.

L. Drawings depicting the respective locations of the Residential Parcel, the Commercial Parcel and the Parking Parcel within the Building are attached hereto as Exhibit E and made a part hereof.

M. Declarants desire by this Declaration to provide for the efficient operation of the Residential Property, the Commercial Property and the Parking Property and to assure the harmonious relationship of the owners of each such Property, by providing for, declaring and creating certain easements, covenants and restrictions benefiting and burdening the Residential Property, the Commercial Property and the Parking Property to the extent provided herein.

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

## ARTICLE I INCORPORATION OF RECITALS

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

## ARTICLE II DEFINITIONS

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

2.2 "Architect" has the meaning set forth in Article XVI hereof.

2.3 "Commercial Improvements" means all improvements now or hereafter constructed within and upon the Commercial Parcel or exclusively serving the Commercial Property. In the event of any reconstruction of the Commercial Improvements pursuant to Article XI, Article XV or Article XXII, the Commercial Improvements shall include any such improvements reconstructed on the Commercial Parcel.

2.4 "Commercial Parcel" means the portion of the Total Parcel legally described on Exhibit "C" attached hereto, provided that following the subdivision of the Total Parcel, if any, the Commercial Parcel shall mean the Lot or Lots substantially comprising the property legally described on Exhibit "C" attached hereto, as said Lot or Lots are designated on the recorded Subdivision Plat.

2.5 "Commercial Property" means, collectively, the Commercial Parcel and the Commercial Improvements and other related incidental portions of the Total Property, which are not a portion of the Residential Property or the Parking Property.

2.6 "Commercial Space" means any portion of the Commercial Property which makes up a separate Commercial Unit or area intended for use or use by a single or multiple businesses. All or most of the Commercial Property may consist of Commercial Space(s), which may be modified from time to time. A Commercial Space may be leased to one or more separate tenants.

2.7 "Common Elements" means all portions of the Condominium Property, except the Units.

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2.8 "Common Expenses" means the costs and expenses attributable to services provided to the Building which benefit more than one property, or the Maintenance of any Facilities that serve more than one property.

2.9 "Common Walls, Floors and Ceilings" means all common structural and partition walls, floors and ceilings now or hereafter situated on or adjoining one property and another property, or located on one property but forming the walls, floors or ceilings of another property.

2.10 "Condominium Association" means an Illinois not-for-profit corporation formed for the purpose of administering the Residential Property (or the Commercial Property, if applicable) pursuant to the Act.

2.11 "Condominium Declaration" means the declaration of condominium ownership and of easements, restrictions, covenants and by-laws which submits the Residential Property (or the Commercial Property, if applicable) to the provisions of the Act.

2.12 "Condominium Property" means the Residential Property (or the Commercial Property, if applicable) from and after its submission to the Act and so long as it has not been withdrawn from the Act.

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

2.14 "Declarants" means WALTON ON THE PARK SOUTH, LLC, WALTON ON THE PARK COMMERCIAL, LLC, and WALTON ON THE PARK COMMUNITY ASSOCIATION, LLC, or any Mortgagee succeeding to all of the rights of WALTON ON THE PARK SOUTH, LLC, WALTON ON THE PARK COMMERCIAL, LLC, or WALTON ON THE PARK COMMUNITY ASSOCIATION, LLC under this Declaration pursuant to a collateral assignment of WALTON ON THE PARK SOUTH, LLC, WALTON ON THE PARK COMMERCIAL, LLC, or WALTON ON THE PARK COMMUNITY ASSOCIATION LLC's rights hereunder, and any other person or entity designated by WALTON ON THE PARK SOUTH, LLC, WALTON ON THE PARK COMMERCIAL, LLC or WALTON ON THE PARK COMMUNITY ASSOCIATION, LLC or a successor Declarant(s) to be the "Declarants."

2.15 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements: Reciprocal Easement Agreement, including all exhibits, amendments and supplements hereto.

2.16 "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 12.5 hereof.

2.17 "Defaulting Owner", except where otherwise defined hereunder in a specific context, means an Owner who has failed to make a payment of money owed under this Declaration to the other Owner or who has failed to perform any of its duties or obligations as and when required under this Declaration, after the expiration of any applicable notice and cure period.

2.18 "Depository" has the meaning set forth in Article XVII of this Declaration.

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

2.20 "Emergency" or "Emergency Situation" means a situation: (i) impairing or imminently likely to impair structural support of the Facilities or the Improvements; or (ii) causing or imminently likely to cause bodily injury to persons or substantial physical damage to all or any portion of the Improvements or any property within or about the Total Property; or (iii) which is otherwise defined hereunder in a specific context as an Emergency or Emergency Situation. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency or Emergency Situation.

2.21 "Facilities" means all components of the Building or of the Total Property, and any replacements or substitutions therefor, comprised of the equipment, machinery, mechanical systems, plumbing systems, heating ventilation and air conditioning ("HVAC") systems and the like now or hereafter existing or, within or for the benefit of the Improvements, including, as examples and without limitation, those consisting of or relating to: chilled and heating hot water, condenser water, central air handling and fan, air intake valves and ducts, annunciators, antennae, boilers, boxes, brackets, cabinets, cables, chases, chutes, coils, connectors, compressors, computers, conduits, controls, control centers, cooling towers, couplers, dampers, devices, ducts, elevator cars, elevator rails, equipment, fans, fixtures, generators, grease traps, black iron and scrubber systems, hangers, heat traces, heat exchangers, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, plumbing, pumps, radiators, risers, stacks, starters, switches, switchboards, systems, tanks, transformers, valves, wiring, temperature control, security, domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, detectors and alarms, master satellite, cable television system, master antenna, emergency power, telephone, elevator, loading dock, trash removal and other utility systems now or hereafter forming a part of the Total Property and designed or utilized to furnish utility and other services to any portion of the Building or the Total Property..

2.22 "First Commercial Mortgage" means the first mortgage, and all amendments, supplements and extensions thereto, encumbering the Commercial Property from time to time.

2.23 "First Commercial Mortgagee" means the holder of a First Commercial Mortgage.

2.24 "First Mortgage" means the First Residential Mortgage, the First Commercial Mortgage or the First Parking Mortgage.

2.25 "First Mortgagee" means the First Residential Mortgagee, the First Commercial Mortgagee or the First Parking Mortgagee. The holder of any note secured by a mortgage or trust deed covering any portion of the Total Property is a "Mortgagee"; all First Mortgagees are Mortgagees. The Mortgagee for any portions of the Total Property owned by the Declarants is sometimes referred to herein as the "Project Mortgagee". The Project Mortgagee is identified on the "Consent of Mortgagee" exhibit attached to this Declaration and is deemed to include any successors and/or assigns of the Project Mortgagee.

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2.26 "First Parking Mortgage" means the first mortgage, and all amendments, supplements and extensions thereto, encumbering the Parking Property from time to time.

2.27 "First Parking Mortgagee" means the holder of a First Parking Mortgage.

2.28 "First Residential Mortgage" means the first mortgage, and all amendments, supplements and extensions thereto, encumbering the Residential Property from time to time and made by Declarant or any person or entity succeeding Declarant as the developer of all or substantially all of the Residential Parcel. First Residential Mortgage does not include a mortgage encumbering a Unit made by a Unit Owner other than Declarant or any person or entity succeeding Declarant as the developer of all or substantially all of the Residential Parcel.

2.29 "First Residential Mortgagee" means the holder of a First Residential Mortgage.

2.30 "Improvements" means any and all buildings, structures, Facilities, support structures, fixtures, pavement or other improvements now or at any time hereafter constructed or situated upon, within or under all or any portion of the Total Parcel and any and all replacements, renewals, additions or modifications thereto; and which includes the Residential Improvements, the Commercial Improvements and the Parking Improvements.

2.31 "Lot" means a Lot designated on the Subdivision Plat (as described in Section 21.1), if any.

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

2.33 "Owner" means either the Owner(s) of the Residential Property, the Owner(s) of the Commercial Property, or the Owner(s) of the Parking Property, as the context requires. "Owners" means collectively, two or more of the Owner(s) of the Residential Property, the Owner(s) of the Commercial Property and the Owner(s) of the Parking Property, as the context requires. The term Owner and Owners shall include such parties' successors and assigns, and its Permitted Parties (defined below).

2.34 "Owner of the Residential Property" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Residential Property and, as the context requires for purposes of certain easements and rights granted herein, such Owner's Permitted Parties. If and so long as the Residential Property, or any portion thereof, has been submitted to and remains subject to the provisions of the Act, the Owner of the Residential Property, or such portion thereof, shall mean collectively, the Condominium Association which is made up of all of the Unit Owners in and to the Residential Property (or such portion thereof subject to the Act) and not the Unit Owners individually.

2.35 "Owner of the Commercial Property" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Commercial Property and, as the context requires for purposes of certain easements and rights granted herein, such Owner's Permitted

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Parties. Should the Commercial Property, or any portion thereof, be at any time submitted to and made subject to the provisions of the Act, the Owner of the Commercial Property, or such portion thereof, shall mean collectively, the Condominium Association which is made up of all of the Unit Owners in and to the Commercial Property (or such portion thereof subject to the Act) and not the Unit Owners individually.

2.36 "Owner of the Parking Property" means the person or entity (or persons or entities if more than one) at any time in question, holding fee simple title to the Parking Property and, as the context requires for purposes of certain easements and rights granted herein, such Owner's Permitted Parties. Should the Parking Property, or any portion thereof, be at any time submitted to and made subject to the provisions of the Act, the Owner of the Parking Property, or such portion thereof, shall mean collectively, the Condominium Association which is made up of all of the Unit Owners in and to the Parking Property (or such portion thereof subject to the Act) and not the Unit Owners individually.

2.37 "Parking Improvements" means all improvements now or hereafter constructed within and upon the Parking Parcel. In the event of any reconstruction of the Parking Improvements pursuant to Article XI, Article XV or Article XXII, the Parking Improvements shall include any such improvements reconstructed on the Parking Parcel.

2.38 "Parking Parcel" means the portion of the Total Parcel legally described on Exhibit "D" attached hereto, provided that following the subdivision of the Total Parcel, if any, the Parking Parcel shall mean the Lot or Lots substantially comprising the property legally described on Exhibit "D" attached hereto, as said Lot or Lots are designated on the recorded Subdivision Plat.

2.39 "Parking Property" means, collectively, the Parking Parcel and the Parking Improvements and other related incidental portions of the Total Property, which are not a portion of the Residential Property or the Commercial Property.

2.40 "Parking Space" or "Parking Unit" means any portion of the Parking Property which makes up a separate striped or otherwise delineated area intended for the parking of a motor vehicle as permitted pursuant to Paragraph 8.6 below.

2.41 "Percentage Share" means that portion of the Common Expenses of the Total Property, as delineated in this Declaration, allocated to the Owner of the Residential Property, the Owner of the Parking Property or the Owner of the Commercial Property. If any cost is designated as shared between all Owners, and not otherwise designated in a specific provision of this Declaration, the relative percentage shares shall be allocated follows: Residential Property Percentage Share: 94.73%; Parking Property Percentage Share: 4.06%; and Commercial Property Percentage Share: 1.21%. If any cost is designated as shared between only the Owner of the Commercial Property and the Owner of the Residential Property, the relative percentage shares shall be allocated as follows: Residential Property Percentage Share: 98.74%; Commercial Property Percentage Share: 1.26%. Percentage Shares allocated to a specific Property are sometimes referred to herein as either the "Commercial Percentage Share", the "Residential Percentage Share" and the "Parking Percentage Share".

2.42 "Permitted Parties" means an Owner's guests, agents, licensees, invitees, tenants, employees, customers and affiliates, or other authorized occupants of a Unit, Commercial Space or

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Parking Space, as the context requires.

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

2.44 "Residential Improvements" means all improvements now or hereafter constructed within and upon the Residential Parcel or exclusively serving the Residential Property. In the event of any reconstruction of the Residential Improvements pursuant to Article XI, Article XV or Article XXII, the Residential Improvements shall include any such improvements reconstructed on the Residential Parcel.

2.45 "Residential Parcel" means the portion of the Total Parcel legally described on Exhibit "B" attached hereto, provided that following the subdivision of the Residential Parcel and the Commercial Parcel, if any, the Residential Parcel shall mean the Lot or Lots substantially comprising the property legally described on Exhibit "B" attached hereto, as said Lot or Lots are designated on the recorded Subdivision Plat.

2.46 "Residential Property" means, collectively, the Residential Parcel and the Residential Improvements, which are not a part of the Commercial Property or the Parking Property.

2.47 "Total Parcel" means collectively, the Residential Parcel, the Commercial Parcel and the Parking Parcel.

2.48 "Total Property" means collectively, the Residential Property, the Commercial Property and the Parking Property.

2.49 "Unit" or "Condominium Unit" means any portion of the Residential Property (or the Commercial Property or Parking Property, if applicable) submitted to the Act described as a "Unit" in a Condominium Declaration. A Unit may also be referred to herein as a Dwelling Unit, a Garage Unit, a Parking Unit or a Commercial Unit and each shall be deemed to have the same meaning herein as defined in the applicable Condominium Declaration.

2.50 "Unit Owner" means the person or persons whose estates or interests, individually or collectively aggregate fee simple ownership of a Unit and shall include any beneficiaries of a trust, shareholders of a corporation, members of a limited liability company, or partner of a partnership holding legal title to a Unit.

2.51 "Unit Ownership" means a part of any portion of the Residential Property (or the Commercial Property or Parking Property, if applicable) submitted to the Act consisting of one Unit and the undivided interest in the Common Elements attributable thereto.

## ARTICLE III EASEMENTS IN FAVOR OF RESIDENTIAL PROPERTY

3.1 The following 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"):

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(a) A perpetual, non-exclusive Easement in and to all structural members, footings, caissons, foundations, demising walls, Common walls, Floors and Ceilings, columns and beams and any other supporting components at any time located within or constituting a part of the Commercial Property and providing support and/or enclosure of (i) the Residential Improvements, or (ii) any Facilities or other portions of the Improvements with respect to which the Owner of the Residential Property is granted an Easement under this Declaration.

(b) An exclusive Easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Improvements, or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Improvements, or minor surveying errors, or the subsequent settlement or shifting of any part of the Improvements, any part of the Residential Improvements (including, without limitation, any balconies and terraces primarily located on the Residential Parcel) encroaches or shall hereafter encroach upon any part of the Commercial Parcel. Such Easement to maintain encroachments shall exist only as long as the encroaching portion of the Residential Improvements continues to exist.

(c) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Commercial Property to the extent reasonably necessary: (i) to permit the Maintenance, restoration or reconstruction of the Residential Property as required or permitted pursuant to this Declaration; (ii) to exercise the Easements set forth in this Section 3.1; (iii) during an Emergency Situation; (iv) to construct, maintain, substitute or add additional structural support required by Article VII hereof; (v) to provide the services and Maintenance required to be provided by the Owner of the Residential Property under Article VI hereof; (vi) to enable the Owner of the Residential Property to perform its obligations under this Declaration; (vii) for access to any Facilities serving the Residential Property or serving both the Residential Property and the Commercial Property. Without limiting the foregoing, the Easement granted in clause (iii) above in this Section 3.1(c) shall include such Easements for ingress and egress over, on, across and through the Commercial Property during an Emergency Situation as may be necessary for the Residential Property to satisfy and comply with all applicable laws, statutes, codes, ordinances and governmental requirements relating to fire and life safety issues and concerns.

(d) A perpetual, non-exclusive Easement for the reasonable use of the Common Walls, Floors and Ceilings at any time located, in whole or in part, on the Commercial Property and serving the Residential Property or any part thereof.

(e) During such time as the Owner of the Commercial Property is a Defaulting Owner with respect to any of its obligations under this Declaration, to the extent the Owner of the Residential Property has the right pursuant to this Declaration to perform such obligations on behalf of the Owner of the Commercial Property and cure such default, a temporary, non-exclusive Easement for ingress and egress by persons, vehicles, materials and equipment over, on, across and through the Commercial Property to the extent reasonably necessary and for a duration reasonably necessary to perform such

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obligations and cure such default.

(f) A perpetual, non-exclusive Easement for the use for their intended purposes of all Facilities at any time located within or constituting a part of the Commercial Property and which are (i) directly or indirectly connected to Facilities at any time located within or constituting a part of the Residential Property and which provide or shall be necessary or desirable to provide the Residential Property with any utilities or other services or which may otherwise be reasonably necessary to the operation and use of the Residential Property, including without limitation any portions of the roof(s) and/or any areas within the walls, ceilings or floors of the Building which permanently house any equipment necessary for the operation of the Residential Property and any Facilities in connection therewith, or (ii) necessary or desirable for the Owner of the Residential Property to furnish the services and Maintenance required to be furnished by the Owner of the Residential Property under Article V hereof.

(g) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Commercial Property to the extent reasonably necessary to obtain access to and from, and to Maintain the Facilities located on and within and/or serving the Residential Property. The Owner of the Residential Property shall give the Owner of the Commercial Property reasonable, prior notice before exercising its rights under this Section 3.1(g), except in an Emergency Situation. In an Emergency Situation, such rights shall be exercised in such a manner and at such times as necessary to remedy the Emergency Situation. Any such notice shall include a reasonably detailed description of the nature of the work being performed for which such Easement is necessary, the expected duration of the exercise of such Easement rights and the name and contact information for the contractor(s) and/or subcontractor(s) performing such work, if any. The Owner of the Residential Property shall exercise its rights under such Easements in a manner as to cause as little disturbance in the use and enjoyment of the Commercial Property as may be practical under the circumstances, and shall not materially disrupt the business activities being carried out in any Commercial Space(s). The Owner of the Residential Property may only exercise its rights under such Easements for a duration that is reasonably necessary to perform the work for which such Easements are granted.

(h) Subject to the rights of the Owner of the Commercial Property for ingress and egress to and from the Commercial Property and all entrances related thereto, a temporary, non-exclusive Easement over, upon and about the exterior walls and public sidewalks appurtenant to the Building to erect and maintain scaffolds and other related equipment necessary to inspect, test and Maintain the Residential Facade of the Building and any balconies or terraces attached thereto as provided in Section 6.2(c). Notwithstanding anything contained in this Section 3.1(h) to the contrary, the Easements granted in this Section 3.1(h) may only be exercised to the extent no other commercially practicable means exist to perform the work for which such Easements are granted and provided that access to and from each of the Commercial Property entrances shall not be obstructed. The Owner of the Residential Property shall give the Owner of the Commercial Property reasonable, prior notice before exercising its rights under this Section 3.1(h). Any such notice shall include a reasonably detailed description of the

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nature of the work being performed for which such Easement is necessary, the expected duration of the exercise of such Easement rights and the name and contact information for the contractor(s) and/or subcontractor(s) performing such work. The Owner of the Residential Property shall exercise its rights under such Easements in a manner as to cause as little disturbance in the use and enjoyment of the Commercial Property as may be practical under the circumstances, and may only exercise its rights under such Easements for a duration that is reasonably necessary to perform the work for which such Easements are granted. The scaffolding shall be located, wherever and whenever possible, to minimize obstruction of all commercial signage and lighting. The Owner of the Commercial Property may, at its option and in its sole discretion, place temporary signage, lighting or banners upon the scaffolding and the Owner of the Residential Property shall cooperate and/or cause its contractor(s) and subcontractor(s) to cooperate with the Owner of the Commercial Property in such placements. The Owner of the Residential Property shall promptly repair, restore and if necessary replace, at its sole cost and expense, any portion of the Commercial Property (including, without limitation, the portions of the Commercial Façade or the Building facade and any windows, signage, awnings or other exterior Improvements appurtenant to or serving the Commercial Property) and any property located therein or thereon which is damaged or destroyed in connection with the exercise of the Easements granted in this Section 3.1(h), to substantially the same condition as existed immediately prior to the exercise of such Easement rights. The Owner of the Residential Property shall reattach any signage, lighting or awnings or other Commercial Improvements which are removed in conjunction with such Residential Façade work and shall reattach such items in substantially the same location and in substantially the same condition as existed immediately prior to their removal.

(i) A non-exclusive easement for the benefit of the Owner of the Residential Property for ingress and egress over, upon and through the Commercial Property to the extent necessary to permit the initial construction or any reconstruction of the Residential Improvements and Facilities, including without limitation the construction of the Condominium Units, common elements and other Improvements deemed necessary by such Owner; provided however, in no event shall the use of such easement by such Owner (i) unreasonably interfere with the use or enjoyment of the Commercial Property; (ii) impair the structural integrity of any Improvements; or (iii) diminish the value of the Commercial Property.

(j) A non-exclusive easement for the benefit of the Owners of the Residential Property for ingress and egress over, upon and through those portions of the Commercial Parcel consisting of the lobby area located off of State Street on the east side of the Building (the "Commercial Property Lobby").

3.2 The following Easements in, to, under, over, upon, through and about portions of the Parking Property in favor of the Residential Property are hereby granted, reserved, declared and created:

(a) A perpetual, non-exclusive Easement in and to all structural members, footings, caissons, foundations, demising walls, Common Walls, Floors and Ceilings, columns and beams and any other supporting components at any time located within or

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constituting a part of the Parking Property and providing support and/or enclosure of (i) the Residential Improvements, or (ii) any Facilities or other portions of the Improvements with respect to which the Owner of the Residential Property is granted an Easement under this Declaration.

(b) Exclusive Easements allowing encroachments, and to Maintain encroachments, in the event and to the extent that, by reason of the original construction of the Improvements, or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Improvements, or minor surveying errors, or the subsequent settlement or shifting of any part of the Improvements, any part of the Residential Improvements (including, without limitation, any balconies and terraces primarily located on the Residential Parcel) encroaches or shall hereafter encroach upon any part of the Parking Parcel. Such Easements allowing encroachments and to Maintain encroachments shall exist only as long as the encroaching portion of the Residential Improvements continues to exist.

(c) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Parking Property to the extent reasonably necessary: (i) to permit the Maintenance, restoration or reconstruction of the Residential Property as required or permitted pursuant to this Declaration; (ii) to exercise the Easements set forth in this Section 3.2; (iii) during an Emergency Situation; (iv) to construct, maintain, substitute or add additional structural support required by Article VII hereof; (v) to provide the services and Maintenance required to be provided by the Owner of the Residential Property under Article VI hereof; (vi) for access to any Facilities serving the Residential Property or serving both the Residential Property and the Parking Property; or (vii) to enable the Owner of the Residential Property to perform its obligations under this Declaration. Without limiting the foregoing, the Easement in this Section 3.2(c) shall also include an Easement for ingress and egress over, on, across and through any portion of the Parking Property during an Emergency Situation as may be necessary for the Residential Property to satisfy and comply with all applicable laws, statutes, codes, ordinances and governmental requirements relating to fire and life safety issues and concerns.

(d) A perpetual, non-exclusive Easement for the use of the Common Walls, Floors and Ceilings at any time located, in whole or in part, on the Parking Property and serving the Residential Property or any part thereof.

(e) During such time as the Owner of the Parking Property is a Defaulting Owner with respect to any of its obligations under this Declaration, to the extent the Owner of the Residential Property has the right pursuant to this Declaration to perform such obligations on behalf of the Owner of the Parking Property and cure such default, a temporary, non-exclusive Easement for ingress and egress by persons, vehicles, materials and equipment over, on, across and through the Parking Property to the extent reasonably necessary and for a duration reasonably necessary to perform such obligations and cure such default.

(f) A perpetual, non-exclusive Easement for the use for their intended purposes

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of all Facilities at any time located within or constituting a part of the Parking Property and which are (i) directly or indirectly connected to Facilities at any time located within or constituting a part of the Residential Property and which provide or shall be necessary or desirable to provide the Residential Property with any utilities or other services or which may otherwise be reasonably necessary to the operation and use of the Residential Property, including without limitation any portions of the roof(s) and/or any areas within the walls, ceilings or floors of the Building which permanently house any equipment necessary for the operation of the Residential Property and any Facilities in connection therewith, or (ii) necessary or desirable for the Owner of the Residential Property to furnish the services and Maintenance required to be furnished by the Owner of the Residential Property under Article VI hereof.

(g) A perpetual, non-exclusive Easement for ingress and egress by persons, vehicles, materials and equipment over, on, across and through the Parking Property to the extent reasonably necessary to obtain access to and from, and to Maintain the Facilities located on and within and/or serving, the Residential Property. The Easement described herein contemplates regular and continuous access by the Owner of the Residential Property by pedestrians and vehicles over, on, across and through the Parking Property. The Easement described herein includes the right to install and Maintain a security gate or other dividing mechanism separating the Residential Property from the Parking Property. The Owner of the Residential Property shall exercise its rights under such Easements in a manner as to cause as little disturbance in the use and enjoyment of the Parking Property as may be practical under the circumstances, and shall not cause any interference with the business activities relating to the parking garage and use of the Parking Spaces.

(h) Subject to the rights of the Owner of the Parking Property for ingress and egress to and from the Parking Property and all entrances related thereto, a temporary, non-exclusive Easement over, upon and about the exterior walls and public sidewalks appurtenant to the Building to erect and maintain scaffolds and other related equipment necessary to inspect, test and Maintain the facade of the Building and any balconies or terraces attached thereto as provided in Section 6.2(c). Notwithstanding anything contained in this Section 3.2(h) to the contrary, the Easements granted in this Section 3.2(h) may only be exercised to the extent no other commercially practicable means exist to perform the work for which such Easements are granted and provided that access to and from each of the Parking Property entrance and/or gated areas shall not be obstructed. The Owner of the Residential Property shall give the Owner of the Parking Property reasonable, prior notice before exercising its rights under this Section 3.2(h). Any such notice shall include a reasonably detailed description of the nature of the work being performed for which such Easement is necessary, the expected duration of the exercise of such Easement rights and the name and contact information for the contractor(s) and/or subcontractor(s) performing such work. The Owner of the Residential Property shall exercise its rights under such Easements in a manner as to cause as little disturbance in the use and enjoyment of the Parking Property as may be practical under the circumstances, and may only exercise its rights under such Easements for a duration that is reasonably necessary to perform the work for which such Easements are granted. The scaffolding shall be located, wherever and whenever possible, to

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minimize obstruction of all parking signage and lighting. The Owner of the Parking Property may, at its option and in its sole discretion, place temporary signage, lighting or banners upon the scaffolding and the Owner of the Residential Property shall cooperate and/or cause its contractor(s) and subcontractor(s) to cooperate with the Owner of the Parking Property in such placements. The Owner of the Residential Property shall promptly repair, restore and if necessary replace, at its sole cost and expense, any doors, signage, awnings or other exterior Improvements appurtenant to the Parking Property which is damaged or destroyed in connection with the exercise of the Easements granted in this Section 3.2(h) to substantially the same condition as existed immediately prior to the exercise of such Easement rights. The Owner of the Residential Property shall reattach any signage, lighting or awnings or other Parking Improvements which are removed in conjunction with such façade work and shall reattach such items in substantially the same location and in substantially the same condition as existed immediately prior to their removal.

(i) A non-exclusive easement for the benefit of the Owner of the Residential Property for ingress and egress over, upon and through the Parking Property to the extent necessary to permit the initial construction or any reconstruction of the Residential Improvements and Facilities, including without limitation the construction of the Condominium Units, common elements and other Improvements deemed necessary by such Owner and including the right to locate Residential Improvements upon the Parking Property; provided however, in no event shall the use of such easement by such Owner (i) unreasonably interfere with the use or enjoyment of the Parking Property, or (ii) impair the structural integrity of any Improvements.

(j) A non-exclusive easement for use by the Owner of the Residential Property, in common with the Owners of the Parking Property and the Commercial Property (as well as other parties pursuant to separate easements which may be recorded within the sole discretion of the Owner of the Parking Parcel or Declarants), for vehicular ingress and egress over, upon and through the Parking Property (but not over the Parking Spaces) and for pedestrian ingress and egress over, upon and through the Parking Property to the extent reasonably necessary for access to and from the Residential Property. This easement right includes access through any garage doors or gates located upon the Parking Property and the right to install and Maintain garage doors or gates between the Residential Property and the Parking Property in order to control or restrict access to the Residential Property from the Parking Property.

(k) An exclusive easement for use by the Owner of the Residential Property through those portions of the Parking Property where any core elevator shafts and stairwells which exclusively serve the Residential Property are located.

3.3 Each Easement granted under Sections 3.1 and 3.2 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property and/or the Parking Property (i) shall include, as a right appurtenant to such easements, all required rights of ingress and egress, and (ii) shall be subject (except in an Emergency Situation) to such reasonable limitations as the respective Owners of the Commercial Property and the Parking Property may, from time to time after consultation with the Owner of the Residential Property, impose with respect to the establishment of

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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 the Parking Property and in order to assure the reasonable security of the applicable portion of the Commercial Property and the Parking Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement, and provided further that the Easements granted in Section 3.1(c)(iii), and 3.2(c)(iii) shall not be subject to any such limitation.

3.4 Easements granted under Sections 3.1 and 3.2 shall be binding upon the Commercial Property and the Parking Property and the respective Owners of the Commercial Property and the Parking Property, as applicable, and all of such Easements (a) shall run in favor of and inure to the benefit of and be appurtenant to the Residential Property, and (b) shall be for the use of the Owner of the Residential Property, its successors and assigns, its Permitted Parties and, as applicable, the Unit Owners.

3.5 The Owners of the Commercial Property and the Parking Property shall have the right, at their sole cost and expense, to relocate within the Commercial Property and the Parking Property, as applicable, any Facilities which burden the Commercial Property or the Parking Property and serve the Residential Property, so long as such relocation does not have a material, adverse effect on the Residential Property or the use of the Residential Property.

## ARTICLE IV EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

4.1 The following 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 perpetual, non-exclusive Easement in and to all structural members, footings, caissons, foundations, demising walls, common walls, floors and ceilings, columns and beams and any other supporting components at any time located within or constituting a part of the Residential Property and providing support and/or enclosure of (i) the Commercial Improvements, or (ii) any Facilities or other portions of the Improvements with respect to which the Owner of the Commercial Property is granted an Easement under this Declaration.

(b) An exclusive Easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Improvements, or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Improvements, or minor surveying errors, or the subsequent settlement or shifting of any part of the Improvements, any part of the Commercial Improvements encroaches or shall hereafter encroach upon any part of the Residential Parcel. Such Easement to maintain encroachments shall exist only as long as the encroaching portion of the Commercial Improvements continues to exist.

(c) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Residential Property, but not

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through any Dwelling Units, to the extent reasonably necessary (i) to permit the Maintenance, restoration or reconstruction of the Commercial Property and related Facilities as required or permitted pursuant to this Declaration, (ii) to exercise the Easements set forth in this Section 4.1, (iii) during an Emergency Situation, (iv) to construct, maintain, substitute or add additional structural support required by Article VII hereof, (v) to provide the services and Maintenance required to be provided by the Owner of the Commercial Property under Article VI hereof, or (vi) to enable the Owner of the Commercial Property to perform its obligations under this Declaration. Without limiting the foregoing, the Easement granted in clause (iii) above in this Section 4.1(c) shall include such Easements for ingress and egress over, on, across and through the Residential Property during an Emergency Situation as may be necessary for the Commercial Property to satisfy and comply with all applicable laws, statutes, codes, ordinances and governmental requirements relating to fire and life safety issues and concerns.

(d) A perpetual, non-exclusive Easement for the use of the Common Walls, Floors and Ceilings at any time located, in whole or in part, on the Residential Property and serving the Commercial Property or any part thereof. The aforesaid easement rights shall include, without limitation, the right to use and penetrate (including without limitation the coring, drilling and opening of) the portions of the Residential garage floor slabs and ceiling slabs which serve to enclose or are adjacent to the Commercial Property without the consent of the Residential Owner.

(e) During such time as the Owner of the Residential Property is a Defaulting Owner with respect to any of its obligations under this Declaration, to the extent the Owner of the Commercial Property has the right pursuant to this Declaration to perform such obligations on behalf of the Owner of the Residential Property and cure such default, a temporary, non-exclusive Easement for ingress and egress by persons, vehicles, materials and equipment over, on, across and through the Residential Property to the extent reasonably necessary and for a duration reasonably necessary to perform such obligations and cure such default.

(f) A perpetual, exclusive Easement for the use of all Facilities at any time located within or constituting a part of the Residential Property and which exclusively serve the Commercial Property, together with a perpetual, non-exclusive Easement for the use for their intended purposes of all Facilities which are located or at any time may be located within or constituting a part of the Residential Property and which are (i) directly or indirectly connected to Facilities at any time located within or constituting a part of the Commercial Property and which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be reasonably necessary to the operation and use of the Commercial Property, including without limitation any portions of the roof(s) and/or any areas within the walls, ceilings or floors of the Building which permanently house any equipment necessary for the operation of the Commercial Property and any Facilities in connection therewith, or (ii) necessary or desirable for the Owner of the Commercial Property to furnish the services and Maintenance required to be provided by the Owner of the Commercial Property under Article VI hereof.

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(g) A perpetual, non-exclusive easement for ingress and egress by persons, materials and equipment in, over, on, across and through the Residential Property to the extent reasonably necessary to obtain access to and from, and to Maintain the Facilities located on and within and/or serving the Commercial Property. A perpetual, non-exclusive easement for ingress and egress by persons and materials and equipment in, over, on, across and through and use of the portions of the Residential Property generally referred to as the corridors, pump rooms, generator rooms, "Com-Ed" or electrical rooms, net-pop rooms, switch gear rooms, trash rooms, if any," all to the extent reasonably necessary for access to and from the Commercial Property and for purposes of exercising the easements and rights granted herein.

(h) A non-exclusive easement for use by the Owners of the Commercial Property, in common with the Owners of the Residential Property and the Parking Property (as well as other parties pursuant to separate easements which may be recorded within the sole discretion of Declarants), for vehicular ingress and egress over, upon and through the private driveway located off of Delaware Place and over the Garage Areas of the Residential Property and for pedestrian ingress and egress over, upon and through the common elements of the Residential Property (including without limitation all doorways, elevators, elevator lobby areas, stairwells and halls leading to and from the garage area and the Commercial Property interior and exterior entrances) to the extent reasonably necessary for access to and from the loading docks, the Commercial Property and the Garage Units owned by the Owners of the Commercial Property. Access through any garage doors or gates located upon the Residential Property will be granted in furtherance of the easement rights granted herein.

(i) A non-exclusive easement for use by the Owners of the Commercial Property, in common with the Owners of the Residential Property and for pedestrian and vehicular ingress and egress over, upon and through the loading dock areas of the Residential Property, together with a non-exclusive easement of ingress and egress in, over, on, across and through the corridors, in order to carry, move and transport (and have shippers and/or other personnel carry, move and transport) inventory, equipment, fixtures, construction materials, personal property and other items to and from the loading dock areas and the Commercial Property.

(j) A non-exclusive easement for the benefit of the Owner of the Commercial Property for ingress and egress over, upon and through the Residential Property to the extent necessary to permit the initial construction or any reconstruction or Maintenance of the Commercial Improvements and Facilities and the addition of any Facilities which shall serve the Commercial Property, from time to time, including without limitation the construction and reconstruction of the Commercial Space(s) or portions thereof and other Improvements deemed necessary by such Owner (or its tenants) and including the right to locate Commercial Improvements and Facilities upon the Residential Property; provided however, in no event shall the use of such easement by such Owner (i) unreasonably interfere with the use or enjoyment of the Residential Property, or (ii) impair the structural integrity of any Improvements. The foregoing easement rights shall include, but shall not be limited to, a perpetual blanket easement for the benefit of the Owner of

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the Commercial Property (and its tenants) to place, locate and replace, from time to time, black iron and scrubber systems (as set forth in the paragraph below), air cooling Facilities (as set forth in the paragraph below), and to install all lines, ductwork, piping, conduits and small pipes for air conditioning/cooling or gas, electricity and other utilities or services, and to attach fixtures, through the Common Walls, Floors and Ceilings and the Building façade as well as other portions of the Building and Residential Property as necessary.

The rights granted to the Owner of the Commercial Property pursuant to this Article 4.1(j) shall include, but shall not be limited to, the following: (i) The right of the Owner of the Commercial Property to hook into the air conditioning or cooling systems located upon the Residential Property (and within the Common, Walls, Floors and Ceilings), including without limitation any chilled water system; (ii) The right of the Owner of the Commercial Property to maintain existing pathways and to install and maintain new pathways, from time to time, over and through the Residential Property (and within the Common, Walls, Floors and Ceilings) for utility and mechanical lines, which may include without limitation, ductwork, piping, plumbing and conduits for any heating/cooling, water/sewer, gas, electrical, communications or other utilities or services; and (iii) The right of the Owner of the Commercial Property to install, Maintain and/or reconstruct black iron, scrubber systems and supporting equipment serving or which shall serve the Commercial Property, and to allow the location of such black iron, scrubber systems and supporting equipment serving the Commercial Property upon and throughout the Building and the Residential Property in such locations as may be deemed desirable by the Owner of the Commercial Property in its sole and exclusive discretion.

(k) Non-exclusive easements for the benefit of the Owner of the Commercial Property to use (and including the right to construct, maintain and repair any Facilities serving the Commercial Improvements located therein) the following portions of the Residential Property (the "Special Easement Areas"): (i) The loading dock areas (which shall include without limitation the right to receive and dispatch shipments), trash or refuse rooms (including without limitation the Commercial Property Trash Room as more fully set forth in this subsection (k) below) and refuse bin pick-up areas (including without limitation the right to locate and place dumpsters, trash bins and grease bins for the exclusive use by the Owner of the Commercial Property upon the refuse bin pick-up areas), corridors, generator rooms, "com-ed" or electrical rooms, net pop rooms, and pump rooms; (ii) Those portions of the Residential Property which permanently house black iron, scrubber systems or other such equipment, if any; (iii) Those portions of the Residential Property which permanently house certain Facilities which serve the Commercial Property, including without limitation water meters and sub-meters, utility components, television and phone cables, mains, conduits, lines pipes, stacks, wires and ducts which supply utilities and services to the Commercial Property; (iv) All telecom and areas or rooms where phone, cable, internet and other communications service providers enter the Building or perform any sort of distribution through out the Building (also know as "Network Point of Presence" or "net pop rooms"); and (v) Portions of the loading dock area and other portions of the Residential Property which may be located adjacent to the public or private alley or drive for purposes of maintaining refuse containers and dumpsters as needed, and any areas located within or adjacent to the

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Building which may house all or portions of the scrubber system serving the Commercial Property.

(l) An exclusive easement for the benefit of the Owner of the Commercial Property is hereby granted over, upon and through those portions of the Residential Property designated as the "Commercial Trash Room" as may be depicted upon Exhibit E or upon the plat of survey attached to the Condominium Declaration affecting the Residential Property, or wherever same may hereafter be located upon the Residential Property. The Owner of the Commercial Property is hereby granted the right to exclusive use of the Commercial Property Trash Room. The Owner of the Commercial Property shall be responsible for the Maintenance of the interior of the Commercial Property Trash Room at its sole cost and expense. The Owner of the Commercial Property, such owner's successors or assigns, affiliates, employees, tenants, licensees and other authorized personnel, shall have an unrestricted right of ingress and egress to the Commercial Property Trash Room. The Residential Condominium Association shall not have the right to promulgate rules and regulations which interfere with the use of the Commercial Property Trash Room for its intended purposes. Any trash receptacles, balers, compactors or other such equipment shall be for the sole and exclusive use of the owner(s) of the Commercial Property, such owner's affiliates, employees, tenants, licensees or other authorized personnel and shall be Maintained by the Owner of the Commercial Property, or such owner's affiliates, employees, tenants, licensees or other authorized personnel. The Commercial Property Owner, such owner's affiliates, employees, independent contractors, lessees, sublessees or licensees shall not cause the obstruction of the Common Elements nor shall anything be stored in the Common Elements by such individuals without the prior consent of the Association. The personal property located in the Commercial Property Trash Room shall not be deemed to increase the rate of insurance on the Residential Property. The Owner of the Commercial Property shall be allowed to place locks or other security systems to control access to the Commercial Property Trash Room; the Owner of the Residential Property shall not access, enter or use the Commercial Property Trash Room without prior written consent from the Owner of the Commercial Property, except in an Emergency Situation.

(m) A non-exclusive easement for the benefit of the Owner of the Commercial Property to erect, or allow others to erect, or affix satellite dishes and other communication receiving and transmitting antennas and devices on the roof of the Building and to run cables from said satellite dishes through the Building, including without limitation through any existing shafts and interior portions of any walls, floors and ceilings of the Building as needed, for purposes of providing services to the Commercial Property or portions thereof, and in connection therewith enter into agreements and licenses with or grant easements to the owners and operators of such equipment, and the providers of the services being furnished in connection with such services, subject to all applicable laws, statutes and ordinances. All such devices, equipment and cables shall be maintained, repaired or replaced, as needed, by the Owner of the Commercial Property, or any tenant or licensee of the Commercial Property. The Owner of the Residential Property shall not erect or allow others to erect, or affix satellite dishes and other communication receiving and transmitting antennas and devices on the

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roof of the Building if the same conflicts with or otherwise affects the transmission or reception or use of the aforesaid communications equipment installed by the Owner of the Commercial Property or any tenant or licensee.

(n) An exclusive easement and right of use for the benefit of the Owner of the Commercial Property to erect and maintain, or allow any tenants to erect and maintain, outdoor seating areas (including without limitation full service or café style seating, and the location of planters, fencing, awnings or canopies) on the street level parkway and sidewalk areas located adjacent to the Commercial Property, provided any required permits or other City authorizations are obtained.

(o) Subject to the rights of the Owner of the Residential Property for ingress and egress to and from the Residential Property and all entrances related thereto, a temporary, non-exclusive Easement over, upon and about the exterior walls and public sidewalks appurtenant to the Building to erect and maintain scaffolds and other related equipment necessary to inspect, test and Maintain the Commercial Facade and the Commercial Property Signage Easement Areas as provided in Section 6.1(d). Notwithstanding anything contained in this Section 4.1(o) to the contrary, the Easements granted in this Section 4.1(o) may only be exercised to the extent no other commercially practicable means exist to perform the work for which such Easements are granted and provided that access to and from the Residential Property entrances shall not be blocked from passage. The Owner of the Commercial Property shall give the Owner of the Residential Property reasonable, prior notice before exercising its rights under this Section 4.1(o). Any such notice shall include a reasonably detailed description of the nature of the work being performed for which such Easement is necessary, the expected duration of the exercise of such Easement rights and the name and contact information for the contractor(s) and/or subcontractor(s) performing such work. The Owner of the Commercial Property shall exercise its rights under such Easements in a manner as to cause as little disturbance in the use and enjoyment of the Residential Property as may be practical under the circumstances, and may only exercise its rights under such Easements for a duration that is reasonably necessary to perform the work for which such Easements are granted. The Owner of the Commercial Property shall promptly repair, restore and if necessary replace, at its sole cost and expense, any portion of the Residential Property which is damaged or destroyed in connection with the exercise of the Easements granted in this Section 4.1(o), to substantially the same condition as existed immediately prior to the exercise of such Easement rights.

(p) A non-exclusive easement for the benefit of the Owner of the Commercial Property in common with the Owner of the Residential Property for ingress and egress over, upon and through those portions of the Residential Property as reasonably necessary to access certain Common Elements adjacent to those Units whose Owners have retained the Commercial Property Owner or its tenants to perform services offered by the Commercial Property Owner or its tenants (including, but not limited to, pick up and drop off or delivery services) on such dates and times as may be determined by the Owner of the Commercial Property in its sole and exclusive discretion. Use of the aforesaid easement shall not be limited in time or duration.

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(q) An exclusive easement for the benefit of the Owner of the Commercial Property to install, erect, affix and maintain signs and/or awnings (including awning signs), lighting, banners, illuminated signs and canopies (and electrical components), over, upon and through those portions of the Residential Property as depicted on Exhibit F attached hereto and incorporated herein by reference (the "Commercial Property Signage Easement Areas"). The aforesaid easement rights shall include, without limitation, the right to bolt and penetrate through and into (including without limitation the coring, drilling and opening of) the portions of the Residential facade and Building located within the Commercial Property Signage Easement Areas, within the sole discretion of the Owner of the Commercial Property and without the consent of the Residential Owner. The Commercial Property Signage Easement Areas will have a lower elevation of approximately 28.25' Chicago City Datum ("CCD"), an upper elevation of approximately 38.25' CCD and a depth of approximately six inches (6") into the exterior facade of the Building. All portions of the Building facade located within the Commercial Property Signage Easement Area shall be maintained by the Owner of the Commercial Property at its sole cost and expense as more fully set forth in Paragraph 6.1(d).

THERE SHALL BE NO RESTRICTION ON SIGNAGE LOCATED OR TO BE LOCATED WITHIN THE COMMERCIAL PROPERTY SIGNAGE EASEMENT AREA; ILLUMINATED OR "LIT" SIGNAGE SHALL BE PERMITTED AND SUCH SIGNAGE MAY REMAIN ILLUMINATED DURING THE DAY AND THROUGH THE NIGHT (ON A TWENTY FOUR HOUR BASIS). THE OWNER OF THE RESIDENTIAL PROPERTY HEREBY ACKNOWLEDGES AND AGREES THAT THE ILLUMINATION OF DWELLING UNITS LOCATED UPON THE RESIDENTIAL PROPERTY DUE TO ILLUMINATED SIGNAGE LOCATED UPON THE COMMERCIAL PROPERTY SIGNAGE EASEMENT AREA SHALL BE PERMITTED AND SHALL NOT BE CONSIDERED A NUISANCE.

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

(a) A perpetual, non-exclusive Easement in and to all structural members, footings, caissons, foundations, demising walls, common walls, floors and ceilings, columns and beams and any other supporting components at any time located within or constituting a part of the Parking Property and providing support and/or enclosure of (i) the Commercial Improvements, or (ii) any Facilities or other portions of the Improvements with respect to which the Owner of the Commercial Property is granted an Easement under this Declaration.

(b) An exclusive Easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Improvements, or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Improvements, or minor surveying errors, or the subsequent settlement or shifting of any part of the Improvements, any part of the Commercial Improvements encroaches or shall hereafter encroach upon any part of the Parking Parcel. Such Easement to maintain encroachments shall exist only as long as the encroaching portion of the Commercial

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Improvements continues to exist.

(c) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Parking Property, to the extent reasonably necessary (i) to permit the Maintenance, restoration or reconstruction of the Commercial Property and related Facilities as required or permitted pursuant to this Declaration, (ii) to exercise the Easements set forth in this Section 4.2, (iii) during an Emergency Situation, (iv) to construct, maintain, substitute or add additional structural support required by Article VII hereof, (v) to provide the services and Maintenance required to be provided by the Owner of the Commercial Property under Article V hereof, or (vi) to enable the Owner of the Commercial Property to perform its obligations under this Declaration. Without limiting the foregoing, the Easement granted in clause (iii) above in this Section 4.2(c) shall include such Easements for ingress and egress over, on, across and through the Parking Property during an Emergency Situation as may be necessary for the Commercial Property to satisfy and comply with all applicable laws, statutes, codes, ordinances and governmental requirements relating to fire and life safety issues and concerns.

(d) A perpetual, non-exclusive Easement for the use of the Common Walls, Floors and Ceilings at any time located, in whole or in part, on the Parking Property and serving the Commercial Property or any part thereof. The aforesaid easement rights shall include, without limitation, the right to use and penetrate (including without limitation the coring, drilling and opening of) the portions of the Parking Property ceiling slabs which serve to enclose or are adjacent to the Commercial Property.

(e) During such time as the Owner of the Parking Property is a Defaulting Owner with respect to any of its obligations under this Declaration, to the extent the Owner of the Commercial Property has the right pursuant to this Declaration to perform such obligations on behalf of the Owner of the Parking Property and cure such default, a temporary, non-exclusive Easement for ingress and egress by persons, vehicles, materials and equipment over, on, across and through the Parking Property to the extent reasonably necessary and for a duration reasonably necessary to perform such obligations and cure such default.

(f) A perpetual, non-exclusive Easement for the use for their intended purposes of all Facilities at any time located within or constituting a part of the Parking Property and which are (i) directly or indirectly connected to Facilities at any time located within or constituting a part of the Commercial Property and which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services or which may otherwise be reasonably necessary to the operation and use of the Commercial Property, including without limitation any portions of the roof(s) and/or any areas within the walls, ceilings or floors of the Building which permanently house any equipment necessary for the operation of the Commercial Property and any Facilities in connection therewith, or (ii) necessary or desirable for the Owner of the Commercial Property to furnish the services and Maintenance required to be provided by the Owner of the Commercial Property under Article V hereof.

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(g) A perpetual, non-exclusive easement for ingress and egress by persons, materials and equipment in, over, on, across and through the Parking Property to the extent reasonably necessary to obtain access to and from, and to Maintain the Facilities located on and within and/or serving the Commercial Property.

(h) A non-exclusive easement for the benefit of the Owner of the Commercial Property, in common with the Owners of the Parking Property and the Residential Property (as well as other parties pursuant to separate easements which may be recorded within the sole discretion of the Owner of the Parking Parcel or Declarant), for vehicular ingress and egress over, upon and through the parking garage ramp areas of the Parking Property to access Garage Units located at the below-grade levels of the Building, and for pedestrian ingress and egress over, upon and through the Parking Property (including without limitation through all doorways, elevators, stairwells and halls leading to and from the Parking Property garage area and the Commercial Property interior and exterior entrances) to the extent reasonably necessary for access to and from the Commercial Property or Garage Units owned by the Owners of the Commercial Property. Access through any garage doors or gates located upon the Parking Property will be granted in furtherance of the easement rights granted herein.

(i) A non-exclusive easement for the benefit of the Owner of the Commercial Property for ingress and egress over, upon and through the Parking Property to the extent necessary to permit the initial construction or any reconstruction of the Commercial Improvements and Facilities, from time to time, including without limitation the construction and reconstruction of the Commercial Space(s) or portions thereof and other Improvements deemed necessary by such Owner (or its tenants) from time to time and including the right to locate Commercial Improvements and Facilities upon the Parking Property; provided however, in no event shall the use of such easement by such Owner (i) unreasonably interfere with the use or enjoyment of the Parking Property, or (ii) impair the structural integrity of any Improvements.

(j) Non-exclusive easements for the benefit of the Owner of the Commercial Property to use those portions of the Parking Property, if any (the "Special Easement Areas"): (i) any portions of the Parking Property which permanently house black iron or other such equipment; and (ii) any portions of the Parking Property which permanently house certain Facilities which serve the Commercial Property, including without limitation water meters and sub-meters, utility components, television and phone cables, mains, conduits, lines pipes, stacks, wires and ducts which supply utilities and services to the Commercial Property.

4.3 Each Easement granted under this Article IV which provides or requires for its enjoyment, ingress and egress on, over, across or through the Residential Property or Parking Property (i) shall include, as a right appurtenant to such easements, all required rights of ingress and egress, and (ii) such rights of ingress and egress shall not be subject to any rules, restrictions or regulations.

4.4 Easements granted under Sections 4.1 and 4.2 shall be binding upon the Residential Property and the Parking Property and the Owners of the Residential Property and the Parking Property, as applicable, and all of such Easements: (a) shall run in favor of and inure to the benefit of and be

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appurtenant to the Commercial Property, and (b) shall be for the use of the Owner of the Commercial Property, its successors and assigns and its Permitted Parties.

4.5 The Owners of the Residential Property and the Parking Property shall have the right, at their sole cost and expense, to relocate within the Residential Property and the Parking Property, as applicable, any Facilities located upon the Residential Property or the Parking Property and serving the Commercial Property, so long as such relocation does not have an adverse effect on the Commercial Property or the use of the Commercial Property, or increase the costs of operating the Commercial Property or decrease the value thereof. Notwithstanding the foregoing, the Owners of the Residential Property and the Parking Property shall not have the right to relocate any utility facilities or black iron and scrubber systems serving the Commercial Property under any circumstances.

## ARTICLE V EASEMENTS IN FAVOR OF PARKING PROPERTY AND GENERAL TERMS

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

(a) A perpetual, non-exclusive Easement in and to all structural members, footings, caissons, foundations, demising walls, common walls, floors and ceilings, columns and beams and any other supporting components at any time located within or constituting a part of the Residential Property and providing support and/or enclosure of (i) the Parking Improvements, or (ii) any Facilities or other portions of the Improvements with respect to which the Owner of the Parking Property is granted an Easement under this Declaration.

(b) An exclusive Easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Improvements, or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Improvements, or minor surveying errors, or the subsequent settlement or shifting of any part of the Improvements, any part of the Parking Improvements encroaches or shall hereafter encroach upon any part of the Residential Parcel. Such Easement to maintain encroachments shall exist only as long as the encroaching portion of the Parking Improvements continues to exist.

(c) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Residential Property, but not through any Dwelling Units, to the extent reasonably necessary (i) to permit the Maintenance, restoration or reconstruction of the Parking Property and related Facilities as required or permitted pursuant to this Declaration, (ii) to exercise the Easements set forth in this Section 5.1, (iii) during an Emergency Situation, (iv) to construct, maintain, substitute or add additional structural support required by Article VII hereof, (v) to provide the services and Maintenance required to be provided by the Owner of the Parking Property under Article VI hereof, or (vi) to enable the Owner of the Parking Property to perform its obligations under this Declaration. Without limiting the

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foregoing, the Easement granted in clause (iii) above in this Section 5.1(c) shall include such Easements for ingress and egress over, on, across and through the Residential Property during an Emergency Situation as may be necessary for the Parking Property to satisfy and comply with all applicable laws, statutes, codes, ordinances and governmental requirements relating to fire and life safety issues and concerns.

(d) A perpetual, non-exclusive Easement for the use of the Common Walls, Floors and Ceilings at any time located, in whole or in part, on the Residential Property and serving the Parking Property or any part thereof.

(e) During such time as the Owner of the Residential Property is a Defaulting Owner with respect to any of its obligations under this Declaration, to the extent the Owner of the Parking Property has the right pursuant to this Declaration to perform such obligations on behalf of the Owner of the Residential Property and cure such default, a temporary, non-exclusive Easement for ingress and egress by persons, vehicles, materials and equipment over, on, across and through the Residential Property to the extent reasonably necessary and for a duration reasonably necessary to perform such obligations and cure such default.

(f) A perpetual, non-exclusive Easement for the use for their intended purposes of all Facilities which are located or may at any time be located within or constituting a part of the Residential Property and which are (i) directly or indirectly connected to Facilities at any time located within or constituting a part of the Parking Property and which provide or shall be necessary or desirable to provide the Parking Property with any utilities or other services or which may otherwise be reasonably necessary to the operation and use of the Parking Property, including without limitation any portions of the roof(s) and/or any areas within the walls, ceilings or floors of the Building which permanently house any equipment necessary for the operation of the Parking Property and any Facilities in connection therewith, or (ii) necessary or desirable for the Owner of the Parking Property to furnish the services and Maintenance required to be provided by the Owner of the Parking Property under Article V hereof.

(g) A perpetual, non-exclusive easement for ingress and egress by persons, materials and equipment in, over, on, across and through the Residential Property to the extent reasonably necessary to obtain access to and from, and to Maintain the Facilities located on and within and/or serving the Parking Property. A perpetual, non-exclusive easement for ingress and egress by persons and materials and equipment in, over, on, across and through and use of the portions of the Residential Property referred to as the service corridor, pump room, generator room, "Com-Ed" room, net-pop rooms, switch gear rooms, trash rooms and those portions of the Residential Property located adjacent to public streets or other access areas, if any.

(h) A non-exclusive easement for use by the Owners of the Parking Property, in common with the Owners of the Residential Property and the Commercial Property (as well as other parties pursuant to separate easements which may be recorded within the sole discretion of the Owner of the Declarants), for vehicular ingress and egress over, upon and through the private driveway located off of Delaware Place and over, across

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and through the garage area ramps of the Residential Property to the extent reasonably necessary for access to and from the Parking Property. Access through any garage doors or gates located upon the Residential Property will be granted in furtherance of the easement rights granted herein.

(i) A non-exclusive easement for use by the Owners of the Parking Property, in common with the Owners of the Residential Property and Commercial Property, and for pedestrian and vehicular ingress and egress over, upon and through the loading dock areas of the Residential Property.

(j) A non-exclusive easement for the benefit of the Owner of the Parking Property for ingress and egress over, upon and through the Residential Property to the extent necessary to permit the initial construction or any reconstruction of the Parking Improvements and Facilities and the addition of any Facilities which shall serve the Parking Property, from time to time, including the right to locate Parking Improvements and Facilities upon the Residential Property; provided however, in no event shall the use of such easement by such Owner (i) unreasonably interfere with the use or enjoyment of the Residential Property, or (ii) impair the structural integrity of any Improvements.

The foregoing easement rights shall include, but shall not be limited to, a perpetual easement for the benefit of the Owner of the Parking Property to maintain existing pathways and to install and maintain new pathways, from time to time over and through the Residential Property (and within the Common, Walls, Floors and Ceilings), for utility and mechanical lines, which may include without limitation, ductwork, piping, plumbing and conduits for any heating/cooling, water/sewer, gas, electrical, communications or other utilities or services, or to attach any fixtures as necessary, including penetration of the common walls, floors and ceilings as necessary, provided the same does not violate any other provisions of this Declaration, including without limitation, Article VII hereof.

(k) Non-exclusive easements for the benefit of the Owner of the Parking Property to use (and including the right to construct, maintain and repair any Facilities serving the Parking Improvements located therein) the following portions of the Residential Property (the "Special Easement Areas"): (i) the loading dock areas, trash or refuse rooms and refuse bin pick-up areas, corridors, generator rooms, net-pop rooms, "Com-ed" or electrical rooms and pump rooms; (ii) those portions of the Residential Property which permanently house certain Facilities which serve the Parking Property, including without limitation water meters and sub-meters, utility components, television and phone cables, mains, conduits, lines pipes, stacks, wires and ducts which supply utilities and services to the Parking Property; and (iii) All telecom and areas or rooms where phone, cable, internet and other communications service providers enter the Building or perform any sort of distribution through out the Building (also know as "Network Point of Presence" or "net pop rooms").

(l) A non-exclusive easement for the benefit of the Owner of the Parking Property in common with the Owner of the Residential Property for emergency ingress and egress over, upon and through those portions of the stairwells which are a part of the

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Residential Parcel to provide pedestrian access to and from the Parking Property in the event of a fire or other Emergency. Stairwell access doors may be locked to prevent general ingress/egress over the residential stairwells, provided the same complies with any municipal or other requirements and that such doors automatically unlock when the fire alarm sounds.

(m) An exclusive easement for the benefit of the Owner of the Parking Property to erect or affix and maintain signs, awnings (including awning signs), lighting, banners, illuminated signs and canopies, over, upon and through those portions of the Residential Property as such has been or shall be located by Declarants as set forth in Section 5.10 below.

(n) A non-exclusive easement for the benefit of the Owner of the Parking Property to erect, or allow others to erect, or affix satellite dishes and other communication receiving and transmitting antennas and devices on the roof of the Building and to run cables from said satellite dishes through the Building, including without limitation through any existing shafts and interior portions of any walls, floors and ceilings of the Building as needed, for purposes of providing services to the Parking Property or portions thereof, and in connection therewith enter into agreements and licenses with or grant easements to the owners and operators of such equipment, and the providers of the services being furnished in connection with such services, subject to all applicable laws, statutes and ordinances. All such devices, equipment and cables shall be maintained, repaired or replaced, as needed, by the Owner of the Parking Property, or any tenant or licensee of the Parking Property. Notwithstanding the foregoing, the Owner of the Parking Property shall not erect or allow others to erect, or affix satellite dishes and other communication receiving and transmitting antennas and devices on the roof of the Building if the same conflicts with or otherwise affects the transmission or reception or use of the aforesaid communications equipment installed by the Owner of the Commercial Property or any tenant or licensee of such Owner.

(o) An exclusive easement for the benefit of the Owner of the Parking Property to install, erect, affix and maintain signs and/or awnings (including awning signs), lighting, banners, illuminated signs and canopies (and electrical components), over, upon and through those portions of the Residential Property as depicted on Exhibit G attached hereto and incorporated herein by reference (the "Parking Property Signage" within the "Parking Property Signage Easement Areas"). The aforesaid easement rights shall include, without limitation, the right to bolt and penetrate through and into (including without limitation the coring, drilling and opening of) the portions of the Residential facade and Building located within the Parking Property Signage Easement Areas, within the sole discretion of the Owner of the Parking Property and without the consent of the Residential Owner. The Parking Property Signage Easement Areas will have a lower elevation of approximately 28.25' Chicago City Datum ("CCD"), an upper elevation of approximately 38.25' CCD and a depth of approximately six inches (6") into the exterior façade of the Building. The Parking Property Signage may be illuminated. The Parking Property Signage may advertise or identify the Parking Property public parking garage and other facilities and may provide information relating to parking in said garage. The Parking Property Signage shall be Maintained in compliance with all applicable zoning

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provisions and rules by the Owner of the Parking Property in a reasonably neat, safe and secure condition. The Parking Property Signage shall not be located upon those portions of the Building façade areas located upon the Commercial Property or upon the Commercial Property Signage Easement Areas and shall not obstruct, impede or impair any Commercial Property signage.

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

(a) A perpetual, non-exclusive Easement in and to all structural members, footings, caissons, foundations, demising walls, common walls, floors and ceilings, columns and beams and any other supporting components at any time located within or constituting a part of the Commercial Property and providing support and/or enclosure of (i) the Parking Improvements, or (ii) any Facilities or other portions of the Improvements with respect to which the Owner of the Parking Property is granted an Easement under this Declaration.

(b) An exclusive Easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Improvements, or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Improvements, or minor surveying errors, or the subsequent settlement or shifting of any part of the Improvements, any part of the Parking Improvements encroaches or shall hereafter encroach upon any part of the Commercial Parcel. Such Easement to maintain encroachments shall exist only as long as the encroaching portion of the Parking Improvements continues to exist.

(c) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Commercial Property to the extent reasonably necessary (i) to permit the Maintenance, restoration or reconstruction of the Parking Property as required or permitted pursuant to this Declaration, (ii) to exercise the Easements set forth in this Section 5.2, (iii) during an Emergency Situation, (iv) to construct, maintain, substitute or add additional structural support required by Article VII hereof, (v) to provide the services and Maintenance required to be provided by the Owner of the Parking Property under Article VI hereof, or (vi) to enable the Owner of the Parking Property to perform its obligations under this Declaration. Without limiting the foregoing, the Easement granted in clause (iii) above in this Section 5.2(c) shall include such Easements for ingress and egress over, on, across and through the Commercial Property during an Emergency Situation as may be necessary for the Parking Property to satisfy and comply with all applicable laws, statutes, codes, ordinances and governmental requirements relating to fire and life safety issues and concerns.

(d) A perpetual, non-exclusive Easement for the use of the Common Walls, Floors and Ceilings at any time located, in whole or in part, on the Commercial Property and serving the Parking Property or any part thereof. Notwithstanding the foregoing or anything contained in this Reciprocal Easement Agreement to the contrary, Parking

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Owner shall not penetrate the Common Walls, Floors and Ceilings for any use whatsoever without the prior written consent of the Commercial Owner.

(e) During such time as the Owner of the Commercial Property is a Defaulting Owner with respect to any of its obligations under this Declaration, to the extent the Owner of the Parking Property has the right pursuant to this Declaration to perform such obligations on behalf of the Owner of the Commercial Property and cure such default, a temporary, non-exclusive Easement for ingress and egress by persons, vehicles, materials and equipment over, on, across and through the Commercial Property to the extent reasonably necessary and for a duration reasonably necessary to perform such obligations and cure such default.

(f) A perpetual, non-exclusive Easement for the use for their intended purposes of all Facilities at any time located within or constituting a part of the Commercial Property and which are (i) directly or indirectly connected to Facilities at any time located within or constituting a part of the Parking Property and which provide the Parking Property with any utilities or other services, including without limitation any areas within the Common, Walls, Floors and Ceilings which permanently house any equipment necessary for the operation of the Parking Property and any Facilities in connection therewith, or (ii) necessary for the Owner of the Parking Property to furnish the services and Maintenance required to be furnished by the Owner of the Parking Property under Article VI hereof.

(g) A perpetual, non-exclusive Easement for ingress and egress by persons, materials and equipment over, on, across and through the Commercial Property to the extent reasonably necessary to obtain access to and from, and to Maintain the Facilities serving the Parking Property. Notwithstanding anything contained in this Section 5.2(g) to the contrary, the Easements granted in this Section 5.2(g) may only be exercised to the extent no other commercially practicable means exist to perform the work for which such Easements are granted. The Owner of the Parking Property shall give the Owner of the Commercial Property reasonable, prior notice before exercising its rights under this Section 5.2(g). Any such notice shall include a reasonably detailed description of the nature of the work being performed for which such Easement is necessary, the expected duration of the exercise of such Easement rights and the name and contact information for the contractor(s) and/or subcontractor(s) performing such work, if any. The Owner of the Parking Property shall exercise its rights under such Easements in a manner as to cause as little disturbance in the use and enjoyment of the Commercial Property, and to the business activities in any Commercial Spaces, as may be practical under the circumstances. The Owner of the Parking Property may only exercise its rights under such Easements for a duration that is reasonably necessary to perform the work for which such Easements are granted.

(h) A non-exclusive easement for the benefit of the Owner of the Parking Property for ingress and egress over, upon and through the Commercial Property to the extent necessary to permit the initial construction or any reconstruction of the Parking Improvements and Facilities and other Improvements deemed necessary by such Owner; provided however, in no event shall the use of such easement by such Owner (i)

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unreasonably interfere with the use or enjoyment of the Commercial Property; (ii) impair the structural integrity of any Improvements; or (iii) diminish the value of the Commercial Property.

(i) A non-exclusive easement for the benefit of the Owner of the Parking Property in common with the Owner of the Commercial Property for emergency ingress and egress over, upon and through those portions of the corridors and stairwells which are a part of the Commercial Parcel and which are necessary and required to provide pedestrian access to and from the Parking Property in the event of a fire or other Emergency. Corridor and stairwell access doors may be locked to prevent general ingress/egress, provided the same complies with any municipal or other requirements and that such doors automatically unlock when the fire alarm sounds.

5.3 Each Easement granted under this Article V which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Residential Property and the Commercial Property (i) shall include, as a right appurtenant to such easements, all required rights of ingress and egress, and (ii) be subject (except in an Emergency Situation) to such reasonable limitations as the Owners of the Residential Property and the Commercial Property may, from time to time after consultation with and express written approval of the Owner of the Parking 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 ingress/egress Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Residential Property and the Commercial Property and in order to assure the reasonable security of the applicable portion of the Residential Property and 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 the Easements granted in Sections 5.1(b) and 5.1(c)(iii) shall not be subject to any such limitation.

5.4 Easements granted under Sections 5.1 and 5.2 shall be binding upon the Residential Property and the Commercial Property and the Owners of the Residential Property and the Commercial Property, as applicable, and all of such Easements (a) shall run in favor of and inure to the benefit of and be appurtenant to the Parking Property, and (b) shall be for the use of the Owner of the Parking Property, its successors and assigns and its Permitted Parties.

5.5 The Owners of the Residential Property and the Commercial Property shall have the right, at their sole cost and expense, to relocate within the Residential Property and the Commercial Property, any Facilities which burden the Residential Property and the Commercial Property and serve the Parking Property, so long as such relocation does not have an adverse effect on the Parking Property or the intended use of the Parking Property or cause a significant increase in the costs of operating the Parking Property.

5.6 With regard to any portion of the Total Property over which Easements have been granted pursuant to Sections 3.1, 3.2, 4.1, 4.2, 5.1 and 5.2 hereof except in the event of an Emergency Situation, such Easements shall not be deemed to include: (a) any portion of a Dwelling Unit or (b) any portion of a Commercial Space. Such Easements may include the Parking Spaces to the extent no other commercially practicable means exist to perform the work for which such Easements are granted. Before

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an Owner uses any Parking Space pursuant to the easement rights granted herein, such Owner shall give the Owner of the Parking Property reasonable, prior notice which shall include a reasonably detailed description of the nature of the work being performed for which use of the Parking Space(s) is necessary, the expected duration of such use and the name and contact information for the contractor(s) and/or subcontractor(s) performing such work. Such shall exercise its rights hereunder in a manner as to cause as little disturbance in the use and enjoyment of the Parking Property and the Parking Spaces as may be practical under the circumstances, and may only exercise its rights hereunder for a duration that is reasonably necessary to perform the work for which an Easement has been granted.

5.7 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 thirty (30) days after written notice from any Owner, the Creditor Owner may, at its option, perform, or cause to be performed, the necessary restoration or replacement work, and shall be entitled to recover from the Defaulting Owner all costs and expenses incurred in connection therewith plus interest thereon as described in Section 12.5 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 12.1 hereof.

5.8 The right is hereby reserved by Declarants, or their assignees, or their respective agents, until such time as Declarants no longer hold legal title to any portions of the Total Property, including without limitation any individual Units or Commercial Spaces, to place "For Sale" or "For Rent" signs and banners on any part of the exterior of the Building and/or to maintain models and sales centers and to conduct various promotional activities within the Building in order to facilitate the sale, closing or rental of unsold or unoccupied Units or Commercial Spaces located within the Building.

5.9 (a) The Owner of the Commercial Property is expressly allowed, and may expressly allow its tenants, to erect or affix various signs, awnings (including awning signs), canopies, lighting, banners, illuminated signs (including flashing and/or neon signs) (which items collectively and together with any attachment devices or electrical components are hereinafter referred to as "Commercial Signs") to the Building façade (and upon or within any window areas of the Commercial Property) which Commercial Signs shall be allowed to, without limitation, include the advertisement or identification of the businesses being conducted within the Commercial Property and each Commercial Space, or information relating to leasing any such Commercial Spaces, such as "For Sale" or "For Rent" signs, upon the Commercial Property and/or upon the Commercial Property Signage Easement Area (as described in subsection (b) below), provided that the foregoing are in compliance with all applicable zoning provisions and rules. All such Signs shall be maintained by the Owner of the Commercial Property or its tenants in a reasonably neat, safe and secure condition.

(b) The Owner of the Commercial Property is expressly allowed to install, and may allow its tenants to install Commercial Signs which may include without limitation the advertisement or

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identification of the businesses being conducted within each Commercial Space, or information relating to leasing any such Commercial Spaces, such as "For Sale" or "For Rent" signs, in or upon the Commercial Property Signage Easement Areas as depicted on Exhibit F attached hereto and incorporated herein by reference.

5.10 The Owner of the Residential Property is expressly allowed to erect or affix awnings, canopies, signs or banners (collectively, "Residential Signs") to only those portions of the Building façade areas that are located upon or within the Residential Property. Residential Signs may advertise or identify the Condominium or provide information relating to leasing or selling Units, including without limitation "For Sale" or "For Rent" signs and banners, provided that the foregoing are in compliance with all applicable zoning provisions and rules. No Residential Signs shall be permitted upon or within the Commercial Property Signage Easement Area or upon the Commercial Property. No Residential Signs shall be permitted upon or within the Parking Property Signage Easement Area or upon the Parking Property. No Residential Signs shall obstruct, impede or impair any such items located or to be located upon the Commercial Property or the Parking Property. Residential Signs may not be neon, illuminated or flash. All Residential Signs shall be Maintained by the Owner of the Residential Property in a reasonably neat, safe and secure condition.

## ARTICLE VI SERVICES, MAINTENANCE AND EXPENSES

6.1 The Owner of the Commercial Property shall, at its sole cost (except as otherwise provided below), furnish or cause to be furnished the following services or Maintenance, as applicable, when, as and if required:

(a) Street Level Pavement. Maintenance of those portions of the curbs, sidewalks and other street level pavement and improvements on or adjacent to those portions of the Building adjacent to the Commercial Property, including snow and ice removal, and keeping such sidewalks and street level pavement and improvements free from debris and obstructions to pedestrians and vehicular traffic, as applicable. Notwithstanding the foregoing, café seating may be located upon the sidewalks and parkways on or adjacent to the Commercial Property as provided in Section 4.1(n).

(b) Landscaping. Maintenance of all planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials and maintenance of any outdoor seating permitted pursuant to Section 4.1(n) now or hereafter located or planted on or adjacent to the Commercial Property, as necessary to maintain such items in a neat, healthy and sightly condition.

(c) Shared Facilities. The Owner of the Commercial Property may be the owner of certain Facilities which serve the Commercial Property and the Residential Property. In such event, a portion of the costs of maintaining any such Facilities will be allocated to the Owner of the Residential Property, pursuant to the applicable Percentage Share. The Owner of the Commercial Property is not planned to be the owner of any Facilities which serve the Parking Property.

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(d) Facade and Other Related Maintenance. Maintenance of the portions of the facade and exterior portions of the Building as follows: (i) Those portions of the east and south facade of the Building at the first floor level which are a part of the Commercial Property or serve to enclose the Commercial Property (the "Commercial Façade"); and (ii) Those portions of the Residential Property facade located on the east and south sides of the Building which are designated as the Commercial Property Signage Easement Areas as set forth in Section 4.1(q) above. The Maintenance of the Commercial Façade and the Commercial Property Signage Easement Areas shall be collectively referred to as the "Commercial Facade Services". The Commercial Facade Services shall include, but shall not be limited to, performing (or causing to be performed) any inspections of such facade required by applicable laws, codes, ordinances and governmental requirements. One hundred percent (100%) of the cost of providing the Commercial Facade Services shall be paid by the Owner of the Commercial Property.

The Commercial Façade Services shall include the Maintenance of the exterior facade of the portions of the structural beams located upon the Commercial Property, as well as the Maintenance of all windows, window casings, doors, entrances, signage, awnings, canopies and other related appurtenances which are located upon and serve the Commercial Property as well as any windows, window casings, doors, entrances, signage, awnings, canopies or other related appurtenances which may be located upon the Residential Property, but which solely serve the Commercial Property. The Commercial Façade Services shall not include Maintenance of the following items: (i) Any structural components of the Building, including without limitation, the structural beams which are partially located upon the Commercial Property (or within the Commercial Property Signage Easement Area) and shall be maintained by the Owner of the Residential Property pursuant to Section 6.2(m) below; however, the facade of any such structural beams will be maintained by the Owner of the Commercial Property as set forth in this paragraph; or (ii) Any other portions of the Building facade which are not located upon the Commercial Parcel or the Commercial Property Signage Easement Areas.

(e) Commercial Floor Slab Maintenance. Maintenance of the floor slab serving the Commercial Space(s) of the commercial portions of the Building, and serving to enclose portions of the Parking Property at an upper elevation (the "Commercial Floor Slab"), shall be maintained by the Owner of the Parking Property at its sole cost and expense as more fully provided in Paragraph 6.3(b) below. Notwithstanding the foregoing, the portion of the Commercial Floor Slab that is included within the boundaries of the Commercial Parcel (generally, the portion of the Commercial Floor Slab located within the Commercial Parcel and extending approximately the first six inches (6") into the slab) shall be maintained by the Commercial Property Owner at its sole expense.

(f) Commercial Ceiling Slab Maintenance. Maintenance of the ceiling slab serving the Commercial Space(s) of the commercial portions of the Building, and serving to enclose portions of the Residential Property at a lower elevation (the "Commercial Ceiling Slab"), shall be maintained by the Owner of the Residential Property at its sole cost and expense as more fully provided in Paragraph 6.2(1)(i) below. Notwithstanding the foregoing, the portion of the Commercial Ceiling Slab that is included within the

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boundaries of the Commercial Parcel [generally, the portion of the Commercial Ceiling Slab located within the Commercial Parcel and extending approximately the first three inches (3") up into the slab] shall be maintained by the Commercial Property Owner at its sole expense.

6.2 The Owner of the Residential Property shall, at its sole cost (except as otherwise provided below), furnish or cause to be furnished the following services or Maintenance, as applicable, when, as and if required:

(a) Street Level Pavement. Maintenance of those portions of the curbs, sidewalks, private driveway areas, and other street level pavement and improvements on or adjacent to the Residential Property, including snow and ice removal, and keeping such sidewalks, private driveway areas and street level pavement and improvements free from debris and obstructions to pedestrians and vehicular traffic, as applicable.

The Maintenance of the Street Level Pavement by the Owner of the Residential Property as provided in this Article 6.2(a) shall include, but shall not be limited to, the Maintenance of all private driveway areas necessary for vehicular and pedestrian access to the Building and the portions of the garage areas located within the Building which are a part of the Residential Property. In conjunction with the Maintenance of the private driveway areas described herein, the Owner of the Residential Property shall Maintain all access garage doors or gates located upon the Residential Property or the Parking Property and which provide vehicular entry/exit to and from and through the Total Property and the Building garage areas at its sole cost and expense.

(b) Landscaping. Maintenance of all planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials now or hereafter located or planted on or adjacent to the Residential Property, as necessary to maintain such items in a neat, healthy and sightly condition.

(c) Facade and Other Related Maintenance. Maintenance of the portions of the facade and exterior portions of the Building referred to as the "Residential Façade" as follows: (i) all portions of the west façade of the Building; (ii) all portions of the north façade of the Building other than that portion of the north façade included in the Commercial Property at the first floor level; (iii) all portions of the east and south façades of the Building above the first floor level, but not including the Commercial Signage Easement Areas or the Parking Signage Easement Areas (the "Residential Façade Services"). The Residential Façade Services shall include, but shall not be limited to, performing (or causing to be performed) any inspections of such facade required by applicable laws, codes, ordinances and governmental requirements. One hundred percent (100%) of the cost of providing the Residential Façade Services shall be paid by the Owner of the Residential Property.

The Residential Façade Services shall additionally include, without limitation, Maintenance of the following items: The exterior façade of the portions of the structural beams located upon the Residential Property, as well as all balconies, terraces, windows, window casings, doors, entrances, signage, awnings and other appurtenances which serve

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the Residential Property, and including any such appurtenances which may jointly serve the Residential and Commercial Properties, unless otherwise herein provided. The roll up garage doors on the south and north sides of the first floor level of the Building shall be Maintained by the Owner of the Residential Property; the Owner of the Parking Property shall reimburse the Owner of the Residential Property for a portion of the cost of said Maintenance, which proportion shall be determined by a fraction, the numerator of which is the number of parking spaces located in the Parking Property and the denominator of which is the number of Parking Units located in the Residential Property.

(d) Electrical Vault and Switchgear Room. Maintenance of the utility company generators, net-pop rooms, vaults and switchgear rooms and "Com-ed" or electrical rooms located on the Residential Property and containing electrical switchgear equipment and other electrical Facilities which service the Residential Property and one or more of the Commercial Property or Parking Property. Any Maintenance of the aforesaid items which benefits an Owner exclusively or any Maintenance to any of the aforesaid Facilities which serve a property exclusively shall be at the sole cost and expense of the Owner so benefited or who owns the benefited property, as applicable.

(e) Ejector Pumps. Maintenance of the ejector pumps, pump rooms and related Facilities located on the Residential Property and which service the Residential Property and one or more of the Commercial Property and the Parking Property. Any Maintenance of the aforesaid items which benefits an Owner exclusively or any Maintenance to any of the aforesaid Facilities which serve a property exclusively shall be at the sole cost and expense of the Owner so benefited or who owns the benefited property, as applicable.

(f) Fire Suppression System, Fire Alarm Panel and Switchgear Panel. In the event the Fire Suppression System and other related Facilities serve the Residential Property and one or more of the Commercial Property and the Parking Property, then the Owner of the Residential Property shall be responsible for the Maintenance of the fire suppression system and equipment, the fire alarm panel and the switchgear panel located on the Residential Property and servicing the Residential Property and one or more of the Commercial Property and the Parking Property. The Owner of the Residential Property shall maintain the main systems serving the Building. Any Maintenance of the aforesaid items which benefits an Owner exclusively or any Maintenance to any of the aforesaid Facilities which serve a property exclusively shall be at the sole cost and expense of the Owner so benefited or who owns the benefited property, as applicable. The Owner of the Commercial Property shall be responsible for the construction and Maintenance of the portions of the systems which serve the Commercial Property exclusively and which serve to connect the Commercial portions to the main systems. The Owner of the Commercial Property shall have the right to modify and/or add to such systems at its own cost and expense, including modifications and additions to those systems located upon the Residential Property. The Owner of the Parking Property shall be responsible for the construction and Maintenance of the portions of the systems which serve the Parking Property exclusively and which serve to connect the Parking Property portions to the main systems. The Owner of the Parking Property shall have the right to modify and/or add to such systems at its own cost and expense, including modifications and additions to

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those systems located upon the Residential Property. The Owner of the Residential Property shall be responsible for the construction and Maintenance of the portions of the systems which serve the Residential Property exclusively. The Owner of the Residential Property shall have the right to modify and/or add to such systems at its own cost and expense. The Owner of the Commercial Property shall reimburse the Owner of the Residential Property for its Percentage Share of 1.26% of the costs of the general Maintenance of the fire suppression system and equipment, the fire alarm panel and the switchgear panel which serve both the Residential and Commercial Properties. The Owner of the Parking Property shall not be required to reimburse the Owner of the Residential Property for any costs of the general Maintenance of the fire suppression system and equipment, the fire alarm panel and the switchgear panel which serve both the Residential and Parking Properties.

(g) Miscellaneous. The Owner of the Residential Property may, in connection with performing its obligations under Section 11.1 below, provide (or cause to be provided) Maintenance of Facilities not specifically described herein that are located on the Residential Property but that service the Residential Property and one or more of the Commercial Property or the Parking Property, including without limitation the loading dock, trash room and service hallway, if any. Any Maintenance of the aforesaid items which benefits an Owner exclusively or any Maintenance to any of the aforesaid Facilities which serve a property exclusively shall be at the sole cost and expense of the Owner so benefited or who owns the benefited property, as applicable. The Owner of the Commercial Property shall reimburse the Owner of the Residential Property for its Percentage Share of 1.26% of the costs of any Maintenance of other Facilities that service both the Commercial Property and the Residential Property, including without limitation the loading dock, trash room and service hallway, if any. The Owner of the Parking Property shall not be required to reimburse the Owner of the Residential Property for the costs of any Maintenance of other Facilities that service both the Parking Property and the Residential Property, including without limitation loading dock, trash room and service hallway, if any.

(h) Roof(s) and Related Components. Maintenance of all roof(s) serving the Building so that the roofs and such other related improvements and materials shall at all times be in good condition and repair and comply with all applicable laws, statutes, codes, ordinances and governmental requirements (the "Roof Services") and the performance of all Roof Capital Improvements and Roof Inspections as defined in Section 6.6 below. The costs of providing the Roof Services, Roof Capital Improvements and Roof Inspections shall not be allocated between the Owner of the Residential Property and the other Owners. The costs of providing the Roof Services shall be the sole responsibility of the Residential Property and neither the Owner of the Commercial Property nor the Owner of the Parking Property shall be responsible for contributing to the costs of providing the Roof Services.

The Owner of the Residential Property, the Owner of the Commercial Property and the Owner of the Parking Property shall be individually responsible for the location and Maintenance of those terraces, roof decks, patios, antennas, satellites, venting or other appurtenances or Improvements attached to the roof(s) and serving the

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corresponding Owner's Property exclusively, if any, and for any Maintenance to the roof(s) resulting from the location and Maintenance of such items, at the corresponding parties' sole cost and expense.

Portions of the seventh floor roof area are anticipated to contain certain amenities and other improvements, including, without limitation, pool, whirlpool, outdoor fireplace, outdoor kitchen, and landscaped area (the "Recreational Amenities"). Notwithstanding anything to the contrary or general requirements for Maintenance of any shared Facilities, the Owner of the Commercial Property and the Owner of the Parking Property shall not be responsible for any of the costs of any Maintenance, repairs or capital improvements made to the Recreational Amenities nor for any costs for Maintenance to the seventh floor roof resulting from any improvements located thereon, including without limitation, any Recreational Amenities.

(g) Water Use. In the event there is a single water meter serving the Building, the Owner of the Residential Property shall provide a copy of each water bill to the Owner of the Commercial Property. Provided that there is a sub-meter for the Commercial Property, then, if permitted by the City of Chicago, the Owner of the Commercial Property shall pay the City of Chicago directly for water furnished to the Commercial Property pursuant to the sub-meter, and the Owner of the Residential Property shall pay the City of Chicago directly for water furnished to the Residential Property. In the event there is no sub-meter for the Commercial Property, the Owner of the Commercial Property shall pay an annual water usage fee in the amount of Five Hundred Dollars (\$500.00) to the Owner of the Residential Property, payable prior to January 31 of any given calendar year in which the Commercial Property is occupied and actively using water service subsequent to the year in which this Declaration is recorded (the "Annual Water Service Fee"). In the year in which this Declaration is recorded, in the event that there is no sub-meter for the Commercial Property, the Owner of the Commercial Property shall pay to the Owner of the Residential Property, if and only if the Commercial Property is occupied and actively using water service, its prorated share of the Annual Water Service Fee, based upon the following formula: the Annual Water Service Fee multiplied by a fraction, the numerator of which is the number of days in said calendar year remaining after the date of the recording of this Declaration and the denominator of which is three hundred sixty-five (365). Any water usage by the Owner of the Parking Property is deemed to be nominal and the Owner of the Parking Property shall not be required to contribute to the Owner of the Residential Property for any water use costs. If an Owner fails to pay a water bill such Owner is obligated to pay prior to its due date, then the Creditor Owner may pay the water bill and shall be entitled to immediate reimbursement from the Defaulting Owner for its share of such water bill plus interest at the Default Rate.

(j) Heat to portions of the Common Elements. (i) Heating to certain portions of the Common Elements located adjacent to the Commercial Property sufficient to maintain a temperature therein that is consistent with the temperatures customarily found in portions of residential condominium projects located in Chicago, Illinois which are comparable to the Condominium Property in size, character and quality that are used for the same purposes as those portions of the Common Elements that are to be heated

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pursuant to this Section 6.2(j). The cost of providing the aforementioned services shall be the responsibility of the Owner of the Residential Property and the Owner of the Residential Property shall be responsible for one hundred percent (100%) of all such heating costs, expenses and Maintenance.

(ii) Heating to the garage portions of the Residential Property sufficient to maintain a temperature therein that is consistent with the temperatures customarily found in similar garage areas in residential condominium projects located in Chicago, Illinois which are comparable to the Building in size, character and quality. The Owner of the Residential Property shall be responsible for heating the Parking Property sufficiently to maintain an ambient temperature of fifty five degrees Fahrenheit (55°) and making all payments relating to such heating. The Owner of the Parking Property shall pay the Owner of the Residential Property Two Hundred and Fifty and 00/100 Dollars (\$250.00) each of the months of November, December, January, February, March and April.

(k) Refuse Collection. (i) It is anticipated that the Commercial Property will contract for its own refuse collection. In the event the Commercial Property has its own refuse containers, then the Owner of the Commercial Property shall pay the refuse collector directly (or as provided above) and the Owner of the Commercial Property shall not be responsible to reimburse the Owner of the Residential Property for any refuse collection, unless and until the Owner of the Commercial Property shall notify the Owner of the Residential Property in writing that it is opting to use the Residential refuse containers. In such event, no later than thirty (30) days after receiving such notice the Owner of the Residential Property shall become responsible for providing the dumpsters and refuse collection services for the Commercial Property (the "Basic Refuse Services"). The Owner of the Commercial Property shall pay to the Owner of the Residential Property One Hundred and 00/100 Dollars (\$100.00) for each month that it uses the Basic Refuse Services, if any. Notwithstanding the foregoing, any special dumpsters or other containers or services provided by the refuse collector at the request of the Owner of the Commercial Property or provided for the sole use and benefit of the Owner of the Commercial Property shall be at the sole expense of the Owner of the Commercial Property and any amounts owed for such items shall be paid to the refuse collector directly, if possible, or in the alternative to the Owner of the Residential Property in addition to the Percentage Share described herein. Any special dumpsters or other containers or services provided by the refuse collector at the request of the Owner of the Residential Property or provided for the sole use and benefit of the Owner of the Residential Property shall be at the sole expense of the Owner of the Residential Property and shall not be considered a part of the Basic Refuse Services for purposes of calculating the Commercial Percentage Share described herein. The Owner of the Commercial Property may, at its option and upon thirty (30) days prior notice to the Owner of the Residential Property, again arrange for its own refuse collection services, and in such event the Owner of the Commercial Property shall no longer be responsible for payment of the Commercial Percentage Share for Basic Refuse Services beginning on the first day of the first month after its own refuse collection services have commenced.

(ii) The Owner of the Residential Property shall be responsible

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for providing the dumpsters and refuse collection services for the Parking Property (the "Parking Property Basic Refuse Services"). The general refuse use by the Parking Property shall be nominal, and the Owner of the Parking Property shall not be required to reimburse the Owner of the Residential Property for providing the Parking Property Basic Refuse Services. Notwithstanding the foregoing, any special dumpsters or other containers or services provided by the refuse collector at the request of the Owner of the Parking Property or provided for the sole use and benefit of the Owner of the Parking Property shall be at the sole expense of the Owner of the Parking Property and any amounts owed for such items shall be paid to the refuse collector directly, if possible, or in the alternative to the Owner of the Residential Property. Any special dumpsters or other containers or services provided by the refuse collector at the request of the Owner of the Residential Property or provided for the sole use and benefit of the Owner of the Residential Property shall be at the sole expense of the Owner of the Residential Property. The Owner of the Parking Property may, at its option and upon thirty (30) days prior notice to the Owner of the Residential Property, arrange for its own refuse collection services.

(1) (i) Commercial Ceiling Slab. Maintenance of the ceiling slab serving the Commercial Space(s) of the commercial portions of the Building, and serving to enclose portions of the Residential Property at a lower elevation (the "Commercial Ceiling Slab"), shall be maintained so that the Commercial Ceiling Slab and such other related improvements and materials shall at all times be in good condition and repair and free of leaks and comply with all applicable laws, statutes, codes, ordinances and governmental requirements (the "Commercial Ceiling Slab Services"). The Commercial Ceiling Slab Services shall include the Maintenance of all portions of the Commercial Ceiling Slab including, without limitation, the top, bottom and middle portions of the slabs, except as otherwise provided herein. The costs of providing the Commercial Ceiling Slab Services shall be paid solely by the Owner of the Residential Property; the Maintenance of the Commercial Ceiling Slab shall not be considered a common expense and reimbursement by the Owners of the Commercial Property and the Parking Property for such Maintenance shall not be required. Notwithstanding the foregoing, the portion of the Commercial Ceiling Slab that is included within the boundaries of the Commercial Parcel [generally, the portion of the Commercial Ceiling Slab located within the Commercial Parcel and extending approximately three inches (3") up into the slab] shall be maintained by the Commercial Property Owner at its sole expense.

(ii) Residential Floor Slab. Maintenance of the floor slab serving the Residential Property, and serving to enclose portions of the Parking Property at an upper elevation (the "Residential Floor Slab"), shall be maintained so that the Residential Floor Slab and such other related improvements and materials shall at all times be in good condition and repair and free of leaks and comply with all applicable laws, statutes, codes, ordinances and governmental requirements (the "Residential Floor Slab Services"). The Residential Floor Slab Services shall include the Maintenance of all portions of the Residential Floor Slab including, without limitation, the top, bottom and middle portions of the slabs, except as otherwise provided herein. The costs of providing the Residential Floor Slab Services shall be paid solely by the Owner of the Residential Property; the Maintenance of the Residential Floor Slab shall not be considered a

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common expense and reimbursement by the Owners of the Commercial Property and the Parking Property for such Maintenance shall not be required. Notwithstanding the foregoing, the portion of the Residential Floor Slab that is included within the boundaries of the Parking Parcel [generally, the portion of the Residential Floor Slab located within the Parking Parcel and extending approximately three inches (3") up into the slab] shall be maintained by the Owner of the Parking Property at its sole expense.

(m) Structural Components of Building. Maintenance of all structural members, footings, caissons, foundations, columns and beams and any other supporting components which serve to provide support and/or enclosure of the entire Building including those structural components which may be located within or constituting a part of the Commercial Property, the Commercial Property Signage Easement Areas or the Parking Property. All structural components shall be maintained so that they are at all times in good condition and repair and comply with all applicable laws, statutes, codes, ordinances and governmental requirements (the "Structural Components Services"). The costs of providing the Structural Components Services shall be paid by the Owner of the Residential Property; the costs of such Structural Components Services shall not be considered a common expense and reimbursement by the Commercial Owner for such Maintenance shall not be required.

(n) Chilled Water Cooling System. The Owner of the Residential Property shall be responsible for the Maintenance of the Chilled Water Cooling System and related Facilities located on the Residential Property and servicing the Commercial Property and the Residential Property, including without limitation, the main systems serving the Building. Any Maintenance of the aforesaid items which benefits an Owner exclusively or any Maintenance to any of the aforesaid Facilities which serve a property exclusively shall be at the sole cost and expense of the Owner so benefited or who owns the benefited property, as applicable. The Owner of the Commercial Property shall be responsible for the construction and Maintenance of the portions of the systems which serve the Commercial Property exclusively and which serve to connect the Commercial portions to the main systems. The Owner of the Commercial Property shall have the right to modify and/or add to such systems at its own cost and expense, including modifications and additions to those systems located upon the Residential Property. The Owner of the Residential Property shall be solely responsible for the construction and Maintenance of the portions of the systems which serve the Residential Property exclusively. The Owner of the Residential Property shall have the right to modify and/or add to such systems at its own cost and expense. The Owner of the Commercial Property may, but shall not be required to, install a gauge or meter in order to measure its relative energy use of the Chilled Water Cooling System. If such gauge or meter is installed by and at the sole cost of the Owner of the Commercial Property, then the Owner of the Commercial Property shall reimburse the Owner of the Residential Property for the Owner of the Commercial Property's relative share of the cost to Maintain the Chilled Water Cooling System; said share shall be calculated by multiplying the actual billed costs by a fraction, the numerator of which is the units of use allocated to the Commercial Property based upon the gauge or meter measuring same and the denominator of which is the total units of use for the entire Chilled Water Cooling System. If no such gauge or meter has been installed by the Owner of the Commercial Property, then the Owner of the Commercial

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Property shall pay to the Owner of the Residential Property Two Hundred and Fifty and 00/100 Dollars for each of the months of April, May, June, July, August, September and October. In any event, until such time as the Owner of the Commercial Property constructs, installs and commences use of those portions of the systems which serve the Commercial Property exclusively and which serve to connect the Commercial portions to the main systems, the Owner of the Commercial Property shall not be responsible for contributing to any costs relating to the Chilled Water Cooling System. The Owner of the Parking Property shall not be responsible for contributing to any costs relating to the Chilled Water Cooling System.

6.3 The Owner of the Parking Property shall, at its sole cost (except as otherwise provided below), furnish or cause to be furnished the following services or Maintenance, as applicable, when, as and if required:

(a) Parking Property Garage Floor Slab. Maintenance of the entire floor slab serving the Parking Property portions of the Building, and adjacent to and serving to enclose Residential Property portions of the Building at the upper elevation, shall be maintained by the Owner of the Parking Property such that the Parking Property Garage Floor Slab shall at all times be in good condition and repair and comply with all applicable laws, statutes, codes, ordinances and governmental requirements, regardless of whether such floor slab is located within the boundaries of the Parking Parcel or within the boundaries of the Residential Parcel (the "Parking Property Garage Floor Slab Services"). The Parking Property Garage Floor Slab Services shall include the Maintenance of all portions of the Parking Property garage floor slab including, without limitation, the top, bottom and middle portions of the slab, except as otherwise provided herein. The costs of providing the Parking Property Garage Floor Slab Services which are associated with the drive lanes and ramps shall be allocated between the Owner of the Parking Property and the Owner of the Residential Property based upon the total number of Parking Spaces located upon the Parking Property divided by the number of below grade Garage Units located upon the Residential Property for purposes of determining the percentage to be paid by the Owner of the Residential Property (any costs associated with the Maintenance of the Parking Spaces located upon the Parking Property shall be at the sole expense of the Owner of the Parking Property).

(b) (i) Commercial Floor Slab Maintenance. Maintenance of the floor slab serving the Commercial Space(s) of the commercial portions of the Building, and serving to enclose portions of the Parking Property at an upper elevation (the "Commercial Floor Slab"), shall be maintained by the Owner of the Parking Property such that the Commercial Floor Slab shall at all times be in good condition and repair and comply with all applicable laws, statutes, codes, ordinances and governmental requirements, regardless of whether such floor slab is located within the boundaries of the Parking, Residential or Commercial Parcel (the "Commercial Floor Slab Services"). The Commercial Floor Slab Services shall include the Maintenance of all portions of the Commercial Floor Slab including, without limitation, the top, bottom and middle portions of the slab, except as otherwise provided herein. The costs of providing the Commercial Floor Slab Services shall be paid by the Owner of the Parking Property at its sole cost and expense. Notwithstanding the foregoing, the portion of the Commercial Floor Slab

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that is included within the boundaries of the Commercial Parcel [generally, the portion of the Commercial Floor Slab located within the Commercial Parcel and extending approximately the first six inches (6") into the slab from top to bottom] shall be maintained by the Commercial Property Owner at its sole expense.

(ii) Residential Floor Slab Maintenance. Maintenance of the floor slab serving the Residential Parcel, and serving to enclose portions of the Parking Property at an upper elevation (the "Residential Floor Slab"), shall be maintained by the Owner of the Residential Property at its sole cost and expense as more fully provided in Paragraph 6.2(1)(ii) above. Notwithstanding the foregoing, the portion of the Residential Floor Slab that is included within the boundaries of the Parking Parcel [generally, the portion of the Residential Floor Slab located within the Parking Parcel and extending approximately three inches (3") up into the slab] shall be maintained by the Parking Property Owner at its sole expense.

(c) Roll Up Garage Door. Maintenance of the roll up garage door separating the Parking Property from the Residential Property at the "B-2" level of the Building, which roll up garage door may be located upon either the Parking Property or the Residential Property. In the event and to the extent that the roll up garage door is located upon the Residential Property, the owner of the Residential Property shall not remove same nor take any action which would impede or impair the use of the roll up garage door described herein.

(d) Facade and Other Related Maintenance. Maintenance of the portions of the facade and exterior portions of the Building as follows: (i) The portion of the south facade of the Building at the first floor level which is a part of the Parking Property and serves to enclose the Parking Property stairwell/elevator lobby (the "Parking Façade"). (ii) That portion of the Residential Property facade of the Building which are designated as the Parking Property Signage Easement Area as set forth in Section 5.1(o) above. The Maintenance of the Parking Façade shall be referred to as the "Parking Façade Services". The Parking Façade Services shall include, but shall not be limited to, performing (or causing to be performed) any inspections of such facade required by applicable laws, codes, ordinances and governmental requirements. One hundred percent (100%) of the cost of providing the Parking Façade Services shall be paid by the Owner of the Parking Property.

The Parking Façade Services shall include the Maintenance of the exterior façade of the portions of the structural beams located upon the Parking Property, if any, as well as the Maintenance of all windows, window casings, doors, entrances, signage, awnings, canopies and other related appurtenances which are located upon and serve the Parking Property, as well as any windows, window casings, doors, entrances, signage, awnings, canopies or other related appurtenances which may be located upon the Residential Property, but which solely serve the Parking Property. The Parking Façade Services shall not include Maintenance of the following items: (i) Any structural components of the Building, including without limitation, the structural beams which may be partially located upon the Parking Property and shall be maintained by the Owner of the Residential Property pursuant to Section 6.2(m) above; however, the façade of any such

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structural beams will be maintained by the Owner of the Parking Property as set forth in this paragraph; or (ii) Any other portions of the Building façade which are not located upon the Parking Property.

6.4 If any Owner fails to perform its obligations under this Article VI or under Section 11.1 hereof (except when such failure is caused by the other Owner or an Unavoidable Delay [as defined in Article XIV hereof]), and such failure shall continue for a period of ten (10) days after written notice thereof to such Owner from the other Owner, the Owner which has sent such notice shall have the right to perform the same until such time as the non-performing Owner cures its failure to perform. Notwithstanding the foregoing, such advance notice shall not be required in an Emergency Situation resulting from such failure, except that the Owner electing to perform such obligation shall notify the non-performing Owner of its election to do so as soon as reasonably possible (and in any event within one (1) business day) after it has commenced such performance. For any period in which a Creditor Owner is performing pursuant to this Section 6.4, the Defaulting Owner shall pay the Creditor Owner its share of the actual out-of-pocket costs and expenses paid or incurred by the Creditor Owner in connection with such performance plus interest thereon as described in Section 12.5 hereof.

6.5 The Owner of the Residential Property shall be responsible for the following: (i) the cost of all capital improvements (including, without limitation, labor and materials costs) made by the Owner of the Residential Property in connection with providing the Residential Façade Services (the "Residential Façade Capital Improvements"); and (ii) the cost of performing (or causing to be performed) any inspections of the Residential Façade required by applicable laws, codes, ordinances and governmental requirements (the "Residential Façade Inspections"). The Owner of the Commercial Property shall be responsible for the following: (i) the cost of all capital improvements (including, without limitation, labor and materials costs) made by the Owner of the Commercial Property in connection with providing the Commercial Façade Services (the "Commercial Façade Capital Improvements"); and (ii) the cost of performing (or causing to be performed) any inspections of the Commercial Façade required by applicable laws, codes, ordinances and governmental requirements (the "Commercial Façade Inspections"). The Owner of the Parking Property shall not be responsible for providing or contributing to the costs of any of the Residential Façade Services, the Commercial Façade Services, the Residential Façade Improvements, or the Commercial Façade Capital Improvements. (see Section 6.3(d) regarding the Parking Façade Services.)

6.6 The Owner of the Residential Property shall be solely responsible for: (i) the cost of the Roof Services and all capital improvements (including, without limitation, labor and materials costs) made by the Owner of the Residential Property to the roof(s) and related roofing components serving the Building in connection with providing the Roof Services (the "Roof Capital Improvements") to all Building roof areas; and (ii) the cost of performing (or causing to be performed) any inspections of those roofs set forth in subsection (i) above as required by applicable laws, codes, ordinances and governmental requirements (the "Roof Inspections"). Neither the Owner of the Commercial Property nor the Owner of the Parking Property shall be responsible for contributing to the costs of the Roof Services or Roof Capital Improvements.

6.7 The Owner of the Commercial Property shall reimburse the Owner of the Residential Property for the Commercial Percentage Share of 1.26% for the cost of the Building services to be provided by the Owner of the Residential Property under subsections (d), (e), (f), and (g) of Section 6.2 above (collectively, the "Commercial Building Services Charge"). The Owner of the Commercial

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Property shall pay the Building Services Charge to the Owner of the Residential Property within thirty (30) days after receipt of a bill from the Owner of the Residential Property, provided that the bill shall be accompanied by invoices, paid receipts and other reasonable evidence of the costs for which reimbursement is demanded and which shall include a separate allocation of the charges attributable to the Building services provided pursuant to subsections (d), (e), (f), and (g) of Section 6.2.

The Owner of the Parking Property shall not be required to reimburse the Owner of the Residential Property for the cost of the Building services to be provided by the Owner of the Residential Property under subsections (d), (e), (f), (g), and (j) of Section 6.2 above..

6.8 An Owner obligated to perform Maintenance of Facilities or improvements under this Article VI or under Article XI hereof shall, in replacing Facilities or improvements, replace such Facilities or improvements with Facilities or improvements which are at least substantially equivalent and providing at least substantially the same quality of service. Each Owner shall operate its Facilities and furnish all services required under this Article VI in a manner which will provide each Owner with comfortable occupancy and enjoyment of its respective portion of the Total Property for its intended use as of the date hereof, but in no event shall an Owner be obligated to use more than reasonable diligence in performing the services required of such Owner under this Article VI, or be liable for consequential damages for failure to perform hereunder or be liable for interruption or inadequacy of service, loss or damage to property or injury (including death) to any person for any reason. Each Owner obligated to furnish services hereunder reserves the right to curtail or halt the performance of any service hereunder at any reasonable time and for a reasonable period of time to the extent reasonably necessary to perform Maintenance or in an Emergency Situation.

6.9 Except to the extent any other services or Maintenance is (i) required pursuant to certain specific provisions contained in Sections 6.1 or 6.2 above, (ii) required as a result of the neglect or acts of one of the Owners; or (iii) covered by any insurance policy maintained by one of the Owners pursuant to Article X hereof, any other Common Expenses shall be coordinated between the parties and each Owner shall cooperate in good faith to hire or retain a third party to perform any such common services or Maintenance. The costs of any such common services or Maintenance shall be shared by the Owners based upon the Owners responsible for such costs pursuant to their respective Percentage Shares. In the event a percentage share is not provided in the definition of Percentage Share or in the applicable specific provision of this Declaration, the Percentage Share for each such Owners shall be calculated based upon the total square footage of each such Owner's property within the Building.

The Owners of the Commercial Property and the Parking Property shall reimburse the Owner of the Residential Property as set forth in the definition of Percentage Share or in the applicable specific provision of this Declaration for the costs of any contributions required from the Owners of the Total Property, as such contributions may be defined in certain separate easements affecting the Total Property, whether or not the Total Property is benefited or burdened thereby.

In the event there are any additional Common Expenses incurred by an Owner, such Owner incurring such Common Expenses shall provide the other party with notice thereof, including copies of all invoices, paid receipts, lien waivers and other reasonable evidence of the costs of the Common Expenses for which reimbursement is demanded, and the other party shall pay its Percentage Share of such Common Expenses to such Owner within thirty (30) days after receipt thereof.

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6.10 Except as otherwise provided for in Sections 6.1, 6.2 and 6.8 above, each respective Owner shall be individually responsible for the following: (i) The Maintenance of the Owners' respective portions of the Total Property or Building at the sole cost and expense of each respective Owner; (ii) The Maintenance of the windows, window casings, balconies, terraces, decks, signs, porches, awnings, lighting or other appurtenances attached or appurtenant to each Owners' respective portion of the Building, at the sole cost and expense of each respective Owner; (iii) The provision and Maintenance of an Owner's heating, ventilating and air conditioning which serves only such Owner's property, at the sole cost and expense of such Owner; and (iv) Any other Maintenance which benefits an Owner exclusively or any Maintenance to any Facilities which serve a property exclusively shall be at the sole cost and expense of the Owner so benefited or who owns the benefited property, as applicable.

6.11 (a) Notwithstanding anything herein to the contrary, prior to commencing work on any repair or Maintenance item for which costs are to be shared between two (2) or more Owners, except in an Emergency Situation, the Owner responsible for such Maintenance or repair (as delegated in this Article VI, Article XI or any other provision of this Declaration) (the "Repairing Owner"): (i) shall submit a copy of any construction plans, proposals, bids, drawings, or other pertinent information regarding the repair or Maintenance (collectively, the "Construction Proposal") to the other Owner (the "Non-Repairing Owner"); and (ii) if the estimated cost provided in the Construction Proposal exceeds \$50,000.00 (in 2010 Equivalent Dollars, as defined in Article XIII), the Repairing Owner shall obtain the written consent of the Non-Repairing Owner.

(b) Notice shall be delivered as required by Article XXIII of this Declaration. In the event that the Non-Repairing Owner fails to notify the Repairing Owner of its objection to the Construction Proposal within thirty (30) days after the Repairing Owner delivers notice and the Construction Proposal, the Non-Repairing Owner shall be deemed to have approved the Construction Proposal and the Repairing Owner shall be authorized to proceed with the repairs or Maintenance included in the Construction Proposal.

(c) In the event that the Non-Repairing Owner objects to the work outlined in the Construction Proposal, and such objection has been delivered to the Repairing Owner within thirty (30) days after notice as required in subparagraph 6.11(b) above, then the Non-Repairing Owner shall obtain an alternative Construction Proposal from another contractor or engineer, as the case may be, and submit same to the Repairing Owner for review. Such Alternative Construction Proposal must be submitted to the Owners within thirty (30) days after the Non-Repairing Owner's original objection. Each of the Owners may submit up to two (2) additional construction proposals to the other. However, if the Owners are unable, within thirty (30) days after the Alternative Construction Proposal has been submitted to the Repairing Owner by the Non-Repairing Owner, to reach an agreement on a construction proposal, the Owners shall request the advice and opinion of the Architect at their shared expense. If after receiving the Architect's advice, the Owners cannot agree on a construction proposal, then such determination shall be made by arbitration pursuant to Article XIII hereof.

## ARTICLE VII STRUCTURAL SUPPORT

7.1 No Owner shall take any action which would adversely affect the structural safety or integrity of any Improvements not owned by such Owner.

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7.2 If for any reason the structural support for any portion of the Improvements is reduced below the support required to maintain the structural safety or integrity of the Improvements, the Architect shall review, at the request of any Owner, the extent of any such reduction and the need for or adequacy of any such substitute or additional structural support. The Architect shall also estimate, if possible, the time reasonably necessary to provide adequate substitute or additional structural support.

7.3 Except in the case in which Sections 11.3 or 11.4 hereof or Article XV hereof is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced, then the Owner or Owners responsible for such reduction, if the responsible Owner or Owners can be determined, shall commence the construction of such substitute or additional support within a reasonable time under the circumstances, and having commenced such construction shall proceed diligently to cause the completion of such construction in accordance with plans and specifications prepared by the Architect and approved by the Owners of the Improvements affected or benefited by such construction, which approval shall not be unreasonably withheld or delayed. The responsible Owner or Owners (based, if two or more Owners are responsible, upon the relative degree of culpability of such Owners) shall pay all costs and expenses, including, without limitation, the Architect's fees, in connection with the construction of such substitute or additional support (and if two or more Owners are responsible, such costs and expenses shall be split based upon the relative degree of culpability of such Owners). The Owners shall attempt in good faith to determine whether either or both Owners are responsible for such reduction and the relative degree of culpability of the Owners, if two or more Owners are responsible. If such parties are unable, within thirty (30) days after such reduction is discovered, to agree whether one Owner or more Owners are responsible for such reduction and the relative degree of culpability of the Owners (if two or more Owners are responsible) or on the sharing of such costs, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on the sharing of such costs or on whether one Owner or two or more Owners are responsible for such reduction and the relative degree of culpability of the Owners (if two or more Owners are responsible) then such determination shall be made by arbitration pursuant to Article XI hereof.

7.4 In the event that the Owner (or Owners) determined responsible for the reduction in structural support fails to commence the construction of substitute or additional support within a reasonable time under the circumstances, or having commenced such construction fails to proceed diligently to its completion, any Creditor Owner shall have the right to complete the construction of such substitute or additional support at the expense of the Defaulting Owner, and all costs and expenses incurred by the Creditor Owner shall be due from the Defaulting Owner(s) on demand.

7.5 If delay in constructing substitute or additional support would endanger the structural safety or integrity of any portion of the Improvements, then, without regard to whether one Owner or two or more Owners shall be determined responsible for the reduction, the Owner of the portion of the Improvements in which the reduction shall have occurred or is then occurring shall, upon not less than ten (10) days advance written notice to the other Owners (except that such advance written notice shall not be required in an Emergency Situation, but notice shall be given to the other Owners as soon as reasonably possible (and in any event within one (1) business day) after it has commenced such work), provide substitute or additional structural support as and wherever may be required, or the Owners shall together undertake to provide substitute or additional structural support; provided, however, the responsible Owner or Owners (based, if two or more Owners are responsible, upon the relative degree of culpability of the

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Owners) shall be liable for and pay all costs and expenses incurred as a result of any required substitute or additional support (and, if two or more Owners are responsible, such costs and expenses shall be split based upon the relative degree of culpability of the Owners). If the responsible Owner or Owners cannot be determined, or if the reduction in structural support results from an act of God or force majeure and neither Section 11.3 or 11.4 is applicable, then the Owners shall share the cost of providing substitute or additional structural support, including, without limitation, any fees of the Architect, in the manner agreed to by the Owners. If the Owners cannot agree, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on the sharing of such costs, then such determination shall be made by arbitration pursuant to Article XIII hereof. If the reduction in structural support results from defects in the design or construction of any of the Improvements, then the Owner of the defective Improvements shall, at its sole cost, provide the necessary substitute or additional structural support within a reasonable time under the circumstances. The foregoing shall not be deemed to limit any rights which an Owner may have against third parties.

7.6 To the extent that the terms of this Article VII that assign responsibility for providing substitute or additional structural support or allocate the costs of providing such substitute or additional structural support between the Owners are in conflict with the provisions of Article VI or Section 11.1 hereof, the terms of this Article VII shall govern and control.

## ARTICLE VIII COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING AND USE

8.1 Each Owner shall comply with all applicable 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 governmental or quasi-governmental authority or agency now or hereafter having jurisdiction over the portion of the Total Property owned by such Owner, the Improvements or any portion thereof, if non-compliance by it would subject another Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to another Owner or for the Improvements themselves, or would jeopardize another Owner's right to occupy or utilize beneficially its portion of the Total Property or any part thereof, or would jeopardize another Owner's right to exercise and enjoy the benefits of any Easements granted pursuant to this Declaration, or would result in the imposition of a lien against any of the property of another Owner or would increase costs of insurance of another Owner or would impose any threat or danger to any person or property.

8.2 Each Owner shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the portion of the Total Property owned by such Owner or any portion thereof and the requirements of any insurance policy affecting insurance coverage on another 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 another Owner or the premiums of any policy of insurance maintained by two or more Owners together (unless any such Owner which is in non-compliance therewith pays the costs of any such increase), or (ii) render another Owner's portion of the Total Property uninsurable, or (iii) create a valid defense to the an Owner's right to collect insurance proceeds under policies insuring the Total Property or another Owner's portion of the Total Property.

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Notwithstanding anything contained herein to the contrary, (i) this Section 8.2 shall not apply to insurance policies of individual Unit Owners; and (ii) if compliance as required pursuant to this Section 8.2 is hereafter required of an Owner solely because of the nature of the use, possession or management of or activities in another Owner's portion of the Total Property, such Owner's whose use, possession, management or activities result in the necessity of such compliance shall be liable for the cost and expense of such compliance. If at any time any Owner so obligated to comply with the requirements of this Section 8.2 shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect another Owner, then the other Owner may give written notice to such 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.

8.3 Each Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', material men's or any other like lien on another 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 granted hereunder or services to be furnished pursuant to Article VI or Section 11.1 hereof, arising by reason of work or materials ordered or any act taken, suffered or omitted by such Owner. In the event the Defaulting Owner fails to remove any such lien within such thirty (30) day period, the Creditor Owner may take such action as the Creditor Owner may deem necessary to remove or bond or insure over such lien. The Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in removing, bonding or insuring over such lien or attempting to do so. Notwithstanding the foregoing, the Defaulting Owner shall not be required to remove such lien so long as (i) within said thirty (30) day period such lien cannot be foreclosed; (ii) the continuance of such lien shall not constitute a default under any mortgage encumbering the portion of the Total Property subject to such lien; 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 of its intention to contest the validity or amount of such lien, and (B) shall deliver to the Creditor Owner either: (1) cash or a surety bond from a responsible surety company reasonably acceptable to the Creditor Owner in an aggregate 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.

8.4 Each Owner (hereinafter in this Section 8.4, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owners (hereinafter in this Section 8.4, 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 there from, by or on behalf of any person, firm, corporation or governmental or quasi-governmental authority, other than the respective Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement by the Indemnifying Owner or its contractors, agents, tenants, customers, guests or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising there from. In case any

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action or proceeding is brought against an 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. Any counsel for the insurance company providing insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to such Indemnitee. An Indemnitee shall have the right to engage separate attorneys, at the Indemnitee's expense, to resist or defend any such action or proceeding on behalf of the Indemnitee.

8.5 Without limiting the provisions of Section 8.1 hereof, no Owner shall make any Alterations (as that term is herein below defined in Section 22.1) or allow any use of its portion of the Total Property or take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance (including, without limitation, Residential-Business Planned Development No. 1043 [the "PD"]), 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 and the PD, if any. No Owner shall have the right to request or obtain any amendment or variance to the PD, if any, or the Chicago Zoning Ordinance. The sole authority to make zoning changes to the Total Property shall be Declarants (or, until Commercial Declarant and Parking Declarant are conveyed portions of the Total Parcel, the Residential Declarant) as further provided in Section 21.3.

8.6 The Residential Property shall be used only for housing and related common purposes, such as the parking of vehicles, for which the Residential Property was designed. The Commercial Property may be used for any lawful purposes (including without limitation all commercial or other uses), including without limitation, all uses permitted pursuant to the Chicago Zoning Ordinance or otherwise permitted by the appropriate governmental authorities. The Parking Property may be used for any legally permitted uses, including without limitation for the parking of vehicles by patrons of specifically designated businesses or institutions, for valet parking or for public parking or for any other uses as determined by the Owner of the Parking Property in its sole and exclusive discretion.

## ARTICLE IX REAL ESTATE TAXES

9.1 Declarants anticipate that for the calendar year that this Declaration is recorded the real estate taxes (which real estate taxes are payable in the following calendar year) will be undivided and the Total Property shall be located in one real estate tax parcel (the "Tax Parcel"). After the date hereof, the Owners may file a tax division petition with the Cook County Assessor to obtain separate real estate tax parcel identification numbers and separate real estate tax bills for their respective portions of the Total Property. The Owners shall cooperate with one another in connection with such tax division petitions. When a separate real estate tax bill (or bills) is received for the Residential Property, the Owner of the Residential Property shall thereafter pay any and all real estate taxes, special assessments, sewer charges, and any similar governmental taxes and charges (collectively, "Taxes") assessed against the Residential Property. When a separate real estate tax bill (or bills) is received for the Commercial Property, the Owner of the Commercial Property shall thereafter pay any and all Taxes assessed against the Commercial Property. When a separate real estate tax bill (or bills) is received for the Parking Property, the Owner of the Parking Property shall thereafter pay any and all Taxes assessed against the Parking Property. To the extent any common bill should be issued for the Commercial Property and the Parking Property such bill shall be allocated between the Owner's of the Commercial Property and the Parking

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Property (based upon their respective Percentage Shares as set forth in the definition of Percentage Share or in the applicable specific provision of this Declaration as being allocable between the Commercial Property and the Parking Property). To the extent that the Parking Property is owned by a not-for-profit and entitled to exempt tax status, the Owner of the Parking Property shall not be required to contribute to the payment of any real estate taxes at such time as the Parking Property exempt status has become effective by virtue of the Parking Parcel receiving its own exempt tax bill, or by notation or confirmation by the assessor that the Parking Parcel was deemed exempt for purposes of calculating any undivided tax bill.

9.2 The Owner of the Residential Property shall pay prior to delinquency, all Taxes assessed against the Tax Parcel with respect to the year in which this Declaration is recorded and for each year thereafter until a separate tax bill (or bills) is issued for the Residential Property. Upon receipt of each real estate tax bill for the Tax Parcel for the year in which this Declaration is recorded and for each year thereafter until a separate tax bill (or bills) is issued for the Residential Property, the Owner of the Residential Property shall promptly provide a copy of such bill to the Owners of the Commercial Property and the Parking Property. Within thirty (30) days after the Owner of the Residential Property delivers any such tax bill to the Owners of the Commercial Property and the Parking Property, the Owners of the Commercial Property and the Parking Property shall pay to the Owner of the Residential Property their applicable Percentage Share (for the Commercial Property: 1.21%; for the Parking Property: 4.06%) of each such tax bill. The Owner of the Residential Property shall pay the tax bills for the Tax Parcel prior to their due date. Notwithstanding the foregoing, the Owners of the Commercial Property and the Parking Property may, at their respective options, elect to make a partial payment of the tax bill for the Tax Parcel directly; in which case such Owner shall provide the Owner of the Residential Property notice of the payment with a copy of any receipts or proof of payment. For any year that a single, undivided tax bill is levied against only the Commercial Property and the Parking Property, the Owner of the Commercial Property shall pay prior to delinquency, all Taxes assessed against such Tax Parcel for those years until a separate tax bill (or bills) is issued for the Commercial Property and the Parking Property. Upon receipt of any tax bill assessed against such Tax Parcel, the Owner of the Commercial Property shall promptly provide a copy of such bill to the Owner of the Parking Property. Within thirty (30) days after the Owner of the Commercial Property delivers any such tax bill to the Owner of the Parking Property, the Owner of the Parking Property shall pay to the Owner of the Commercial Property its applicable Percentage Share of any such tax bill. The Owner of the Commercial Property shall pay the tax bills for such Tax Parcel prior to the due date. Notwithstanding the foregoing, the Owner of the Parking Property may elect to make a partial payment of the tax bill for such Tax Parcel directly; in which case the Owner of the Parking Property shall provide the Owner of the Commercial Property notice of the payment with a copy of any receipts or proof of payment. Notwithstanding the foregoing, for any year that the Parking Property exempt status has become effective (by virtue of the Parking Parcel receiving its own exempt tax bill, or by notation or confirmation by the assessor that the Parking Parcel was deemed exempt for purposes of calculating any undivided tax bill, the Owner of the Parking Property shall not be required to contribute to any real estate tax payment. Notwithstanding the foregoing, any prorations and allocations of real estate taxes for any undivided tax bills shall be based upon any individual valuations made by the assessor for each portion of the Total Property (Commercial, Residential and Parking). In the event, individual valuations were made on any portions of the Total Property (Commercial, Residential or Parking), as can be established and documented by the assessor's office, such individual valuation(s) shall serve as the basis for any such proration.

9.3 If any Owner shall fail to pay any Taxes or share thereof, which is due and which such

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Owner is obligated to pay pursuant to this Article IX, and if such unpaid Taxes is or would be a lien or encumbrance on the portion of the Total Property owned by the other Owners, or if any lawful authority would have the right to sell or otherwise foreclose against the portion of the Total Property owned by the other Owners or extinguish any Easement benefiting the other Owners by reason of such non-payment, or subjects the other Owners to personal liability for the same, then the Creditor Owner may, after ten (10) days' written notice to the Defaulting Owner(s), pay such Taxes, or share thereof, together with any interest and penalties thereon, and the Defaulting Owner(s) shall, upon demand, reimburse the Creditor Owner for the amount of such payment, including the amount of any interest or penalty amounts accrued thereon.

9.4 For any year prior to the year in which a separate bill (or bills) is issued for the Total Property or any portions thereof, the Owners shall have the right to contest, either collectively or separately: (i) the assessed valuation of the property included within the Tax Parcel; (ii) whether any portion of the property included within the Tax Parcel should be exempt from taxation, and/or (iii) the amount of Taxes assessed against the Tax Parcel, or to seek a refund of any such Taxes. Each Owner shall cooperate with the other and such Owner's attorneys in the pursuit of any such matter. If the contesting Owner receives a refund of any Taxes assessed against the Tax Parcel, and the other Owner paid any portion of the Taxes which are the subject of such refund, the contesting Owner shall pay to the other Owner an equitable share of the net proceeds of such refund (based on the reasons for obtaining such refund according to the best information then available from the County Assessor and/or County Treasurer), after the contesting Owner has paid from such refund all costs and expenses (including, without limitation, attorneys' fees) paid or incurred by the contesting Owner in connection with obtaining such refund. If the contesting Owner is successful in any such contest, then the percentage allocation of Taxes to the other Owner, as described in Section 9.2 above, shall be equitably adjusted based on the reasons for such successful contest (according to the best information then available from the County Assessor and/or County Treasurer). If the Owners are not able to agree upon the amount of any equitable refund or adjustment under this Section 9.4 within sixty (60) days after the existence of such refund or the need for such adjustment becomes known, then any Owner may submit such matter to arbitration pursuant to Article XIII hereof for resolution.

9.5 If for the calendar year that this Declaration is recorded or any subsequent years the real estate taxes (which real estate taxes are payable in the following calendar year), the Total Property or any portion thereof is located in one or more real estate tax parcels (or any other properties are included in the Tax Parcel, as it may be divided from time to time), then Declarants shall equitably allocate a portion of the real estate taxes under such tax parcels to the Total Property, and a portion of such real estate taxes allocated to the Total Property shall be further allocated to and paid by the Owners of the Residential Property, the Commercial Property and the Parking Property (as applicable) pursuant to the percentage allocation set forth in Section 9.2 above (subject to a possible adjustment of such percentage allocation pursuant to Section 9.4 above), and the balance of such taxes allocated to the Total Property shall be paid by the applicable Owner as set forth in Section 9.2 above.

## ARTICLE X INSURANCE

10.1 The Owners shall procure and maintain the following insurance:

(a) (i) The Owner of the Residential Property shall keep the Residential Property

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insured for "all risk" or "special form" coverage, including Building Ordinance coverage, on real property and on personal property policy for an amount not less than one hundred percent (100%) of the "Full Insurable Value" (as hereinafter defined) thereof.

(ii) The Owner of the Commercial Property shall keep the Commercial Property insured for "all risk" or "special form" coverage, including Building Ordinance coverage, on real property and on personal property policy for an amount not less than one hundred percent (100%) of the "Full Insurable Value" thereof.

(iii) The Owner of the Parking Property shall keep the Parking Property insured for "all risk" or "special form" coverage, including Building Ordinance coverage, on real property and on personal property policy for an amount not less than one hundred percent (100%) of the "Full Insurable Value" thereof.

(iv) In the event it shall be necessary or desirable in the judgment of the Owner of the Parking Property, for the Owner of the Residential Property to include the Parking Property in the Residential Property insurance policy on behalf of the Owner of the Parking Property, then the Owner of the Parking Property shall provide the Owner of the Residential Property with written notice of its election to have the Parking Property included in the Residential Property insurance policy, and within thirty (30) days of receipt of such written notice the Owner of the Residential Property shall procure such insurance as set forth in subsection (iii) above (together with all necessary or desirable endorsements) and provide a copy of such policy to the Owner of the Parking Property and the Owner of the Parking Property shall be responsible for reimbursing the Owner of the Residential Property for the additional costs allocable to the addition of the Parking Property to the Residential Property insurance policy as determined by the applicable insurance company or insurance broker.

(v) The term "Full Insurable Value" shall mean the actual replacement cost (exclusive of cost of excavation, foundations and footings) and shall be determined from time to time by an appraisal prepared by an independent appraiser chosen by the Owner of the Residential Property, the cost of the appraisal to be shared by the Owners proportionately based on the Full Insurable Value of their respective portions of the Improvements. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause in accordance with such appraisal.

(b) Each Owner shall maintain comprehensive general liability insurance (including auto liability insurance for all hired, owned and non-owned vehicles) with broad form extensions covering claims for personal and bodily injury, death or property damage occurring in, on, within, upon or about (i) the portion of the Total Property owned by such Owner, or as a result of operations thereon (including contractual liability covering obligations created by this Declaration, including, but not limited to, those indemnity obligations created by this Declaration), or (ii) any other portion of the Total Property as a result of the actions of such Owner or its lessees, contractors, agents or employees. All liability insurance shall be primary coverage as to claims for injury or damage resulting from the acts or failure to act of the Owner, with any insurance carried by the other Owner being excess coverage. Such insurance shall be in such amounts as

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may be required by law and as from time to time shall be carried by prudent owners and operators of similar buildings in the City of Chicago, Illinois but in all events for limits of not less than \$1,000,000 combined single limit for personal and bodily injury or property damage with an additional \$1,000,000 umbrella coverage (both amounts in 2010 Equivalent Dollars as defined in Section 13.6 below); and

(c) Each Owner shall insure its boiler and machinery risks, on a comprehensive, blanket basis covering all equipment, machinery and apparatus owned by such Owner on the Total Property, consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment, miscellaneous electrical apparatus and their appurtenant equipment and piping and ducts on a repair or replacement basis for not less than one hundred percent (100%) of the Full Insurable Value thereof.

10.2 Insurance policies required by Section 10.1 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-/VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. In the event an Owner is unable to procure a separate policy and the insurance policies required by Sections 10.1(a) and 10.1(c) must be purchased as a unified policy affecting the Total Property, such policy or policies shall: (a) be purchased from a single insurance company or group of companies designated by the Owner of the Residential Property (the "Property Insurer") under a single policy (other than insurance for personal property which shall be under a separate policy for each Owner issued by the Property Insurer), and (b) provide for the adjustment of claims with the Property Insurer by the Owners of the affected parcels. The respective costs of the insurance policies required by Sections 10.1(a) and 10.1(c) to be paid by each Owner shall be reasonably determined by the Property Insurer providing such coverage (the "Insurance Cost Allocation"). If the Commercial Owner or Parking Owner, upon review of the Insurance Cost Allocation considers the Property Insurer's Insurance Cost Allocation unreasonable, such Owner shall retain the right to review such relative Insurance Cost Allocation and consult alternative insurers regarding same. In the event an allocation by an insurance professional chosen by the other Owner is materially disparate from that of the Property Insurer, the Property Insurer and the insurance professional chosen by the other Owner shall jointly review the Insurance Cost Allocation and, should such parties materially disagree, they shall jointly choose an independent third party property insurance professional to review the Insurance Cost Allocation and the opinion of the independent third party property insurance professional shall be deemed final.

To the extent that the Residential Property (and the Commercial Property, if applicable) remains (or becomes) subject to the provisions of the Act, insurance on additions, alterations, improvements and betterments to individual Units shall be the responsibility of those persons designated in the Condominium Declaration as being responsible for such insurance.

10.3 Each policy described in Section 10.1 hereof: (i) shall provide that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) shall insure as named insured and additional insureds, as the case may be, with respect to the acts of the named insured, the Owner of the Commercial Property, the Owner of the Parking Property and the Owner of the Residential Property, together with such affiliates, managers and lenders of such Owners as any of them may designate from time to time, all as their interests may appear, with the named insured's coverage

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being primary; provided, however, that so long as the Residential Property (or the Commercial Property) is (or becomes) subject to the Act, the Association and not the individual Unit Owners shall be insured as a named insured or additional insured; (iii) shall provide, except for liability insurance described in Section 10.1(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; (iv) shall provide, except for liability insurance required by Section 10.1(b), that all losses payable thereunder shall be paid to the Depositary in accordance with the terms of Article XVII (unless such loss only affects one component of the Total Property and is less than \$100,000 (in 2010 Equivalent Dollars as defined in Section 13.6 below), in which event such loss shall be paid to the Owner of such component of the Total Property); (v) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all insureds thereunder and to all Mortgagees, unless such cancellation is for non-payment of premium, in which case only ten (10) days' advance written notice shall be sufficient; and (vi) shall, subject to subsection (iv) immediately above, include a standard mortgagee endorsement or loss payable clause in favor of each of the Mortgagees.

10.4 Limits of liability or types of insurance specified in this Article X or carried by the Owners shall be reviewed by the Owners no less often than annually at least thirty (30) days before the expiration of each policy to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, 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. Initially, deductible amounts for insurance required under Sections 10.1(a), 10.1(b) and 10.1(c) shall not exceed \$10,000.00 (in 2010 Equivalent Dollars as defined in Section 13.6 below) for each such policy. 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, at any Owner's election, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration.

10.5 Original certificates of insurance evidencing such policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered to each Owner prior to the expiration date of any such expiring insurance policy. Copies of all insurance policies maintained by an Owner will be provided to the other Owners upon request. Should an Owner fail to provide and maintain any policy of insurance required under this Article X or pay its share of the premiums or other costs for any joint policies, then either or both of the other Owners may purchase such policy and the costs thereof (or the Defaulting Owner's share of such costs) shall be due from the Defaulting Owner within ten (10) days after a Creditor Owner's demand therefor.

10.6 Each of the Owners, for itself and for each party claiming under, by or through such Owner, hereby waives all claims for recovery from the other Owner for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery collectible (or which would have been collectible had such insurance required hereunder been obtained) under such insurance policies, plus deductible amounts.

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10.7 All policies of insurance of the character described above shall name as additional insureds the other Owners as set forth in Paragraph 10.3 (ii) above, or any formed association, as applicable. In the event, the insurance requirements set forth in this Article X or that may otherwise be required, are best satisfied by virtue of an endorsement for insurance policies held by another Owner or association, then such Owner or association shall obtain such endorsement at the direction of the other Owner and the Other Owner shall pay the additional costs allocable to such endorsement.

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

11.1 Except as expressly provided in Sections 6.1 and 6.2 hereof or hereinafter in this Article XI in the event of fire or casualty, and without limiting or diminishing each Owner's obligations under Article VII hereof, each Owner shall, at its sole cost and expense (except as provided in Article VI), keep its respective portion of the Total Property and all Facilities, fixtures, equipment and appurtenances located within its respective portion of the Total Property, in good and safe order and condition and in such condition as is necessary to permit the use and enjoyment of the Easements granted in this Declaration and to provide the services described in Article VI. Each Owner shall make all repairs or replacements of, in, on, under, within, upon or about the property described above, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Each Owner further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property.

11.2 Subject to Section 10.6, in the event an Owner fails to perform its obligations under Section 11.1 or under Sections 6.1 or 6.2, or damages, impairs or destroys through misuse, negligence, willful misconduct or failure to perform its obligations under this Declaration all or any part of the Improvements, Facilities or other property owned by another Owner, resulting in any loss, cost or damage to another Owner, the Defaulting Owner shall pay to such other Owner the amount of all actual losses, costs and damages incurred by such other Owner as a result thereof, but in no event shall an Owner be liable for consequential damages resulting therefrom.

11.3 If the Improvements are damaged by fire or other casualty and if such damage occurs in, on, under, within, upon, about or affecting only a single property, then this Section 11.3 shall apply and any such damage shall be repaired and restored by the Owner of the portion of the Total Property in which any such damage occurs, at its sole cost and expense, as close to the condition existing immediately prior to such casualty as commercially practicable, and in as timely a manner as practicable under the circumstances. Such Owner shall, in accordance with the provisions of Article X/VIII, 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; provided, however, that to the extent such proceeds are insufficient to fully pay such cost and expense, such Owner shall be responsible for the payment of any such deficiency. If at any time the Owner so obligated to repair and restore such damage pursuant to this Section 11.3 shall not proceed diligently with any repair or restoration of such damage which adversely and materially affects another Owner (including, without limitation, services to be furnished such other Owner under Article VI) then (i) the affected Owner may

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give written notice to such Owner specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of ten (10) days after the receipt of such notice, any repair or restoration work is still not proceeding diligently, then such Creditor Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Creditor Owner may immediately perform such repair and restoration and may take all appropriate steps to carry out the same, and the Creditor Owner shall use commercially reasonable efforts to give the Defaulting Owner prior notice of its intent to perform such repair and restoration, or if such prior notice is not so given (notwithstanding such commercially reasonable efforts), then the Creditor Owner shall give the Defaulting Owner notice of such repair and restoration as soon as reasonably possible after the Creditor Owner begins such repair and restoration. The Creditor Owner in so performing such repair and restoration shall, in accordance with Article XVIII, be entitled to withdraw any insurance proceeds and other monies held by the Depository as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by the Creditor Owner in excess of said insurance proceeds and other monies.

11.4 If the Improvements are damaged by fire or other casualty and if the provisions of Section 11.3 are not applicable, then the repair or restoration of such damage shall be the joint responsibility of the Owners. Said repair and restoration shall be performed on behalf of the Owners by a reputable contractor or contractors experienced in the construction of structures similar to the Improvements jointly selected by the Owners. In the event the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be made by arbitration pursuant to Article XIII. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners otherwise agree, in accordance with instructions given by the Owners. Such plans and specifications 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. In the event that an Owner proposes to restore or repair its Improvements with elective materials or additional systems which exceed or are not necessary to restore the Improvements to a condition as nearly as commercially practicable to the Improvements as constructed prior to the damage, such work shall be considered "Betterments". Any and all Betterments shall be at the sole cost of the Owner electing to make such Betterments to that portion of the Improvements included within its Property. The Architect shall furnish to each of the Owners a set of the plans and specifications which it has prepared or caused to be prepared. Unless the Owners otherwise agree, any contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Owners, as such repair and restoration progresses, to disburse in accordance with Article XVIII, the insurance proceeds held by the Depository and any other monies deposited with the Depository pursuant to Section 11.6 for application against the cost and expense of any such repair and restoration.

11.5 If the cost and expense of performing any repair and restoration provided for in Section 11.4 hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage, then such excess cost and expense (or the entire amount of such cost and expense, if there are no insurance proceeds) shall be borne by the Owners in proportion to the cost and expense of repairing and restoring to their former condition their respective portions of the Improvements; provided, however, that to the extent such excess cost and expense results from the failure of an Owner to maintain the insurance required by

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Section 10.1, such Owner shall bear such portion of such excess cost and expense.

11.6 In any instance of repair or restoration pursuant to Sections 11.3 or 11.4, any Owner may require that an estimate of the cost or expense of performing such repair or restoration be made by a reputable, independent, professional, construction cost-estimating firm, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been executed. If said estimate or stipulated sum, or if the actual amount incurred in performing such repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to any other Owner demanding that such Owner(s) deposit with the Depository the amount of such excess cost and expense attributable to such Owner(s) pursuant to this Article XI. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, an Owner may deliver to the Depository security for payment of its share reasonably acceptable to such other Owner(s) and the Depository. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owed or a loan commitment reasonably satisfactory to such other Owner(s), issued by a responsible lending institution, to disburse an amount equal to such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If an Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section 11.6, or fails to deliver the security provided for within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with such payment.

11.7 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage shall be refunded to each applicable Owner in proportion to the ratio that the insurance proceeds contributed by reason of such Owner's insurance bears to the total insurance proceeds made available for the repair and restoration, or if the insurance is provided by a single policy covering the Improvements, then the ratio of insurance proceeds attributed to such Owner's portion of the Improvements by the insurer to the total insurance proceeds made available by the insurer for the repair and restoration. The right of the Owner of the Commercial Property to payment of excess insurance proceeds, if any, shall be subject to the rights of the First Commercial Mortgagee under the First Commercial Mortgage; the right of the Owner of the Residential Property to payment of excess insurance proceeds, if any, shall be subject to the rights of the First Residential Mortgagee under the First Residential Mortgage; and the right of the Owner of the Parking Property to payment of excess insurance proceeds, if any, shall be subject to the rights of the First Parking Mortgagee under the First Parking Mortgage.

11.8 If the Improvements are destroyed or substantially damaged and the Owners unanimously agree not to rebuild, repair or restore the Improvements, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the

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Improvements. In such event, the available insurance proceeds, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to each Owner in the same ratio of insurance proceeds contributed by such Owner's insurance to the total insurance proceeds paid by reason of such damage or, if the insurance is provided by a single policy covering the Improvements, then in the ratio of insurance proceeds attributed by the insurer to such Owner's portion of the Improvements to the total insurance proceeds paid by reason of the damage. Such demolition shall be deemed to be a "repair or restoration" to which the provisions of Sections 11.3-11.7 are applicable except that demolition, and not construction, shall be performed.

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

11.10 Subject to Section 10.6, notwithstanding anything set forth in Article VI or this Article XI to the contrary, in the event that any portion of the Improvements or the Facilities is damaged or destroyed by the action of an Owner, such Owner shall be solely responsible for all costs and expenses associated with repairing any such damage or destruction (and, if the damage or destruction is caused by more than one Owner, their respective share of such costs or expenses shall be based upon their relative degree of culpability with respect to such damage or destruction).

## ARTICLE XII LIENS INTEREST AND REMEDIES

12.1 If, at any time, an Owner fails within the time period set forth for payment, or if no time period is set forth, then within ten (10) days after notice or demand to such Owner to pay another Owner any sum of money due to such other Owner under or pursuant to the provisions of this Declaration, then, in addition to any other rights or remedies that the Creditor Owner may have, the Creditor Owner shall have a lien against the Defaulting Owner's interest in the Total Property (which lien, if the Defaulting Owner is the Owner of the Residential Property, shall also attach to the Units, subject to Section 12.3) and a lien against any insurance proceeds and condemnation awards payable to 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 XII. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner with the Recorder and may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full. The liens provided for in this Section 12.1 shall be subject and subordinate to the lien of any bona-fide, first priority mortgage, trust deed or other similar encumbrance on the Defaulting Owner's interest in the Total Property (including but not limited to, a first priority mortgage, trust deed or other similar encumbrance on a Unit) that is recorded before the time of the recording of the notice of lien for all amounts (whenever advanced or accrued) secured by said mortgage, trust deed or other encumbrance, and are subject to termination and defeat as provided in Section 12.4 below.

12.2 To the fullest extent permitted by law, the provisions of Article X and this Article XII shall be controlling over the provisions of the Act insofar as the provisions of the Act purport to limit (i) the obligations of the Unit Owners to repair or restore the Condominium Property, or (ii) the use of insurance proceeds to repair or restore the Condominium Property. In the event of fire or other casualty

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or act of God or force majeure causing damage to the Condominium Property which would entitle the Owner of the Residential Property, under the Act, to withdraw all or any part of the Condominium Property from the Act and not to repair and restore the Condominium Property as required by this Declaration, then the Owner of the Commercial Property shall have a lien on the Condominium Property and any insurance proceeds payable for loss or damage to such portion of the Total Property under insurance policies carried pursuant to Article X, in an amount necessary so that the Owner of the Commercial Property shall have sufficient proceeds to demolish or repair and restore the Improvements to a condition so as adequately to assure:

- (a) the structural integrity and safety of the Improvements;
- (b) the continuous and efficient operation of all Facilities and electrical, utility, mechanical, plumbing and other systems serving the Commercial Property;
- (c) compliance with all zoning, building and other laws, rules, orders, ordinances, regulations and requirements of any governmental body or municipality or agency thereof having jurisdiction of the Total Property or any part thereof;
- (d) the architectural unity and aesthetic appearance of the restored Improvements for their intended purposes;
- (e) provide the Commercial Property with the benefits of the Easements granted in Section 4.1 hereof; and
- (f) provide the Parking Property with the benefits of the Easements granted in Section 5.1 hereof.

The lien created by this Section 12.2 shall be superior to and take precedence over any mortgage or other encumbrance constituting a lien on the Condominium Property or any portion thereof other than a First Mortgagee. Such lien shall arise immediately upon the recording of a notice by the Owner of the Commercial Property with the Recorder following the occurrence of a fire or other casualty or act of God or force majeure stating that it is a lien created by this Section of the Declaration. Such lien shall continue in full force and effect until either the sum of money required hereunder shall have been paid to the Owner of the Commercial Property, or the Owner of the Residential Property shall have repaired and restored the Condominium Property as required by this Declaration. Such lien may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Illinois or by any other remedy available by statute or at law or in equity.

12.3 Without limiting any equitable remedies to which the Owners of the Commercial Property and the Parking Property may be entitled, so long as the Residential Property remains subject to the provisions of the Act, no Unit Owner shall be liable for all or any part of any claim against the Owner of the Residential Property in excess of an amount equal to the amount of the claim multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit Ownership as set forth in the Condominium Declaration. Without limiting any equitable remedies to which the Owners of the Residential Property and the Parking Property may be entitled, should the Commercial Property become subject to the provisions of the Act, no Unit Owner shall be liable for all or any part of any claim against the Owner of the Commercial Property in excess of an amount equal to the amount of the claim

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multiplied by the percentage of ownership interest in Common Elements allocated to such Unit Owner's Unit Ownership as set forth in the Condominium Declaration. Upon payment of such amount for which a Unit Owner is liable (i) any lien arising against such Unit Owner's Unit Ownership on account of such claim shall be deemed released against such Unit Owner's Unit Ownership without further act or deed by any such Unit Owner, and (ii) upon the written request of such Unit Owner, the Owner of the Commercial Property or Parking Property (or, if applicable, the Residential Property) shall deliver to such Unit Owner an instrument evidencing the release of such lien, but only with respect to said Unit Owner's Unit Ownership. When a Unit Ownership is owned by more than one "person" (as defined in the Act) the liability of each such person for any claim against the Unit Ownership shall be joint and several. In addition to any remedies the Owners of the Commercial Property or the Parking Property (or, if applicable, the Residential Property) shall be entitled to, in the event any Unit Owner defaults in its obligation to pay any amount due hereunder, the Condominium Association shall be liable to the Owner of the Commercial Property or the Owner of the Parking Property (or the Owner of the Residential Property), as applicable, for such amount and, upon payment of the same by the Condominium Association, the Condominium Association shall be entitled to recover the same from any such Unit Owner.

12.4 No conveyance or other divestiture of title shall in any way affect, diminish or defeat any lien arising pursuant to this Article XII other than a divestiture resulting from a foreclosure of a mortgage lien that, pursuant to Section 12.1 or 12.2, is superior to the lien arising pursuant to this Article XII, which foreclosure shall automatically cut-off, terminate and defeat any such lien; provided, however, that the purchaser at the foreclosure sale and any subsequent Owner shall be liable for the payment of all amounts and the performance of all covenants and obligations accruing from and after the transfer of title pursuant to such foreclosure sale.

12.5 Interest shall accrue on any sums owed by a Defaulting Owner to a Creditor Owner pursuant to this Declaration, and shall accrue and be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest per annum equal to the lesser of (i) the floating rate which is equal to six percent (6%) in excess of the rate of interest from time to time announced by Bank of America (or other major bank in the City of Chicago if Bank of America ceases to exist) as its "prime rate", "reference rate" or "corporate base rate" of interest, or (b) the the maximum lawful rate of interest in Illinois applicable to the Defaulting Owner and the nature of the debt. In the event a "prime rate", "reference rate" or "corporate base rate" is not announced, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%). Without limiting the terms of this Section 12.5, if a Creditor Owner pays interest and/or penalties on any unpaid Taxes to any governmental body or authority under Section 9.3, interest shall accrue and be payable under this Section 12.5 on any such interest and penalties so paid.

12.6 Subject to the limitations set forth in Article XXIV, the rights and remedies of an Owner provided for in this Article XII 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 the 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.

12.7 Each claim of an Owner arising under this Declaration shall be separate and distinct, and

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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.

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

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

## ARTICLE XIII ARBITRATION

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

- (a) All disputes, claims or controversies arising under this Declaration involving an amount not exceeding \$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 another 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.

13.2 Unless otherwise agreed to in writing by the applicable Owners within thirty (30) days after the notice demanding arbitration has been given, such Owners shall jointly designate one (1) arbitrator to resolve the Matter. If the Owners fail to designate the arbitrator within such time period, an arbitrator shall be appointed in accordance with the procedures set forth in the applicable AAA rules, provided, however, that in any event such arbitrator shall be experienced as to the design, construction and/or operation, as the Matter requires, of developments similar to the Improvements. Except where contrary to the provisions set forth in this Declaration, the rules of the AAA for commercial arbitration shall apply to the arbitration of any Matter. During the thirty (30) day time period referenced above, the applicable Owners may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

13.3 The arbitrator shall commence hearings within sixty (60) days of selection, unless the applicable Owners and the arbitrator agree upon an expedited or delayed schedule of hearings. Prior to the hearings, any Owner may send out requests to compel document production from another Owner.

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Disputes concerning the scope of document production and enforcement of the document requests shall be subject to agreement by the applicable Owners or may be ordered by the arbitrator to the extent reasonable. The arbitrator may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions presented in the course of arbitration to the extent reasonably necessary to the fair resolution of the Matter and to the extent that it is economical to do so considering the financial consequences of the Matter. The arbitrator in rendering a decision may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this 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 arbitrator may hear and determine the Matter upon evidence produced by the appearing Owner(s). The arbitration costs shall be borne equally by each applicable Owner, except that each applicable Owner shall be responsible for its own expenses.

13.4 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 or constituted or conducted under the provisions of this Article XIII. The obligation of the Owners to continue performance and make payments despite the existence of 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 XIII.

13.5 With respect to any Matter subject to arbitration under this Article XIII, it is agreed that the arbitration provisions of this Article XIII 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 XIII or with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this Article XII may, at the request of any Owner, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrators shall be final and binding upon the applicable Owners and judgment thereon shall be entered by any court having jurisdiction.

13.6 For purposes of this Article XIII and Article X above, "2010 Equivalent Dollars" or "2010 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 December, 2010, and the denominator of which is the Consumer Price Index for December, 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 applicable Owners if such index is no longer available.

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## ARTICLE XIV UNAVOIDABLE DELAYS

14.1 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 only 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, delays in obtaining governmental licenses, permits, certificates or approvals, enemy action, civil commotion, strikes, lockouts, inability to obtain labor or materials (after using reasonable efforts to do so), war or national defense preemptions, acts of God, energy shortages or similar causes beyond the reasonable control of such Owner ("Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay; provided, however, that the Owner unable to perform (the "Non-Performing Owner") shall notify the other applicable Owner(s) in writing of the existence and nature of any Unavoidable Delay within a reasonable time after obtaining knowledge of the onset of any such Unavoidable Delay. The Non-Performing Owner shall, from time to time upon written request of the another Owner, keep the such Owner fully informed, in writing, of all further developments concerning any such Unavoidable Delay and its non-performance.

## ARTICLE XV CONDEMNATION

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

15.2 All Awards resulting from the taking of all or any part of the Total Property, other than Awards resulting from a taking of the temporary use of space as hereinafter described, shall be paid to the Depository (unless such taking is only with respect to one component of the Total Property and the Award is less than \$100,000.00, in which event such award shall be paid to the Owner of such component of the Total Property) and disbursed by the Depository as hereinafter provided. In the event of a taking of a temporary use of any space, 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 according to then applicable law.

15.3 In the event of a taking (other than a temporary taking) of a part of the Residential Property only or the Commercial Property only, then this Section 15.3 shall apply, and 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 and to the condition existing immediately prior to the taking, to the extent commercially practicable. 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, provided that such Owner shall be entitled to withdraw any Award paid to the Depository by reason of such taking for application to the cost of said repair and restoration in accordance with the provisions of Article XVIII hereof and to retain any excess not required for such repair and restoration;

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provided, however, that the right of the Owner of the Residential Property to receive such excess, if any, shall be subject to the rights of the First Residential Mortgagee under the First Residential Mortgage with respect to any such excess Award; the right of the Owner of the Commercial Property to receive such excess, if any, shall be subject to the rights of the First Commercial Mortgagee under the First Commercial Mortgage with respect to any such excess Award; and the right of the Owner of the Parking Property to receive such excess, if any, shall be subject to the rights of the First Parking Mortgagee under the First Parking Mortgage with respect to any such excess Award.

15.4 In the event of a taking other than (a) a temporary taking described in Section 15.2, (b) a taking which falls within either of the categories described in Section 15.3, or (c) a taking of all or substantially all of the Total Property, then the Owners shall jointly cooperate to repair and restore the Improvements in accordance with plans and specifications jointly approved by the Owners. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be performed on behalf of the Owners by a reputable contractor or contractors experienced in the construction of projects similar to the Improvements jointly selected by the Owners. If the Owners fail to agree upon the selection of a contractor or contractors, the Owners shall request the advice of the Architect. If after receiving the Architect's advice, the Owners cannot agree on a contractor or contractors, then the selection of a contractor or contractors shall be made by arbitration pursuant to Article XIII. The plans and specifications for such repair and restoration shall be prepared by the Architect, unless the Owners shall otherwise agree. 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. 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 and for furnishing of services comparable, to the extent commercially practicable, to Easements created under Articles III and IV and for the furnishing of services under Article VI. Unless the Owners otherwise agree, the contractor or contractors shall work under the supervision of the Architect, and the Architect is hereby authorized and directed to instruct the Depository, from time to time, but only with the prior approval of the Owners, as such repair and restoration progresses, to disburse, in accordance with Article XVII, any Award paid to the Depository for application to the cost and expense of such repair and restoration.

15.5 The Award for any taking described in Section 15.4 shall first be used to pay for the repair and restoration. Any excess of the Award over the cost of repair and restoration shall then be allocated to each Owner in the same ratio as (a) the Award to parties with an interest in such Owner's portion of the Total Property in any judicial or administrative proceeding in connection with the taking, bears to (b) the total, aggregate Award to parties with an interest in the Total Property; provided, however, that the right of the Owner of the Residential Property to receive such excess shall be subject to the rights of the First Residential Mortgagee under the First Residential Mortgage with respect to any such excess; the right of the Owner of the Commercial Property to receive such excess shall be subject to the rights of the First Commercial Mortgagee under the First Commercial Mortgage with respect to any such excess; and the right of the Owner of the Parking Property to receive such excess shall be subject to the rights of the First Parking Mortgagee under the First Parking Mortgage with respect to any such excess.

15.6 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 the Owners in accordance

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with said apportionment; provided, however, that the right of the Owner of the Residential Property to receive any Award and payment shall be subject to the rights of the First Residential Mortgagee under the First Residential Mortgage with respect to any such Award and payment; the right of the Owner of the Commercial Property to receive such Award and payment shall be subject to the rights of the First Commercial Mortgagee under the First Commercial Mortgage with respect to any such Award and payment; and the right of the Owner of the Parking Property to receive such Award and payment shall be subject to the rights of the First Parking Mortgagee under the First Parking Mortgage with respect to any such Award and payment.

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

## ARTICLE XVI ARCHITECT

16.1 The Declarants hereby appoint Pappageorge Haymes Ltd. ("Pappageorge") to serve as "Architect" for the purposes of this Declaration. In the event Pappageorge is unable or unwilling to serve as Architect, the Owners shall jointly appoint a reputable firm consisting of both architects and engineers (or a firm of architects and a firm of engineers agreeing to act jointly hereunder) experienced in the design and operation of structures similar to the Improvements to serve as "Architect" under, pursuant and subject to the terms and provisions of this Declaration. An Owner may cause any Architect to be replaced by an Architect meeting the above stated qualifications if it demonstrates to the other Owner that such then-serving Architect has failed to perform its duties hereunder diligently or competently. 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 its duties hereunder diligently or competently. If, in the opinion of the 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 16.1, then 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 Owner desiring to replace the Architect. 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 XIII. Any Architect acting hereunder shall have the right to resign at any time upon not less than ninety (90) days' prior written notice to the Owners.

16.2 In any instance when the Architect serving pursuant to Section 16.1 is authorized by this Declaration to advise the Owners concerning any dispute or matter, any 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 applicable Owner(s). The Architect shall, except in an Emergency Situation, afford each applicable 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.

16.3 The Architect shall be paid a reasonable fee for any services rendered hereunder, as jointly determined by the applicable Owners, and shall be reimbursed for reasonable and necessary expenses incurred in connection therewith, and the applicable Owners shall pay their equitable share of

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such fees. In any instance when the Architect shall, in accordance with any of the provisions of this Declaration, render services in connection with the preparation of plans and specifications or the supervision of repair, restoration or demolition of the Improvements or any part thereof, the fees and expenses of the Architect shall be considered as costs and expenses of said repair, restoration or demolition, as the case may be, and shall be paid in the same manner as other costs and expenses of repair, restoration and demolition under the provisions of this Declaration pursuant to which the Architect is performing such services. If any Owner shall fail to pay its allocable share of any fees or expenses of the Architect within ten (10) days after receipt of any invoice therefor from the Architect, then any other Owner may pay the same and the Defaulting Owner shall, within ten (10) days after written demand, reimburse the Creditor Owner for any such payment, with interest thereon as provided herein.

## ARTICLE XVII DEPOSITARY

17.1 A depositary (the "Depositary") shall be appointed to receive insurance proceeds and Awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. The Depositary shall be jointly appointed by the Owners. The Depositary appointed hereunder shall be one of the tier five (5) largest banks or trust companies (measured in terms of assets) with principal offices in Chicago, Illinois, or shall be Chicago Title and Trust Company or a comparable title insurer with trust capacities with offices in Chicago, Illinois. The Depositary shall be entitled to receive from each applicable Owner its allocable share of the Depositary's reasonable fees and expenses for acting as Depositary, and may retain said fees and expenses, free of trust, from monies held by it. Any Depositary appointed to act hereunder shall execute an agreement with the applicable Owners accepting said appointment and setting forth the terms and provisions of this Article XVII.

17.2 The Depositary shall have no obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or Awards unless the Depositary shall have been given express written authorization from the applicable Owners.

17.3 The Depositary shall, at the direction of the applicable Owners, purchase with such monies, to the extent feasible, United States Government securities maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depositary, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depositary expects to make shortly thereafter, and the Depositary shall hold such securities in trust in accordance with the terms and provisions of this 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.

17.4 The Depositary may resign by serving sixty (60) days' prior written notice on the applicable Owners. Within sixty (60) days after receipt of such notice, the applicable Owners shall jointly appoint a substitute who qualifies under Section 17.1 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 applicable Owners shall fail to appoint a substitute within said sixty (60)

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

## ARTICLE XVIII DISBURSEMENTS OF FUNDS BY DEPOSITARY

18.1 (a) Each request by 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 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 (a) has been paid by or on behalf of any or all of the Owners (the certificate shall specify the amount paid by each 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, provided that any amounts payable to the Architect shall be approved in writing by the applicable Owner(s) of that portion of the Total Property to which such work relates. Such certificate shall also state any other information required by the mechanics lien law of the State of Illinois 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 for the benefit of the Owners and the holders of the applicable First Mortgages);
- (iii) that no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and
- (iv) that the cost to complete the unfinished work will not exceed the funds or security therefor held by the Depository after payment of the then-current request.

(b) Upon compliance with the provisions of Section 18.1(a) (but not more frequently than once in any thirty (30) day period):

- (i) upon receipt of contractors' and subcontractors' sworn statements required under the mechanics lien laws of the State of Illinois accompanied by partial or final waivers of lien, as appropriate, and an Owner's sworn statement, and any other information required by any title insurer affording coverage against mechanics liens from the persons named in the sworn statement;
- (ii) approval by the title insurer and the Owner or Owners requesting disbursement,

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of the lien waivers and other documentation, and the willingness of the title insurer to issue title insurance satisfactory to such parties, insuring over possible mechanics lien claims relating to work in place; and

- (iii) satisfaction of such other reasonable conditions that are consistent with customary construction lending practices in the State of Illinois and may be imposed by the holder of a First Mortgage encumbering a portion of the Total Property in which such work is being performed,

the Depository shall, out of the monies so held by the Depository, pay or cause to be paid to the appropriate Owner(s), contractors, subcontractors, material men, engineers, architects and other persons named in the Architect's certificate and contractors' and subcontractors' sworn statements, the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners requesting disbursement or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by any Owner or the Architect to the Depository in accordance with the provisions of Section 18.1(a) and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

18.2 No contractor, subcontractor, material men, engineer, architect or any other person whatsoever, other than the applicable Owners shall have any interest in or right to or lien upon any funds held by the Depository. The applicable Owner may jointly at any time provide for a different disposition of funds than that provided for in this Declaration, without the necessity of obtaining the consent of any contractor, subcontractor, materialman, engineer, architect or any other person whatsoever. If at any time the applicable Owners shall jointly instruct the Depository in writing with regard to the disbursement of any funds held by the Depository, then the Depository shall disburse such funds in accordance with said instructions and the Depository shall have no liability to anyone by reason of having so disbursed said funds in accordance with said instructions.

## ARTICLE XIX ESTOPPEL CERTIFICATES

19.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from another Owner (subject to payment of the fees described in Section 19.2, 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) to such Owner's knowledge, whether there is any existing default hereunder by the requesting Owner and, if so, specifying the nature and extent thereof;
- (c) whether there are any sums (other than those arising out of the normal course

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of operation of the Improvements within the previous forty-five (45) days) which the Owner executing such Estoppel Certificate is entitled to receive or demand from the other Owner, and if there is any such sum, specifying the nature and amount thereof;

(d) whether the Owner executing the Estoppel Certificate has performed or is performing work, other than services pursuant to Article VI, the cost of which such Owner is or will be entitled to charge in whole or in part to the other Owner under the provisions hereof, but has not yet charged to the 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 otherwise known by the Owner executing the Estoppel Certificate against the enforcement of the other Owner's rights hereunder;

(f) the total amount of all liens being asserted by the Owner executing the Estoppel Certificate under the provisions of this Declaration, and describing the applicable provision or provisions and the details of any such lien claim;

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

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

(i) the current address or addresses to which notices given to the Owner executing the Estoppel Certificate are required to be delivered under Article XXIII; and

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

19.2 The Owners of the Commercial Property and the Parking Property, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a residential Unit Ownership, may charge a reasonable fee for preparing, executing and delivering the Estoppel Certificate and may, in their sole discretion, limit to items (b) and (f) described above the statements made in the Estoppel Certificate.

19.3 So long as the Residential Property remains subject to the provisions of the Act, (a) an Estoppel Certificate requested from the Owner of the Residential Property shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association, and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and (b) an Estoppel Certificate requested by the Owner of the Residential Property or any Unit Owner or Unit Owners may only be requested by the Condominium Association on behalf of the Owner of the Residential Property, or any such Unit Owner or Unit Owners. Should the Commercial Property become subject to the provisions of the Act, (a) an Estoppel Certificate requested from the Owner of the Commercial Property shall be issued by the Condominium Association on behalf of the Unit Owners and the Condominium Association, and any Estoppel Certificate so issued shall be binding on the Unit

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Owners and such Condominium Association, and (b) an Estoppel Certificate requested by the Owner of the Commercial Property or any Unit Owner or Unit Owners may only be requested by the Condominium Association on behalf of the Owner of the Commercial Property, or any such Unit Owner or Unit Owners.

19.4 In the event an Estoppel Certificate is not completed and delivered to the requesting Owner within ten (10) days of receipt of such request, such Estoppel Certificate shall be deemed approved by the non-responsive Owner with no defaults, sums due, charges to be made, set-offs, claims, counterclaims or defenses, liens, arbitrations or affirmative response to other matters requested being asserted, and the requesting Owner shall have the right to declare the non-responsive owner in default and seek any and all remedies in law or equity against the Defaulting Owner (including without limitation the right to require completion of the Estoppel Certificate) and shall be entitled to reasonable attorney's fees from the Defaulting Owner.

## ARTICLE XX CONDOMINIUM ASSOCIATION ACTING FOR UNIT OWNERS

So long as the Residential Property (or, if and when applicable, the Commercial Property) is subject to the provisions of the Act, all rights, Easements and benefits under this Declaration appurtenant to or enjoyed by the Condominium Property shall be exercised by the Condominium Association on behalf of the Unit Owners, except for such rights or benefits expressly granted to Unit Owners hereunder, if any. Any action to enforce or defend rights, obligations, Easements, burdens and benefits under this Declaration on behalf of the Unit Owners or the Condominium Association shall be taken on behalf of all Unit Owners and the Condominium Association solely by the Condominium Association by its duly authorized officers acting pursuant to authority granted by law, the Condominium Declaration or resolution of the board of managers of the Condominium Association. Except as otherwise noted herein, any requirement for any Unit Owner to furnish a notice or deliver a document may also be performed by the Condominium Association. No Unit Owner or group of Unit Owners shall have the right to take any action under this Declaration or to enforce any of the rights, Easements or privileges granted by this Declaration for the benefit of the Residential Property (or, if applicable, the Commercial Property) or any part thereof. Subject to Article XXIV and Section 12.3, all obligations of the Owner of the Residential Property (and, if applicable, the Commercial Property) under this Declaration shall be the joint and several obligations of the Condominium Association and the Unit Owners.

## ARTICLE XXI SUBDIVISION PLAT; AMENDMENTS TO DECLARATION; ZONING

21.1 By virtue of the recording of this Declaration together with the declaration of condominium for the Residential Parcel, the Total Parcel shall be deemed to be vertically and horizontally separated pursuant to the plats, depictions and legal descriptions attached hereto and to such declaration of condominium, as applicable. Notwithstanding the foregoing, and as described in Recital J above, as soon as reasonably practicable after the date hereof, as determined by Declarants (or their successors or assigns), Declarants may proceed with a plat of subdivision which shall serve to create separately described lots in such subdivision for the Residential Parcel, the Commercial Parcel and the Parking Parcel, and which may further include and subdivide other portions of the Building and the adjacent Building to the north in the sole discretion of Declarants (the "Subdivision Plat"). Should the signature on the Plat of the individual Owners be required by the City of Chicago, then the Owners of the

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Commercial Property, the Parking Property and the Residential Property shall, at their respective costs: (i) cooperate with Declarants in connection with the preparation, execution and recording of the Subdivision Plat (such cooperation shall include, but not be limited to, reviewing and approving or providing reasonably detailed written comments on any drafts of the Subdivision Plat within a reasonable period of time [but in any event within ten (10) days] after a draft is delivered to each respective Owner for such purposes); (ii) execute and deliver the Subdivision Plat promptly after Declarants' request that it do so; and (iii) cause the holder of any mortgages encumbering the Commercial Property, the Parking Property or the Residential Property, as applicable, or any portion thereof (including, without limitation, the holder of any First Residential Mortgage, First Commercial Mortgage and First Parking Mortgage) and any other parties having any interest in the Commercial Property, the Parking Property or the Residential Property, as applicable, to execute and deliver the Subdivision Plat promptly after Declarants' request that it do so, in order to evidence their consent to the Subdivision Plat and their agreement that their mortgage or other interest in the Commercial Property, the Parking Property or the Residential Property, as applicable, is subject and subordinate to the Subdivision Plat and the terms thereof. Declarants and their successors and assigns may, in their sole and exclusive discretion, execute the Subdivision Plat on behalf of and in the name of the Owner of the Commercial Property, the Owner of the Parking Property and the Owner of the Residential Property, and in furtherance of the foregoing, a power coupled with an interest is hereby granted to Declarants and their successors and assigns to execute the Subdivision Plat on behalf of the Owner of the Commercial Property, the Owner of the Parking Property and the Owner of the Residential Property, and any mortgagees holding mortgages encumbering the Commercial Property, the Parking Property or the Residential Property, as applicable, or any portion thereof (including, without limitation, the holder of any First Residential Mortgage, First Commercial Mortgage and First Parking Mortgage) and any other parties having any interest in the Commercial Property, the Parking Property or the Residential Property, as attorney-in-fact for all of such parties. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Commercial Property, the Parking Property or the Residential Property, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the power to Declarant to execute and record the Subdivision Plat on behalf of, and as attorney-in-fact for, the Owner of the Commercial Property, the Owner of the Parking Property and the Owner of the Residential Property and any aforesaid mortgagees.

21.2 Declarants reserve, for themselves and their successors and assigns, the right and power to record an amendment to and/or an amendment and restatement of this Declaration ("Special Amendment") at any time and from time to time. A Special Amendment may, among other things: (i) correct clerical or typographical errors; (ii) revise and/or add to the exhibits attached to this Declaration to reflect "as built" conditions; (iii) revise the legal descriptions attached as exhibits hereto so that they are consistent with the Subdivision Plat; (iv) grant additional Easements (including, without limitation, on, over, under, in, across, through or about the Commercial Property, the Parking Property or the Residential Property, before or after it becomes Condominium Property) as may be necessary in Declarant's reasonable judgment in order to effectuate Maintenance, operation and administration of the Total Property or any portion thereof; (v) provide for additional services to be furnished by one Owner to another Owner and for the payment for such services; and (vi) make such other modifications of, or additions or deletions to, this Declaration as may be necessary, in Declarant's reasonable judgment, in order to effectuate the Maintenance, operation and administration of the Total Property or any portion thereof. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner (and all Mortgagees) 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

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thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Declarants 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 Declarants to act pursuant to rights reserved or granted under this Article XXI shall terminate at such time as Declarants no longer own or control title to any portion of the Total Property.

21.3 Declarants reserve the right and power to make zoning changes, including without limitation, changes or amendments to the PD at any time and from time to time, on behalf of the Owners. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarants to make zoning changes, including without limitation changes or amendments to the PD, on behalf of each Owner (and all Mortgagees) as proxy or attorney-in-fact, as the case may be, except that prior written consent must be obtained from the Project Mortgagee, its successors and assigns, for so long as the Project Mortgagee, or its successors or assigns, retains an interest in any portion of the Total Property prior to the exercise of any such rights by the Declarants. 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 aforesaid reservation of rights and power to Declarants. The right of Declarants to act pursuant to rights reserved or granted under this Article XXI shall terminate at such time as Declarants no longer own or control title to any portion of the land located within the PD.

## ARTICLE XXII ALTERATIONS

22.1 (a) Except as otherwise expressly required or permitted in Articles VI, VII, XI and XV, any Owner (hereinafter in this Article XXII, "Altering Owner") may, at any time, at such Altering Owner's sole cost and expense, make additions, improvements or alterations (hereinafter in this Article XXII, "Alterations") to such Altering Owner's portion of the Improvements, provided that such Alterations comply with the provisions of this Article XXII. Prohibitions and restrictions on Alterations by the Owner of the Residential Property (and, if applicable the Owner of the Commercial Property) shall also apply to individual Unit Owners.

(b) No Alterations shall be made without the prior written consent of the applicable Owner(s), if such Alterations will:

- (i) unreasonably diminish the benefits afforded to an Owner by any Easement or unreasonably interrupt an Owner'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) unreasonably degrade or diminish the services to such other Owner under Article VI;
- (iv) unreasonably increase the cost or expenses for which another Owner is or would

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- be responsible pursuant to Article VI;
- (v) require modification of any other Owner's Property in order to maintain architectural or aesthetic design, without express written permission from and cooperation with said affected Owner; or
- (vi) violate the Planned Development requirements, if any, or the provisions of the Chicago zoning ordinance applicable to the Total Parcel, as said ordinance may be amended from time to time.

(c) If, at any time, the Altering Owner proposes to make any Alterations which require or could possibly require the consent of another Owner, then before commencing or proceeding with such Alterations the Altering Owner shall deliver to such Owner(s) a copy of the plans and specifications showing the proposed Alterations and a notice referring to this Section 22.1. If the other Owner(s) consents to such Alterations or states that its consent is not required, the Altering Owner may proceed to make its Alterations substantially in accordance with said plans and specifications. An Owner whose consent is requested shall make a good faith effort to respond to the Altering Owner within thirty (30) days after its receipt of said plans and specifications from the Altering Owner showing proposed Alterations. If the Altering Owner has not requested the applicable Owner's consent to the proposed Alterations, and if, in the good faith opinion of such Owner(s), the Altering Owner has violated or will violate the provisions of Section 22.1(b), then the other Owner(s) (the "Objecting Party") shall notify the Altering Owner of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of Section 22.1(b), and shall specify the respect or respects in which its provisions are or will be violated. If an Objecting Party in good faith asserts a violation of Section 22.1(b), then the Altering Owner shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Objecting Party may be entitled by reason of the Altering Owner's violation or likely violation of the provisions of this Section 22.1, the Objecting Party shall be entitled to seek and obtain injunctive relief to enjoin any such violation.

(d) If any matter arises between the Owners with respect to whether any Alterations or proposed Alterations violate the provisions of Section 22.1(b) then any Owner may submit such matter to the Architect for its opinion as to whether the Alterations or proposed Alterations violate the provisions of Section 22.1(b). In the event that any Owner disagrees with the determination of the Architect with respect to any such matter, such Owner shall have the right to submit such matter to arbitration in accordance with the provisions of Article XIII, by giving written notice of such election within ten (10) days of such determination. In the event that no Owner so elects to submit such matter to arbitration, the determination of the Architect shall be final and binding on the Owners.

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

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22.2 No Owner shall make any Alterations, allow any use of or undertake any other action relating to their respective portions of the Total Property which would violate the provisions of (i) the PD or the provisions of the Chicago zoning ordinance applicable to the Total Parcel, as said ordinance may be amended from time to time, or (ii) any health codes, building codes, fire codes, or environmental and life safety regulations.

22.3 Applications for building permits to make Alterations which comply with the provisions of this Article XXII shall be filed and processed by the Altering Owner without the joinder of another Owner in such application, unless the City of Chicago or other government agency having jurisdiction thereof requires joinder of the another Owner. If joinder by another Owner is so required, said Owner shall cooperate in executing such application or other instruments as may be necessary to obtain the building permit; provided, however, the Altering Owner shall indemnify and hold harmless such other Owner(s) from and against any and all losses, liabilities, claims, judgments, costs and expenses arising out of the such Owner's execution of the application, permit or other instrument. If an Owner fails to execute said application, permit or instruments when required hereunder to do so, the Altering Owner is hereby irrevocably appointed attorney-in-fact of such Owner (such power of attorney being coupled with an interest) to execute said application, permit or other instrument on behalf of such Owner.

22.4 An Owner performing any Alterations or other work required or provided for under this Declaration shall include in any construction contract a provision pursuant to which the contractor either (i) recognizes the separate ownership of the Residential Property and the Commercial Property and agrees that any lien rights which the contractor or subcontractors have under the mechanics lien laws of the State of Illinois shall only be enforceable against the portion of the Total Property owned by the Owner with whom they have contracted, or (ii) agrees that no lien or claim may be filed or maintained by such contractor or any subcontractors and agrees to comply with the provisions of the mechanics lien law of the State of Illinois in connection with giving notice of such "no lien" provision.

22.5 Notwithstanding anything contained in this Declaration to the contrary, other than the terms, provisions and restrictions set forth in Sections 22.1(b) and 22.2, the terms, provisions and restrictions set forth in this Article XXII shall not apply to any Alterations made by or on behalf of any Owner, tenant or other occupant of the retail or commercial portions of the Commercial Property, including the build-outs and reconstruction from time to time of the interior portions such Owner's, tenant's or occupant's Commercial Space within the Commercial Property and any Alterations affecting the storefront of such space, including, but not limited to, the addition or removal of interior walls (non-load bearing), Alterations to the type or color of storefront glass or mullions; the design or color of any canopy(ies) or awning(s); signs (including awning signs); landscaping; café seating arrangements; or adornments.

22.6 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 such 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 contained herein to the contrary, 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

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sixty (60) days after written notice from an Owner, the Creditor Owner may, at its option, perform, or cause to be performed, the necessary restoration or replacement work, and shall be entitled to recover from the Defaulting Owner all costs and expenses incurred in connection therewith, plus interest thereon as described in Section 12.5.

## ARTICLE XXIII NOTICES

23.1 All notices, demands, elections or other communications required, permitted or desired to be served hereunder shall be in writing and shall be delivered in person, sent by a nationally recognized overnight courier, or mailed as certified or registered mail, postage prepaid, return receipt requested, addressed as below stated:

To the Owner  
of the Residential Property: WALTON ON THE PARK SOUTH, LLC

c/o The Enterprise Companies  
710 West Oakdale Avenue  
Chicago, Illinois 60657  
Attention: Ronald B. Shipka, Jr.

&

c/o Mesirow Financial Real Estate  
353 North Clark Street  
9<sup>th</sup> Floor  
Chicago, Illinois 60654  
Attention: Richard A. Stein, Michael Skatulski

To the Owner of  
the Commercial Property: WALTON ON THE PARK COMMERCIAL, LLC

c/o The Enterprise Companies  
710 West Oakdale Avenue  
Chicago, Illinois 60657  
Attention: Ronald B. Shipka, Jr.

&

c/o Mesirow Financial Real Estate  
353 North Clark Street  
9<sup>th</sup> Floor  
Chicago, Illinois 60654  
Attention: Richard A. Stein, Michael Skatulski

# UNOFFICIAL COPY

To the Owner of  
the Parking Property: WALTON ON THE PARK SOUTH COMMUNITY ASSOCIATION,  
LLC

c/o The Enterprise Companies  
710 West Oakdale Avenue  
Chicago, Illinois 60657  
Attention: Ronald B. Shipka, Jr.

&

c/o Mesirow Financial Real Estate  
353 North Clark Street  
9<sup>th</sup> Floor  
Chicago, Illinois 60654  
Attention: Richard A. Stein, Michael Skatulski

23.2 So long as the Residential Property (and, if applicable, the Commercial Property) remains (or should become) subject to the Act, (i) the Owners of the Commercial Property and the Parking Property (and, if applicable, the Residential Property) may, but shall not be obligated to, give personal notice to any Unit Owner, notice to the Condominium Association hereby being deemed sufficient and effective notice to all Unit Owners, and (ii) the Condominium Association alone shall be empowered to give notice on behalf of any or all Unit Owners under this Declaration, which notice shall be binding on the Unit Owners.

23.3 Any notice, demand, election or other communication delivered in person as aforesaid shall be deemed received when delivered, any notice demand election or other communication delivered by nationally recognized overnight courier as aforesaid shall be deemed received one (1) business day after delivery to such courier, and any notice, demand, election or other communication 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. All Notices shall be sent to the applicable Owner of record or its agent or such party as designated by such Owner of record. The parties and/or addresses for service of notice may be changed by written notice served as hereinabove provided. Nothing herein contained, however, shall be construed to preclude service of any notice, demand, election or other communication in the same manner that service of a summons or legal process may be made.

## ARTICLE XXIV LIMITATION OF LIABILITY

24.1 Notwithstanding anything contained in this Declaration to the contrary, no judgment or decree enforcing obligations under this Declaration against any Owner shall be subject to execution on or be a lien on any assets of such Owner other than that Owner's portion, estate or interest in the Total Property and any proceeds there from, including any insurance or condemnation proceeds relating thereto and any proceeds arising from the operation or use of such Owner's portion of the Total Property.

24.2 In the event of any conveyance or divestiture of title to any portion of or interest in any

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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 there from as hereinabove provided in this Section, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.

## ARTICLE XXV GENERAL

25.1 In fulfilling obligations and exercising rights under this Declaration, each Owner shall cooperate with the other Owner(s) 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 of their 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(s) may reasonably request in order to confirm to such requesting Owner(s) the benefits contemplated hereby, but only so long as any such request does not restrict or abridge the benefits granted the other Owner(s) hereunder or increase the any other Owner's burdens hereunder; and (ii) such grants of easements to and agreements with utility companies and providers of internet access as the other Owner(s) may reasonably request in order to enable such company or entity to furnish services as required by any such Owner.

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

25.3 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.

25.4 Except as otherwise provided herein (including, without limitation, Article XXI hereof), this Declaration may be amended or terminated only by an instrument signed by the then Owners and the First Mortgagees. So long as any portion of the Residential Property (and, if applicable, the Commercial Property) is submitted to the Act, the Condominium Association shall, by its authorized officers, execute all amendments to or any termination of this Declaration on behalf of all Unit Owners and the Owner of the Residential Property (and, if applicable, the Owner of the Commercial Property), which amendments or termination shall be binding on all Unit Owners and the Owner of the Residential Property (and, if applicable, the Owner of the Commercial Property). Any amendment to or termination of this Declaration shall be recorded with the Recorder.

25.5 Except for perpetual Easements provided for under this Declaration, the covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Declaration is recorded,

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after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law and as provided below, for successive periods of ten (10) years, subject to amendment or termination as hereinabove set forth in Article XXI and Section 25.4; 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, easements or other provisions of this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants, easements or other provisions may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Richard M. Daley, Mayor of the City of Chicago, living at the date of this Declaration.

25.6 All the Easements, covenants, rights, agreements, reservations, restrictions and conditions herein contained touch and concern the land and shall run with the land and shall inure to the benefit of and be binding upon the Owners and each subsequent holder of any interest in any portion of the Total Property and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Total Property or any part thereof or interest therein. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the Easements and covenants herein described shall be sufficient to create and reserve such Easements and covenants to the respective grantees or mortgagees of such parcels as fully and completely as though said Easements and covenants were fully recited and set forth in their entirety in any such documents.

25.7 Easements created hereunder shall not be presumed abandoned by non-use or the occurrence of damage or destruction of a portion of the Improvements subject to an Easement unless the Owner benefited by such Easement states in writing its intention to abandon the Easement, provided that any abandonment of an Easement shall not relieve an Owner of any of its obligations under this Declaration except as they relate to such Easement.

25.8 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.

25.9 Except as provided in Section 25.15 below, 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 under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise.

25.10 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.

25.11 No provision of this Declaration shall be deemed to have been waived by any party hereto unless such waiver is in writing and signed by the party making such waiver. The failure of any

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party subject hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Declaration, shall not be deemed a waiver thereof or prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

25.12 Without limiting the terms of Article XXI and Section 25.1, if it becomes clear that additional easements among the portions of the Total Property are necessary or desirable to effectuate the purposes of this Declaration, provided said proposed additional easements will not materially interfere with the use and occupancy of any portion of the Improvements, materially affect access to, or operation of, any portion of the Improvements, or materially increase the operating costs of, or create any additional expense for, any of the Owners, Declarant hereby reserves for itself and its successors and assigns the right to determine, create and grant such additional easements as are necessary. In the event any such new easements are created, this Declaration and the exhibits hereto shall be amended by designating and describing said easements and such amended Declaration shall be signed by the Owners and the First Mortgagees, if necessary, to effectuate the grant or creation of such additional easements, and shall be recorded with the Recorder and shall have the same force, effect and priority as if such new easements were originally contained herein.

25.13 All consents and approvals of any of the Owners or the First Mortgagees shall not be unreasonably withheld or delayed. Any disapproval of or failure to consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefor.

25.14 Notwithstanding any ownership, directly or indirectly, in all or any portion of the Commercial Property, the Residential Property and the Parking Property in one person or entity, whether as of the date hereof or at any time in the future, it is the intent and understanding that all such properties and estates shall remain separate and distinct from each other and shall not be merged into such other estates and properties by reason of such common ownership. A merger of any of such estates and properties can only be effected by a written instrument signed by the then owner of such estates and properties and by each mortgagee of such estates and properties and recorded in the office of the Recorder.

25.15 Each First Mortgagee is given the right, but not the obligation, to act on behalf of the Owner whose interest is mortgaged to it, to cure defaults of such Owner within any applicable cure period set forth herein, and each Owner agrees to accept performance by such First Mortgagee.

25.16 This Declaration may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

[no further text on this page--signature page to follow]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the \_\_\_\_ day of May, 2010.

**RESIDENTIAL DECLARANT:**

**WALTON ON THE PARK SOUTH, LLC**, an Illinois limited liability company

By: MFDE-STATE AND DEARBORN, LLC, an Illinois limited liability company, a manager

By: Mesrow Financial Developer Equity, LLC, an Illinois limited liability company, its member manager

By: Mesrow Financial Real Estate, Inc., an Illinois corporation, its managing member

By: \_\_\_\_\_

Name: Ronald A. Stein

Its: SE. MOUNTAIN DIRECTOR

By: EDC WALTON ON THE PARK SOUTH, LLC, an Illinois limited liability company, a manager

By: EDC WALTON AND DEARBORN, LLC, an Illinois limited liability company, its manager

By: EDC MANAGEMENT, INC., an Illinois corporation, its manager

By: \_\_\_\_\_

Name: Ronald B. Shipka, Jr.

Its: President

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the \_\_\_\_ day of May, 2010.

**RESIDENTIAL DECLARANT:**

**WALTON ON THE PARK SOUTH, LLC**, an Illinois limited liability company

By: MFDE-STATE AND DEARBORN, LLC, an Illinois limited liability company, a manager

By: Mesirow Financial Developer Equity, LLC, an Illinois limited liability company, its member manager

By: Mesirow Financial Real Estate, Inc., an Illinois corporation, its managing member

By: \_\_\_\_\_

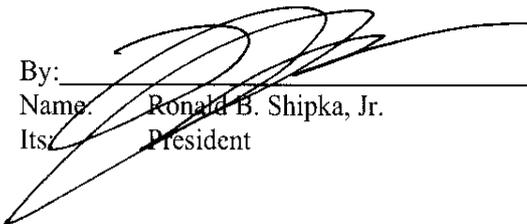
Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: EDC WALTON ON THE PARK SOUTH, LLC, an Illinois limited liability company, a manager

By: EDC WALTON AND DEARBORN, LLC, an Illinois limited liability company, its manager

By: EDC MANAGEMENT, INC., an Illinois corporation, its manager

By:  \_\_\_\_\_

Name: Ronald B. Shipka, Jr.

Its: President

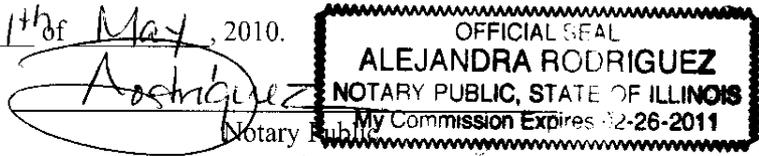
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Ronald Shipka, Jr., as President of EDC MANAGEMENT, INC., which is the Manager of EDC WALTON AND DEARBORN, LLC, which is the Managing Member of EDC WALTON ON THE PARK SOUTH, LLC, which is a Member-Manager of WALTON ON THE PARK SOUTH, LLC, 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 as such manager he signed and delivered the said instrument as manager of said Limited Liability Company as his free and voluntary act, 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 official seal this 11<sup>th</sup> of May, 2010.



STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, as \_\_\_\_\_ of MESIROW FINANCIAL REAL ESTATE, INC., the Managing Member of MESIROW FINANCIAL DEVELOPER EQUITY, LLC, which is the Managing Member of MFDE STATE AND DEARBORN, LLC, which is a Member-Manager of WALTON ON THE PARK SOUTH, LLC, 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 as such manager he signed and delivered the said instrument as manager of said Limited Liability Company as his free and voluntary act, 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 official seal this \_\_\_\_ of \_\_\_\_\_, 2010.

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

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Ronald Shipka, Jr., as President of EDC MANAGEMENT, INC., which is the Manager of EDC WALTON AND DEARBORN, LLC, which is the Managing Member of EDC WALTON ON THE PARK SOUTH, LLC, which is a Member-Manager of WALTON ON THE PARK SOUTH, LLC, 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 as such manager he signed and delivered the said instrument as manager of said Limited Liability Company as his free and voluntary act, 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 official seal this \_\_\_\_\_ of \_\_\_\_\_, 2010.

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

STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Richard Feris, as Managing Director of MESIROW FINANCIAL REAL ESTATE, INC., the Managing Member of MESIROW FINANCIAL DEVELOPER EQUITY, LLC, which is the Managing Member of MFDE STATE AND DEARBORN, LLC, which is a Member-Manager of WALTON ON THE PARK SOUTH, LLC, 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 as such manager he signed and delivered the said instrument as manager of said Limited Liability Company as his free and voluntary act, 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 official seal this 14th of May, 2010.

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



# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the \_\_\_\_ day of May, 2010.

**COMMERCIAL DECLARANT:**

**WALTON ON THE PARK COMMERCIAL, LLC,**  
an Illinois limited liability company

BY: EDC Walton on the Park South, LLC, an Illinois limited liability company, a managing member

By: EDC Walton and Dearborn, LLC, its manager

By: EDC Management, Inc., its manager

By:   
\_\_\_\_\_  
Ronald B. Shipka, Jr., its President

BY: MFDE-State and Dearborn, LLC, a managing member

By: Mesirow Financial Developer Equity, LLC, its sole member

By: Mesirow Financial Real Estate, Inc., its managing member

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the \_\_\_\_ day of May, 2010.

**COMMERCIAL DECLARANT:**

**WALTON ON THE PARK COMMERCIAL, LLC,**  
an Illinois limited liability company

BY: EDC Walton on the Park South, LLC, an Illinois limited liability company, a managing member

By: EDC Walton and Dearborn, LLC, its manager

By: EDC Management, Inc., its manager

By: \_\_\_\_\_  
Ronald B. Shipka, Jr., its President

BY: MFDE-State and Dearborn, LLC, a managing member

By: Mesirow Financial Developer Equity, LLC, its sole member

By: Mesirow Financial Real Estate, Inc., its managing member

By: Michael Stratuski *MLC*

Print Name: MICHAEL STRATUSKI

Its: SR. MANAGING DIRECTOR



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
                                  )SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Ronald Shipka, Jr., as President of EDC MANAGEMENT, INC., which is the Manager of EDC WALTON AND DEARBORN, LLC, which is the Managing Member of EDC WALTON ON THE PARK SOUTH, LLC, which is a Member-Manager of WALTON ON THE PARK COMMERCIAL, LLC, 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 as such manager he signed and delivered the said instrument as manager of said Limited Liability Company as his free and voluntary act, 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 official seal this \_\_\_\_ of \_\_\_\_\_, 2010.

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

STATE OF ILLINOIS )  
                                  )SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Michael Szkatalski, as Senior Managing Director of MESIROW FINANCIAL REAL ESTATE, INC., the Managing Member of MESIROW FINANCIAL DEVELOPER EQUITY, LLC, which is the Managing Member of MFDE-STATE AND DEARBORN, LLC, which is a Member-Manager of WALTON ON THE PARK COMMERCIAL, LLC, 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 as such manager he signed and delivered the said instrument as manager of said Limited Liability Company as his free and voluntary act, 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 official seal this 19<sup>th</sup> of May, 2010.



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

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the \_\_\_\_ day of May, 2010.

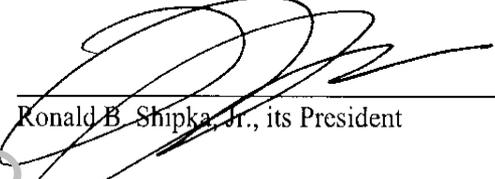
**PARKING DECLARANT:**

**WALTON ON THE PARK COMMUNITY ASSOCIATION, LLC,**  
an Illinois limited liability company

BY: EDC Walton on the Park South, LLC, a managing member

By: EDC Walton and Dearborn, LLC, its manager

By: EDC Management, Inc., its manager

By:   
\_\_\_\_\_  
Ronald B. Shipka Jr., its President

MFDE-State and Dearborn, LLC

By: Mesirow Financial Develop Equity, LLC, its sole member

By: Mesirow Financial Real Estate, Inc., its managing member

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the \_\_\_\_ day of May, 2010.

**PARKING DECLARANT:**

**WALTON ON THE PARK COMMUNITY ASSOCIATION, LLC,**  
an Illinois limited liability company

BY: EDC Walton on the Park South, LLC, a managing member

By: EDC Walton and Dearborn, LLC, its manager

By: EDC Management, Inc., its manager

By: \_\_\_\_\_  
Ronald B. Shipka, Jr., its President

MFDE-State and Dearborn, LLC

By: Mesirow Financial Developer Equity, LLC, its sole member

By: Mesirow Financial Real Estate, Inc., its managing member

By: Michael Szkatvicki *MS*

Print Name: MICHAEL SZKATVICKI

Its: SA. MANAGING MEMBER





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## CONSENT OF MORTGAGEE

Corus Construction Venture, LLC, a Delaware limited liability company ("Project Mortgagee"), the successor in interest to Corus Bank, N.A., holder of a note secured by the lien of a Construction Mortgage, Assignment of Leases and Rents and Fixture Filing on the South Tower Property dated for reference purposes only as of January 17, 2008 and recorded with the Recorder of Deeds of Cook County, Illinois, on March 6, 2008 as Document No. 0806660092 (the "Mortgage"), hereby consents to the execution of and recording of, and subordinates the lien of the Mortgage, to the provisions of the foregoing Declaration of Covenants, Conditions, Restrictions and Easements: Reciprocal Easement Agreement ("REA"), but reserves for itself and its successors and assigns the right to approve in writing any amendments and modifications to such REA.

IN WITNESS WHEREOF, the said Project Mortgagee has caused this instrument to be signed by its duly authorized officers on its behalf on this 30<sup>th</sup> day of May, 2010.

CORUS CONSTRUCTION VENTURE, LLC, a Delaware limited liability company

By: ST Residential, LLC, its Managing Member

By: [Signature]

Name: John M. Barkidjija

Title: Executive Vice President

STATE OF ILLINOIS     )  
  ) SS:  
COUNTY OF COOK     )

I, the undersigned a Notary Public in and for said County and State, do hereby certify that John M. Barkidjija the EVP of ST Residential, LLC, which is managing member of Corus Construction Venture, LLC, and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's free and voluntary act, and as the free and voluntary act of such bank, for the uses and purposes therein set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.



[Signature]  
Notary Public

# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description of Total Parcel

LOT 5 IN WALTON ON THE PARK SUBDIVISION, RECORDED SEPTEMBER 10, 2008 AS DOCUMENT NUMBER 0825418053, IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 4 AND IN THE SOUTH FRACTIONAL HALF OF SECTION 3, ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 2 West Delaware Place, Chicago, Illinois 60610

P.I.N. 17-04-435-030-0000 (expected 2009 PIN)

2008 PINS: Part of 17-04-435-003-0000; Part of 17-04-435-004-0000; Part of 17-04-435-024-0000; Part of 17-04-435-023-0000; Part of 17-04-435-025-0000; Part of 17-04-435-022-0000

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## EXHIBIT B

### Legal Description of Residential Parcel

LOT 5 IN WALTON ON THE PARK SUBDIVISION, RECORDED 09/10/2008, AS DOCUMENT NUMBER 0825418053, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 4 AND IN THE SOUTH FRACTIONAL 1/2 OF SECTION 3, ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,  
EXCEPT THE FOLLOWING DESCRIBED EXCEPTION PARCEL 1 AND EXCEPTION PARCEL 2, IN COOK COUNTY, ILLINOIS:

EXCEPTION PARCEL 1 (ALSO KNOWN AS THE COMMERCIAL PARCEL and PROPOSED LOT 2 IN THE PENDING WALTON ON THE PARK SOUTH SUBDIVISION):

THAT PART OF LOT 5 IN WALTON ON THE PARK SUBDIVISION, RECORDED 09/10/2008, AS DOCUMENT NUMBER 0825418053, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 4 AND IN THE SOUTH FRACTIONAL 1/2 OF SECTION 3, ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN.

DESCRIBED AS FOLLOWS:

LYING ABOVE A PLANE WITH LOWER LIMIT 5 INCHES BELOW THE FLOOR SLAB AND BELOW A PLANE WITH UPPER LIMIT THE CEILING SLAB, (EXCEPT THE UPPER 5 INCHES OF THE CEILING SLAB), MORE PARTICULARLY DESCRIBED AS FOLLOWS: LYING ABOVE HORIZONTAL PLANE WITH ELEVATION 13.83 FEET ABOVE CHICAGO CITY DATUM, AND BELOW A PLANE WITH ELEVATIONS DESCRIBED BELOW, AND LYING WITHIN SAID PLANES HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, MORE PARTICULARLY DESCRIBED AS FOLLOWS, ALL DISTANCES BEING HORIZONTAL, ALL ELEVATIONS BEING CHICAGO CITY DATUM:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5, UPPER LIMIT ELEVATION 28.84;

THENCE NORTH 89°48'27" WEST, 49.85 FEET, UPPER LIMIT ELEVATION 28.84;

THENCE NORTH 00°00'00" EAST, 22.19 FEET, UPPER LIMIT ELEVATION 23.54;

THENCE SOUTH 90°00'00" WEST, 8.30 FEET, UPPER LIMIT ELEVATION 28.48;

THENCE NORTH 00°00'00" EAST, 3.73 FEET, UPPER LIMIT ELEVATION 28.48;

THENCE SOUTH 90°00'00" WEST, 9.25 FEET, UPPER LIMIT ELEVATION 28.48;

THENCE NORTH 00°00'00" EAST, 3.40 FEET, UPPER LIMIT ELEVATION 28.48;

THENCE SOUTH 90°00'00" WEST, 3.40 FEET, UPPER LIMIT ELEVATION 28.33;

THENCE NORTH 00°00'00" EAST, 16.75 FEET, UPPER LIMIT ELEVATION 28.06;

THENCE SOUTH 90°00'00" WEST, 9.51 FEET, UPPER LIMIT ELEVATION 28.16;

THENCE NORTH 00°00'00" EAST, 33.83 FEET, UPPER LIMIT AT ELEVATION 24.95;

THENCE NORTH 90°00'00" EAST, 18.44 FEET, UPPER LIMIT ELEVATION 25.55;

THENCE NORTH 00°00'00" EAST, 47.98 FEET, TO THE NORTH LINE OF LOT 5, UPPER LIMIT ELEVATION 22.00;

THENCE NORTH 90°00'00" EAST, 13.27 FEET, UPPER LIMIT ELEVATION 23.00;

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THENCE SOUTH 00°00'00" EAST, 19.64 FEET, UPPER LIMIT ELEVATION 29.00;  
 THENCE NORTH 90°00'00" EAST, 49.07 FEET, TO THE EAST LINE OF SAID LOT 5, UPPER LIMIT  
 ELEVATION 29.19;  
 THENCE SOUTH 00°14'21" WEST, 108.41 FEET ALONG THE EAST LINE OF LOT 5, TO THE POINT OF  
 BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCEPTION PARCEL 2: (ALSO KNOWN AS PARKING PARCEL and PROPOSED LOT 3 IN THE PENDING  
 WALTON ON THE PARK SOUTH SUBDIVISION):

THAT PART OF LOT 5 IN WALTON ON THE PARK SUBDIVISION, RECORDED 09/10/2008, AS  
 DOCUMENT NUMBER 0825418053, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 4 AND IN  
 THE SOUTH FRACTIONAL 1/2 OF SECTION 3, ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE  
 THIRD PRINCIPAL MERIDIAN,

CONSISTING OF PARTS A, B, C, D AND E, SAID PARTS LYING ABOVE PLANES WITH LOWER LIMIT 5  
 INCHES BELOW THE FLOOR SLAB AND BELOW PLANES WITH UPPER LIMIT THE CEILING SLAB,  
 (EXCEPT THE UPPER 5 INCHES OF THE CEILING SLAB), AND LYING WITHIN SAID PLANES  
 HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, MORE PARTICULARLY DESCRIBED AS  
 FOLLOWS, ALL DISTANCES BEING HORIZONTAL, ALL ELEVATIONS BEING CHICAGO CITY DATUM:

PART A

LYING ABOVE HORIZONTAL PLANE WITH ELEVATION MINUS 12.41 AND BELOW HORIZONTAL  
 PLANE WITH ELEVATION MINUS 2.34, COMMENCING AT THE SOUTHWEST CORNER, BEING THE  
 MOST SOUTHERLY CORNER OF SAID LOT 5;

THENCE SOUTH 89°48'27" EAST, 41.93 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°00'00" EAST, 8.37 FEET;

THENCE NORTH 90°00'00" EAST, 13.56 FEET;

THENCE SOUTH 00°00'00" WEST, 8.42 FEET, TO THE SOUTH LINE OF LOT 5;

THENCE NORTH 89°48'27" WEST, 13.56 FEET, TO THE POINT OF BEGINNING,

ALSO

PART B

LYING ABOVE HORIZONTAL PLANE WITH ELEVATION MINUS 12.41 AND BELOW PLANE WITH  
 ELEVATIONS DESCRIBED BELOW, COMMENCING AT THE SOUTHWEST CORNER, BEING THE MOST  
 SOUTHERLY CORNER OF SAID LOT 5;

THENCE SOUTH 89°48'27" EAST, 41.93 FEET;

THENCE NORTH 00°00'00" EAST, 8.37 FEET, TO THE POINT OF BEGINNING, UPPER LIMIT  
 ELEVATION 32.27;

THENCE NORTH 00°00'00" EAST, 9.22 FEET, UPPER LIMIT ELEVATION 32.27;

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THENCE NORTH 90°00'00" EAST, 13.56 FEET, UPPER LIMIT ELEVATION 31.79;  
 THENCE SOUTH 00°00'00" WEST, 9.22 FEET, UPPER LIMIT ELEVATION 31.79;  
 THENCE SOUTH 90°00'00" WEST, 13.56 FEET, TO THE POINT OF BEGINNING,

ALSO

PART C

LYING BELOW HORIZONTAL PLANE WITH ELEVATION 13.83 AND ABOVE PLANE WITH ELEVATIONS DESCRIBED BELOW, BEGINNING AT THE NORTHEAST CORNER, BEING THE MOST NORTHERLY CORNER OF SAID LOT 5; LOWER LIMIT ELEVATION 2.26;

THENCE SOUTH 00°00'00" EAST, 19.64 FEET, LOWER LIMIT ELEVATION 1.90;

THENCE NORTH 90°00'00" EAST, 49.07 FEET, LOWER LIMIT ELEVATION 1.90;

THENCE SOUTH 00°00'00" WEST, 82.00 FEET, LOWER LIMIT ELEVATION 2.18;

THENCE SOUTH 90°00'00" WEST, 16.16 FEET, LOWER LIMIT ELEVATION 2.18;

THENCE SOUTH 00°00'00" WEST, 5.19 FEET, LOWER LIMIT ELEVATION 2.18;

THENCE SOUTH 90°00'00" WEST, 10.36 FEET, LOWER LIMIT ELEVATION 2.18;

THENCE SOUTH 00°00'00" WEST, 21.11 FEET, TO THE SOUTH LINE OF LOT 5, LOWER LIMIT ELEVATION 2.18;

THENCE NORTH 89°48'27" WEST, 51.69 FEET, LOWER LIMIT ELEVATION 0.63;

THENCE NORTH 00°00'00" EAST, 26.44 FEET, LOWER LIMIT ELEVATION 0.21;

THENCE SOUTH 90°00'00" WEST, 78.20 FEET, LOWER LIMIT ELEVATION MINUS 2.08;

THENCE SOUTH 00°00'00" WEST, 8.57 FEET, LOWER LIMIT ELEVATION MINUS 2.08;

THENCE SOUTH 90°00'00" WEST, 4.63 FEET, LOWER LIMIT ELEVATION MINUS 2.08;

THENCE NORTH 00°00'00" EAST, 8.57 FEET, LOWER LIMIT ELEVATION MINUS 2.08;

THENCE SOUTH 90°00'00" WEST, 12.37 FEET, LOWER LIMIT ELEVATION MINUS 2.31;

THENCE NORTH 45°08'11" WEST, 4.70 FEET, LOWER LIMIT ELEVATION MINUS 2.31;

THENCE SOUTH 90°00'00" WEST, 23.22 FEET, LOWER LIMIT ELEVATION MINUS 2.31;

THENCE NORTH 00°00'00" EAST, 81.58 FEET, LOWER LIMIT ELEVATION MINUS 3.58;

THENCE NORTH 90°00'00" EAST, 18.30 FEET, LOWER LIMIT ELEVATION MINUS 3.58;

THENCE NORTH 00°00'00" EAST, 16.44 FEET, TO THE NORTH LINE OF LOT 5, LOWER LIMIT ELEVATION MINUS 3.49;

THENCE NORTH 90°00'00" EAST, 25.93 FEET, LOWER LIMIT ELEVATION MINUS 3.49;

THENCE SOUTH 00°00'00" WEST, 47.67 FEET, LOWER LIMIT ELEVATION MINUS 3.49;

THENCE NORTH 90°00'00" EAST, 80.66 FEET, LOWER LIMIT ELEVATION MINUS 6.40;

THENCE AT THE LAST DESCRIBED POINT, TO LOWER LIMIT ELEVATION 3.93;

THENCE NORTH 00°00'00" EAST, 47.67 FEET, TO THE NORTH LINE OF LOT 5, LOWER LIMIT ELEVATION 4.17;

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THENCE NORTH 90°00'00" EAST, 31.39 FEET, TO THE POINT OF BEGINNING,

(EXCEPT

THAT PART OF THE ABOVE DESCRIBED PART C, COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 5;

THENCE NORTH 89°48'27" WEST, 83.15 FEET;

THENCE NORTH 00°00'00" EAST, 26.44 FEET;

THENCE SOUTH 90°00'00" WEST, 77.51 FEET;

THENCE NORTH 00°00'00" EAST, 37.64 FEET, TO THE POINT OF BEGINNING;

THENCE NORTH 00°00'00" EAST, 4.05 FEET;

THENCE NORTH 90°00'00" EAST, 17.46 FEET;

THENCE SOUTH 00°00'00" WEST, 2.22 FEET;

THENCE NORTH 90°00'00" EAST, 20.35 FEET;

THENCE NORTH 00°00'00" EAST, 2.30 FEET;

THENCE NORTH 90°00'00" EAST, 9.86 FEET;

THENCE SOUTH 00°00'00" WEST, 7.71 FEET;

THENCE NORTH 90°00'00" EAST, 10.28 FEET;

THENCE NORTH 00°00'00" EAST, 5.42 FEET;

THENCE NORTH 90°00'00" EAST, 8.30 FEET;

THENCE SOUTH 00°00'00" WEST, 19.83 FEET;

THENCE SOUTH 90°00'00" WEST, 48.80 FEET;

THENCE NORTH 00°00'00" EAST, 18.00 FEET;

THENCE SOUTH 90°00'00" WEST, 17.46 FEET, TO THE POINT OF BEGINNING.)

ALSO

PART D

LYING BETWEEN PLANES WITH ELEVATIONS DESCRIBED BELOW, COMMENCING AT THE NORTHWEST CORNER, BEING THE MOST NORTHERLY CORNER OF SAID LOT 5;

THENCE NORTH 90°00'00" EAST, 25.93 FEET, TO THE POINT OF BEGINNING, UPPER LIMIT ELEVATION 13.83, LOWER LIMIT ELEVATION MINUS 3.49;

THENCE SOUTH 00°00'00" WEST, 47.67 FEET, TO THE NORTH LINE OF LOT 5, UPPER LIMIT ELEVATION 13.83, LOWER LIMIT ELEVATION MINUS 3.49;

THENCE NORTH 90°00'00" EAST, 80.66 FEET, UPPER LIMIT ELEVATION 3.93, LOWER LIMIT ELEVATION MINUS 6.40;

THENCE NORTH 00°00'00" EAST, 47.67 FEET, UPPER LIMIT ELEVATION 4.17, LOWER LIMIT ELEVATION MINUS 5.45;

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THENCE SOUTH 90°00'00" WEST, 80.66 FEET, TO THE POINT OF BEGINNING,

ALSO

PART E

LYING ABOVE HORIZONTAL PLANE WITH ELEVATION 13.83 AND BELOW PLANE, WITH ELEVATIONS DESCRIBED BELOW, COMMENCING AT THE SOUTHWEST CORNER, BEING THE MOST SOUTHERLY CORNER OF SAID LOT 5;

THENCE SOUTH 89°48'27" EAST, 38.93 FEET TO THE POINT OF BEGINNING, UPPER LIMIT ELEVATION 32.33;

THENCE NORTH 00°00'00" EAST, 17.58 FEET, UPPER LIMIT ELEVATION 32.33;

THENCE NORTH 90°00'00" EAST, 3.00 FEET, UPPER LIMIT ELEVATION 32.27;

THENCE SOUTH 00°00'00" WEST, 9.22 FEET, UPPER LIMIT ELEVATION 32.27;

THENCE NORTH 90°00'00" EAST, 13.56 FEET, UPPER LIMIT ELEVATION 31.79;

THENCE SOUTH 00°00'00" WEST, 8.42 FEET, UPPER LIMIT ELEVATION 31.79;

THENCE NORTH 89°48'27" WEST, 16.56 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Commonly known as: 2 West Delaware Place, Chicago, Illinois 60610

P.I.N. 17-04-435-030-0000 (affects the Total Parcel)

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## EXHIBIT C

### Legal Description of the Commercial Parcel

(ALSO KNOWN AS PROPOSED LOT 2 IN THE PENDING WALTON ON THE PARK SOUTH SUBDIVISION):

THAT PART OF LOT 5 IN WALTON ON THE PARK SUBDIVISION, RECORDED 09/10/2008, AS DOCUMENT NUMBER 0825418053, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 4 AND IN THE SOUTH FRACTIONAL 1/2 OF SECTION 3, ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

LYING ABOVE A PLANE WITH LOWER LIMIT 5 INCHES BELOW THE FLOOR SLAB AND BELOW A PLANE WITH UPPER LIMIT THE CEILING SLAB, (EXCEPT THE UPPER 5 INCHES OF THE CEILING SLAB), MORE PARTICULARLY DESCRIBED AS FOLLOWS: LYING ABOVE HORIZONTAL PLANE WITH ELEVATION 13.33 FEET ABOVE CHICAGO CITY DATUM, AND BELOW A PLANE WITH ELEVATIONS DESCRIBED BELOW, AND LYING WITHIN SAID PLANES HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, MORE PARTICULARLY DESCRIBED AS FOLLOWS, ALL DISTANCES BEING HORIZONTAL, ALL ELEVATIONS BEING CHICAGO CITY DATUM:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5, UPPER LIMIT ELEVATION 28.84;  
 THENCE NORTH 89°48'27" WEST, 49.85 FEET, UPPER LIMIT ELEVATION 28.84;  
 THENCE NORTH 00°00'00" EAST, 22.19 FEET, UPPER LIMIT ELEVATION 28.54;  
 THENCE SOUTH 90°00'00" WEST, 8.30 FEET, UPPER LIMIT ELEVATION 28.48;  
 THENCE NORTH 00°00'00" EAST, 3.73 FEET, UPPER LIMIT ELEVATION 28.48;  
 THENCE SOUTH 90°00'00" WEST, 9.25 FEET, UPPER LIMIT ELEVATION 28.48;  
 THENCE NORTH 00°00'00" EAST, 3.40 FEET, UPPER LIMIT ELEVATION 28.48;  
 THENCE SOUTH 90°00'00" WEST, 3.40 FEET, UPPER LIMIT ELEVATION 28.33;  
 THENCE NORTH 00°00'00" EAST, 16.75 FEET, UPPER LIMIT ELEVATION 23.06;  
 THENCE SOUTH 90°00'00" WEST, 9.51 FEET, UPPER LIMIT ELEVATION 28.16;  
 THENCE NORTH 00°00'00" EAST, 33.83 FEET, UPPER LIMIT AT ELEVATION 24.95;  
 THENCE NORTH 90°00'00" EAST, 18.44 FEET, UPPER LIMIT ELEVATION 25.55;  
 THENCE NORTH 00°00'00" EAST, 47.98 FEET, TO THE NORTH LINE OF LOT 5, UPPER LIMIT ELEVATION 22.00;  
 THENCE NORTH 90°00'00" EAST, 13.27 FEET, UPPER LIMIT ELEVATION 23.00;  
 THENCE SOUTH 00°00'00" EAST, 19.64 FEET, UPPER LIMIT ELEVATION 29.00;  
 THENCE NORTH 90°00'00" EAST, 49.07 FEET, TO THE EAST LINE OF SAID LOT 5, UPPER LIMIT ELEVATION 29.19;  
 THENCE SOUTH 00°14'21" WEST, 108.41 FEET ALONG THE EAST LINE OF LOT 5, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT D

### Legal Description of the Parking Parcel

(ALSO KNOWN AS PROPOSED LOT 3 IN THE PENDING WALTON ON THE PARK SOUTH SUBDIVISION):

THAT PART OF LOT 5 IN WALTON ON THE PARK SUBDIVISION, RECORDED 09/10/2008, AS DOCUMENT NUMBER 0825418053, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 4 AND IN THE SOUTH FRACTIONAL 1/2 OF SECTION 3, ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,

CONSISTING OF PARTS A, B, C, D AND E, SAID PARTS LYING ABOVE PLANES WITH LOWER LIMIT 5 INCHES BELOW THE FLOOR SLAB AND BELOW PLANES WITH UPPER LIMIT THE CEILING SLAB, (EXCEPT THE UPPER 5 INCHES OF THE CEILING SLAB), AND LYING WITHIN SAID PLANES HORIZONTAL BOUNDARIES PROJECTED VERTICALLY, MORE PARTICULARLY DESCRIBED AS FOLLOWS, ALL DISTANCES BEING HORIZONTAL, ALL ELEVATIONS BEING CHICAGO CITY DATUM:

#### PART A

LYING ABOVE HORIZONTAL PLANE WITH ELEVATION MINUS 12.41 AND BELOW HORIZONTAL PLANE WITH ELEVATION MINUS 2.34, COMMENCING AT THE SOUTHWEST CORNER, BEING THE MOST SOUTHERLY CORNER OF SAID LOT 5;

THENCE SOUTH 89°48'27" EAST, 41.93 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°00'00" EAST, 8.37 FEET;

THENCE NORTH 90°00'00" EAST, 13.56 FEET;

THENCE SOUTH 00°00'00" WEST, 8.42 FEET, TO THE SOUTH LINE OF LOT 5;

THENCE NORTH 89°48'27" WEST, 13.56 FEET, TO THE POINT OF BEGINNING,

ALSO

#### PART B

LYING ABOVE HORIZONTAL PLANE WITH ELEVATION MINUS 12.41 AND BELOW PLANE WITH ELEVATIONS DESCRIBED BELOW, COMMENCING AT THE SOUTHWEST CORNER, BEING THE MOST SOUTHERLY CORNER OF SAID LOT 5;

THENCE SOUTH 89°48'27" EAST, 41.93 FEET;

THENCE NORTH 00°00'00" EAST, 8.37 FEET, TO THE POINT OF BEGINNING, UPPER LIMIT ELEVATION 32.27;

THENCE NORTH 00°00'00" EAST, 9.22 FEET, UPPER LIMIT ELEVATION 32.27;

THENCE NORTH 90°00'00" EAST, 13.56 FEET, UPPER LIMIT ELEVATION 31.79;

THENCE SOUTH 00°00'00" WEST, 9.22 FEET, UPPER LIMIT ELEVATION 31.79;

THENCE SOUTH 90°00'00" WEST, 13.56 FEET, TO THE POINT OF BEGINNING,