THIS INSTRUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

Adam T. Berkoff, Esq. DLA Piper LLP (US) 203 North LaSalle Street Suite 1900 Chicago, Illinois 60601



Doc#: 1130510066 Fee: \$92.00 Eugene "Gene" Moore RHSP Fee:\$10.00 Cook County Recorder of Deeds
Date: 11/01/2011 03:06 PM Pg: 1 of 29

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FIRST AMENUMENT TO OPERATION AND RECIPROCAL EASEMENT AGREEMENT FOR SIX NORTH MICHIGAN AVENUE

THIS FIRST AMEND'MENT ("Amendment") amends that certain Operation and Reciprocal Easement Agreement for Six North Michigan Avenue, Chicago, Illinois recorded on October 23, 2008 in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder") as Document No. 0829718124 (the "REA"), and is executed as of this 27 day of October, 2011 by 6 NM RETAIL, INC., an Illinois corporation ("6NMR"), and the SIX NORTH MICHIGAN CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation (the "Association"). 6NMR and the Association sometimes are individually referred to as a "Party" and collectively referred to as the "Parties".

RECITALS (

- A. 6NMR (as the "Owner of the Retail Property" under the REA) and 6 NM Development, Inc., an Illinois corporation (as the "Declarant" under the REA), entered into the REA in order to govern the operation of a mixed-use, mixed-ownership residential condominium, commercial retail and parking facility project located at Six North Michigan Avenue, Chicago, Illinois (the "Project") and legally described on Appendix 1 hereto.
- B. Control of the Six North Michigan Condominium Association has been writed over pursuant to Section 18.2 of the Illinois Condominium Property Act and, pursuant to Article XX and Section 24.4 of the REA, the Association is empowered to act on behalf of all unit owners in the Condominium Property (as such term is defined in the REA) and to enter into any amendments of the REA on behalf of such unit owners.
- C. The Parties desire to amend the REA to address certain operational matters regarding the Project and to correct certain scriveners errors.

NOW, THEREFORE, the Parties do hereby amend and supplement the REA as follows:

- 1. <u>Consumer Price Index</u>. In Section 1.29, the definition for the term "Consumer Price Index" is hereby deleted in its entirety and is hereby replaced with the following: "means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Chicago, Gary, Lake County, IL-IN-WI All Items (Base Year 1982-4 = 100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the Owners if such index is no longer available".
- 2. <u>Shared Easement Area</u>. In Section 1.80, the following language is hereby added to the end of the last sentence: "from and after the date upon which—and for so long as—the Owner of the Retail Property elects to exercise its rooftop easement rights as provided in Section 2.2 (J) below".
- 3. <u>Storage Area</u>. Section 1.81 and the defined term "Storage Area" are hereby deleted in their entirety. Final addition, "Exhibit F" and all references to "Exhibit F" are hereby deleted in their entirety.
- 4. Roof Area Easement Rights. In Section 2.2 (J), the following language is hereby added to the end of such Section: Notwithstanding anything to the contrary contained herein, unless and until the Owner of the Retail Property exercises any of the easement rights contemplated in this Subsection (J), the Owner of the Retail Property shall not be obligated to share in the costs of elevator operation, Maintenance, requir or replacement, or the equitable share of costs relating to the use of the Facilities or Shared Facilities referred to in subsection (iii) above or any other costs associated with access to the Roof Areas. Once the Owner of the Retail Property exercises any of the easement rights contemplated in this Subsection (J), the Owner of the Retail Property shall be obligated to share in such costs in the marner contemplated in this Agreement, but only for so long as the Owner of the Retail Property continues to exercise such easement rights."
- 5. <u>Retail Signage</u>. Section 2.2 (L) is hereby deleted in its entirety and the following language is hereby inserted in its place: "An exclusive Easement for the benefit of the Retail Property to install and Maintain signage on the exterior walls of the Condominium Building, but only on such portion of the Condominium Building shown on <u>Ext. bit G</u> attached hereto (the "Exclusive Retail Signage Area")."
- 6. Shared Easement Area. In the first sentence of Section 6.1, "one (1) hour per week" is hereby changed to "two (2) hours per week".
- 7. <u>Utilities</u>. In Section 6.3, at the end of the second sentence of Section 6.3, the following parenthetical is hereby inserted: "(except with respect to HVAC services as provided in <u>Schedule 1.79</u>, which shall be shared on the basis of the Owner of the Condominium Property bearing ninety-five percent (95%) of the cost and the Owner of the Retail Property bearing five percent (5%) of the cost)".
- 8. <u>Notice</u>. Section 22.1 is hereby modified such that the notice addresses and information set forth in Section 22.1 are hereby deleted in their entirety and are hereby replaced with the following notice addresses and information:

To the Owner of the Retail Property:

6 NM Retail Inc.

c/o FBOP Corporation

Suite 210

1100 Lake Street

Oak Park, Illinois 60301 Attention: Thomas Gallagher

Fax: 708-948-0031

Email: tgallagher@fbopcorp.com

With a copy to:

DLA Piper LLP (US)

203 North LaSalle Street, Suite 1900

Chicago, Illinois 60601

Attention: Adam T. Berkoff, Esq.

Fax: (312) 213-8083

Email: adam.berkoff@dlapiper.com

Stopology Of Coo, And a copy to:

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

including the following:

US Eank

11 West Madison Street Oak Perk, Illinois 60302 Attention: David Daniel Fax: (708) 445-3284

Email: david.dar ıel@usbank.com

To the Owner of the Condominium

Property:

Six North Michigan Condominium Association

c/o Phoenix Rising Management Group

946 West Randolph Street Chicago, Illinois 60607 Attention: Jennifer Lewellen

Fax: (312) 726-4140

Email: JL@phoenixrisinggroup.com

With a copy to:

Levenfeld Pearlstein LLC 2 North LaSalle Street

Suite 1300

Chicago IL 60602

Attention: Howard Dakoff, Esq.

Fax: (312) 346-8434

Email: hdakoff@lplegal.com

- 9. <u>Perpetuities</u>. In Section 24.14, the name "George W. Bush" is hereby deleted and the name "Barack Obama" is hereby inserted in its place.
- 10. <u>Administrative Fee.</u> For any payments required to be made by the Owner of the Retail Property to the Owner of the Condominium Property under the REA (as amended hereby), the Owner of the Condominium Property shall be entitled to an administrative fee equal to eight percent (8%) of the aggregate payments required to be made by the Owner of the Retail Property to the Owner of the Condominium Property.
- 11. <u>Domestic Water</u>. Notwithstanding anything to the contrary contained herein or contained in the REA, the Owner of the Retail Property shall not be obligated to share in any costs relating to domestic water consumption, domestic water facilities or domestic water equipment as inc domestic water service to the Retail Property is metered separately from the domestic water service to the Condominium Property.
- 12. <u>Schedules and Exhibits</u>. Attached to this Amendment are a series of Schedules and Exhibits. Those Schedules and Exhibits attached hereto are replacements of the corresponding Schedules and Exhibits in the REA. Specifically, the replacement Schedules and Exhibits are as follows:

Schedule of Exhibits and Schedules

Donodale of Emilions	
Exhibit E	Trash Area
Exhibit F	INTENTIONALLY OMITTED
Exhibit G	Retail Signage Area and Exclusive Retail Signage Area
Exhibit H	Signage Diagram for the Condominium Property
Schedule 1.22	List of Condominium Easemen, Facilities
Schedule 1.69	List of Retail Easement Facilities
Schedule 1.79	List of Shared Facilities
Schedule 4.2(A)(i)	List of Retail Property Use Prohibitions
Schedule 4.2(A)(ii)	Retail Property Signage Restrictions
Schedule 4.2(B)	Condominium Property Signage Restrictions

Schedule 6.4 Services Provided by Owners

Any Exhibits or Schedules not specifically addressed above or attached here shall remain as the original Exhibits and Schedules, as the case may be, to the REA, unmodified and in full force and effect.

- Terms. Capitalized terms used in this Amendment shall have the same meanings as ascribed to them in the REA, except to the extent they are amended or otherwise defined in this Amendment.
- Continuation. All terms, conditions and provisions of the REA, as expressly amended 14. and supplemented by this Amendment, are hereby ratified, confirmed and shall continue to apply with full force and effect. In the event of any inconsistency between this Amendment and the REA, this Amendment shall control.

[SIGNATURE PAGES FOLLOW]

Property of Cook County Clark's Office

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IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first above written.

day and year first above written.	
	OWNER OF THE RETAIL PROPERTY:
	6 NM RETAIL, INC., an Illinois corporation
Pooling Contraction of the contr	By: T V
STATE OF ILLINOIS	v
COUNTY OF COOK) SS.	
aforesaid, do hereby certify that Thomas is	Votary Public in and for the County and State
to be the same person whose name is subscribe	day in person and acknowledged thathe
signed and delivered the First Amendment as his and voluntary act of such Company, for the uses a	and purposes therein set forth.
GIVEN under my hand and notarial seal t	his day of 1000, 2011. Notary Public
My Commission Expires: <u>April 13,</u> 20	OFFICIAL 557.L PAULA PETRAGALLO Notary Public - State of Illinois My Commission Expires Apr 13, 2014

OWNER OF THE CONDOMINIUM PROPERTY:

SIX NORTH MICHIGAN CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, in its capacity as agent for all unit owners in the Condominium Property pursuant to the REA

•	By: The
	Name: John S. Ham Itan
	Its: Pr-1: dr-t
90-	
STATE OF ILLINOIS)	
) ss.	
COUNTY OF COOK	•
-	
I Jannifer Edl no	, a Notary Public in and for the County and State
aforesaid, do hereby certify that Jo-	Husil as President
	CCIDOMINIUM ASSOCIATION, an Illinois not-for-
	agent for all unit owners in the Condominium Property
pursuant to the REA (the "Company"), personally known to me to be the same person whose
	irst Amendment as such Ide I. Hand the Praise appeared
	knowledged that he signed and delivered the First
	voluntary act, and as the free and voluntary act of such
Company, for the uses and purposes the	erein set forth.
GIVEN under my hand and not	arial seal this 22 day of Goober, 2011
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	Notary Public
	Trong guestic
My Commission Expires:	
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	OFFICIAL SEA
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	5.06/20/14
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#### **CONSENT OF MORTGAGEE**

US Bank, holder of that certain [Mortgage, Security Agreement, Assignment of Lease and Rents and Fixture Filing] dated and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on as Documents, as amended from time to time, hereby consents to the execution, and, and, and	he nt on
and recording of the attached First Amendment to Operation and Reciprocal Easement Agreement and agrees that its mortgage is subject and subordinate thereto	nt
IN WITNESS WHEREOF, US Bank has caused this Consent to be signed by its dula authorized officers on its behalf this / day of	ly //
STATE OF ILLINOIS ) SS.	
COUNTY OF COOK )	
I, LISA M. FORD , a Notary Public in and for th	ıe
County and State aforesaid, do hereby certify that <u>DAVIA DAVIE</u> , the <u>Vice</u> PRESIDENT of US Bank, a [national banking as ociation], as such <u>Vice President</u>	Ŧ
ppeared before me this day in person and acknowledged thatrceigned, sealed and delivere he Consent as his/her free and voluntary act, and as the free and voluntary act of such bank, for he uses and purposes therein set forth.	d
GIVEN under my hand and notarial seal this 17th day of October, 2011.	
Misa M force	
Notary Public	
Ay Commission Expires: 02/25/20/5  OFFICIAL SEAL LISA M FORD Notary Public - State of Illinois My Commission Expires Feb 25, 2015	

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#### **SCHEDULE OF EXHIBITS AND SCHEDULES**

#### LIST OF EXHIBITS:

Legal Description of the Condominium Parcel
Legal Description of the Retail Parcel
Legal Description of the Total Parcel
Roof Area
Trach Area
INTENTIONALLY OMITTED
Exclusive Retail Signage Area
Signage Diagram for Condominium Property
INTENTION ALLY OMITTED

#### LIST OF SCHEDULES:

I	INTENTION ALLY OMITTED
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LIST OF SC	HEDULES:
	0/_
1.22	List of Condominium Easen ent Facilities
1.69	List of Retail Easement Facilities
1.79	List of Shared Facilities
4.2(A)(i)	List of Retail Property Use Prohibitions
4.2(A)(ii)	Retail Property Signage Restrictions
4.2(B)	Condominium Property Signage Restriction
6.4	Services Provided by Owners
	7.6
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PIN:

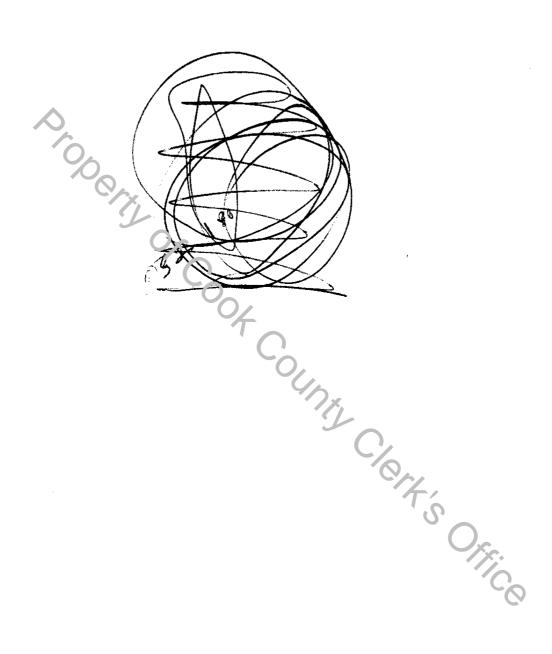
17-10-312-008-0000

ADDRESS: 6 N Michigan Ave., Chicago, Illinois 60602

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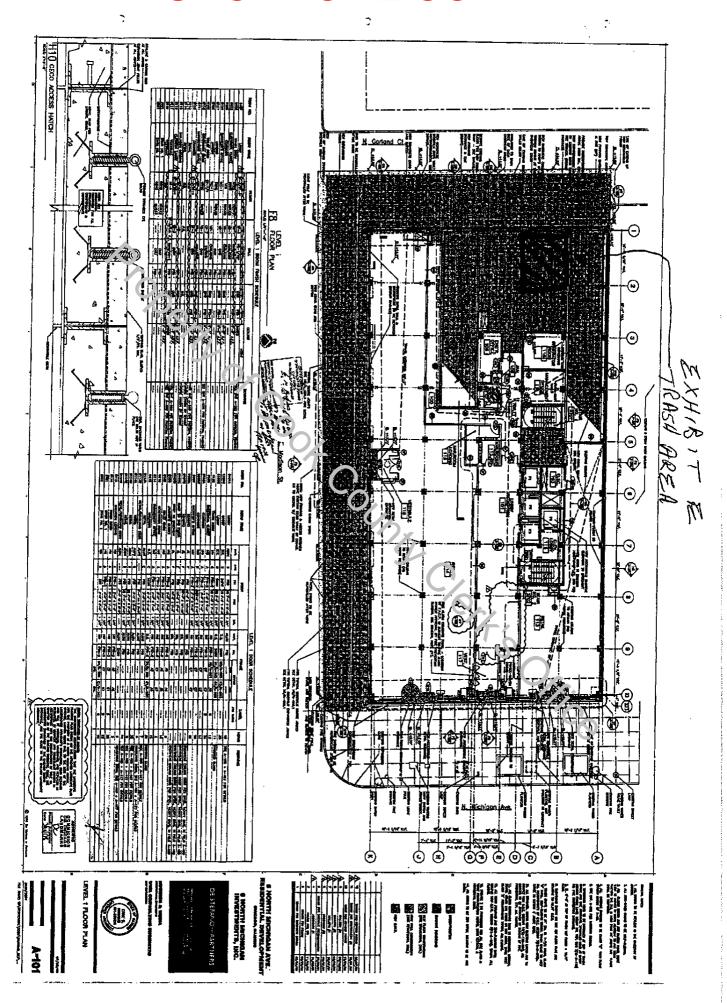
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EXHIBIT E Trash Area



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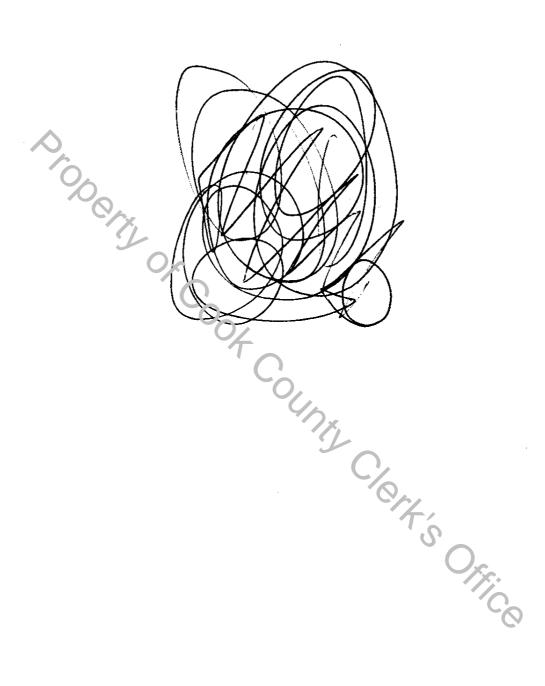


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EXHIBIT G • Ruil 5: Area

Exclusive Retail Signage Area

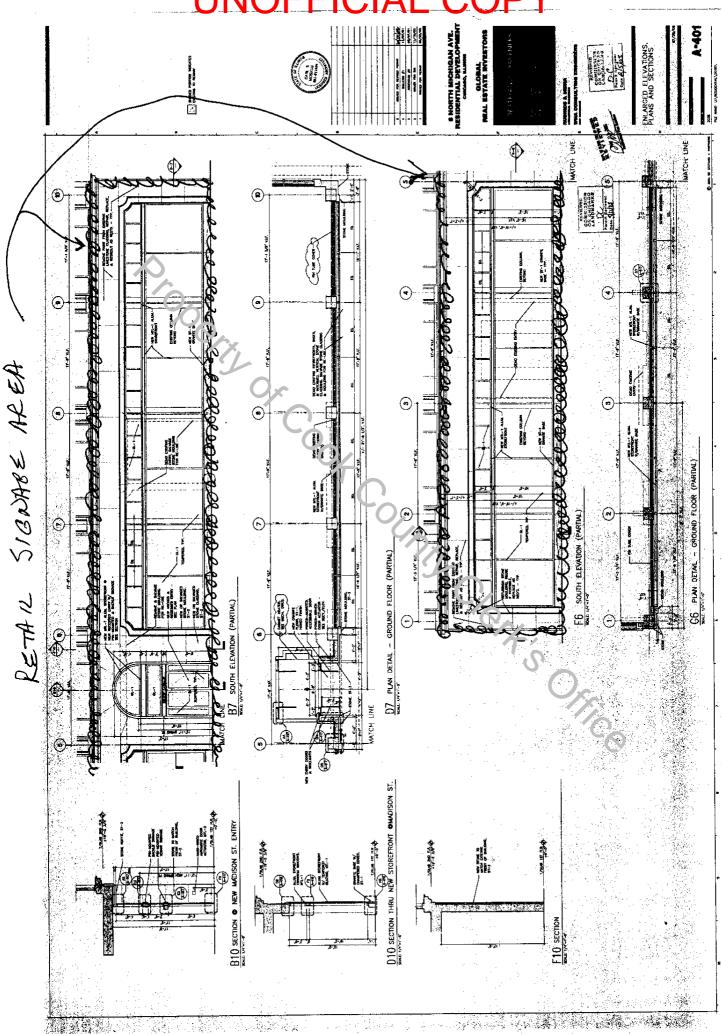


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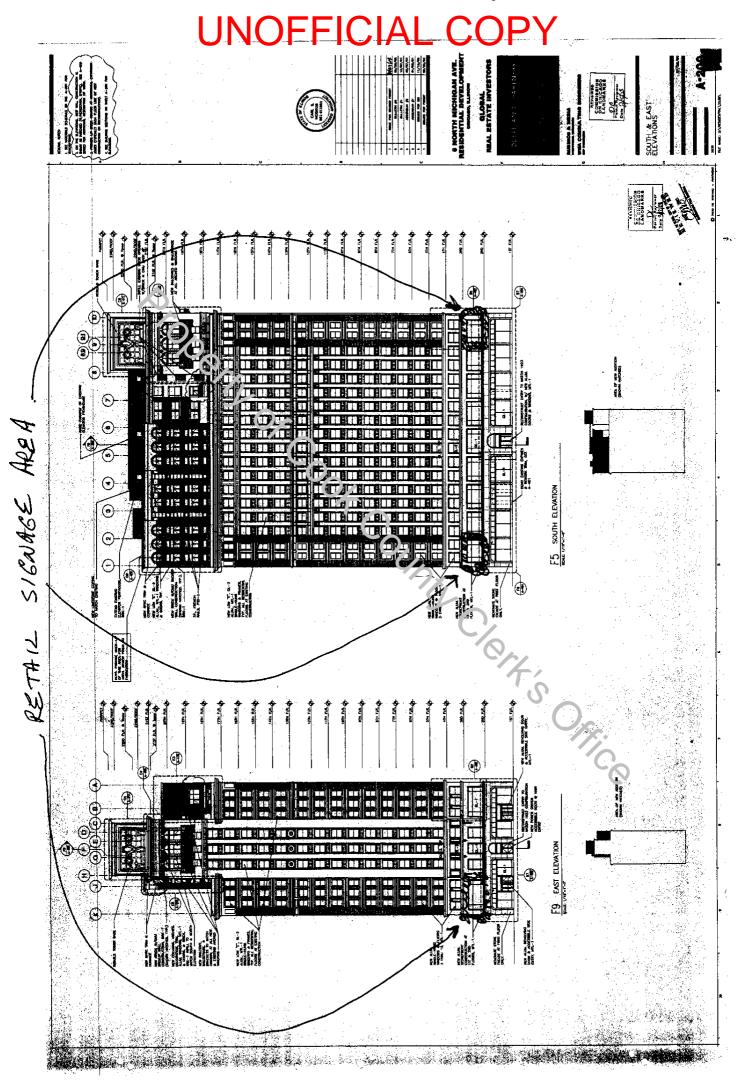
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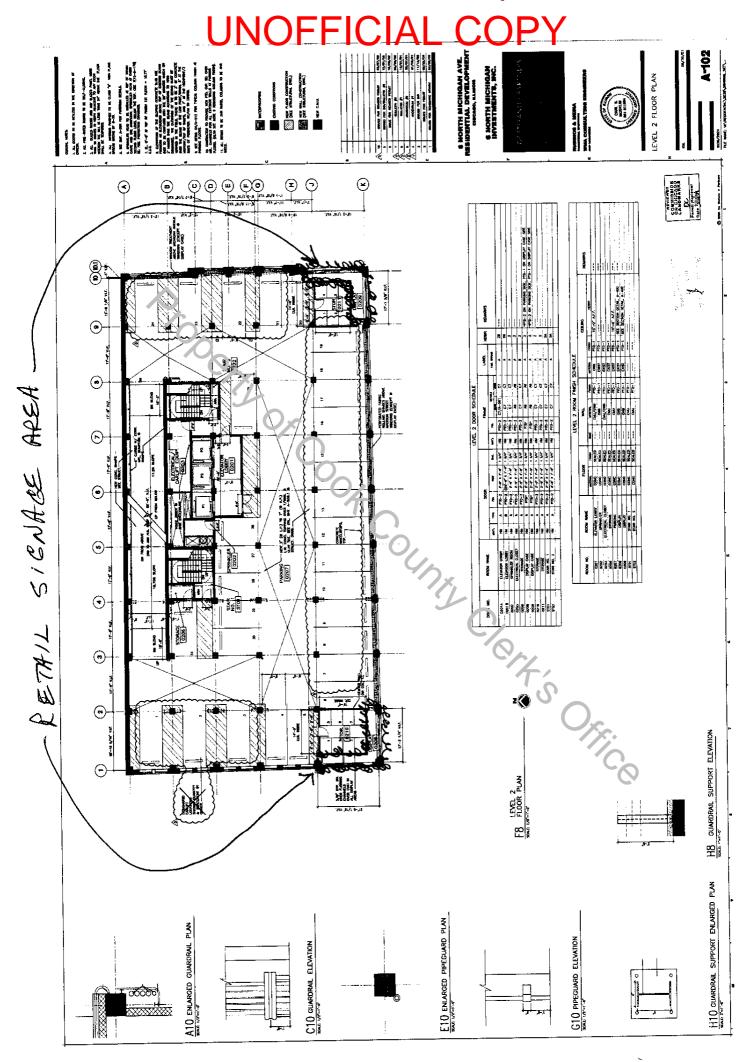


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RETAIL SIGNABLE AREA

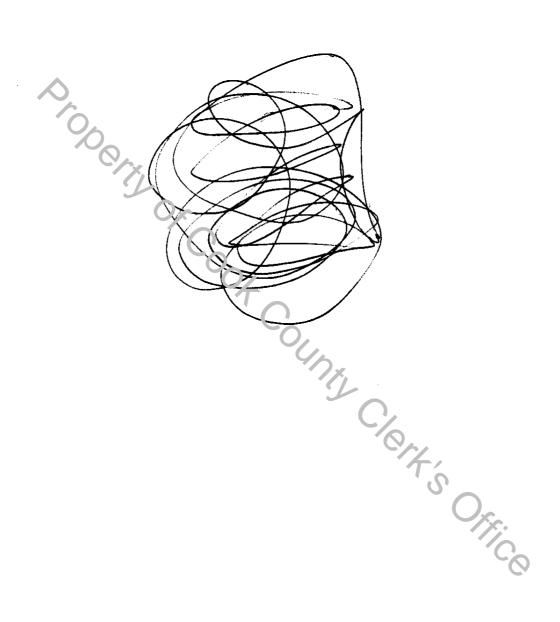
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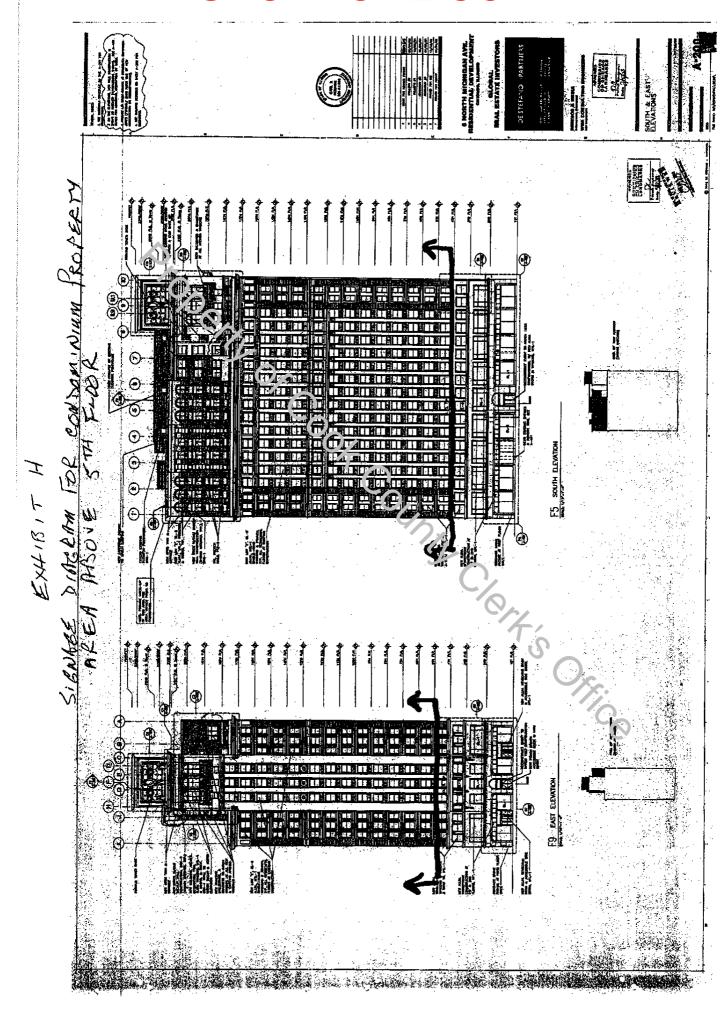
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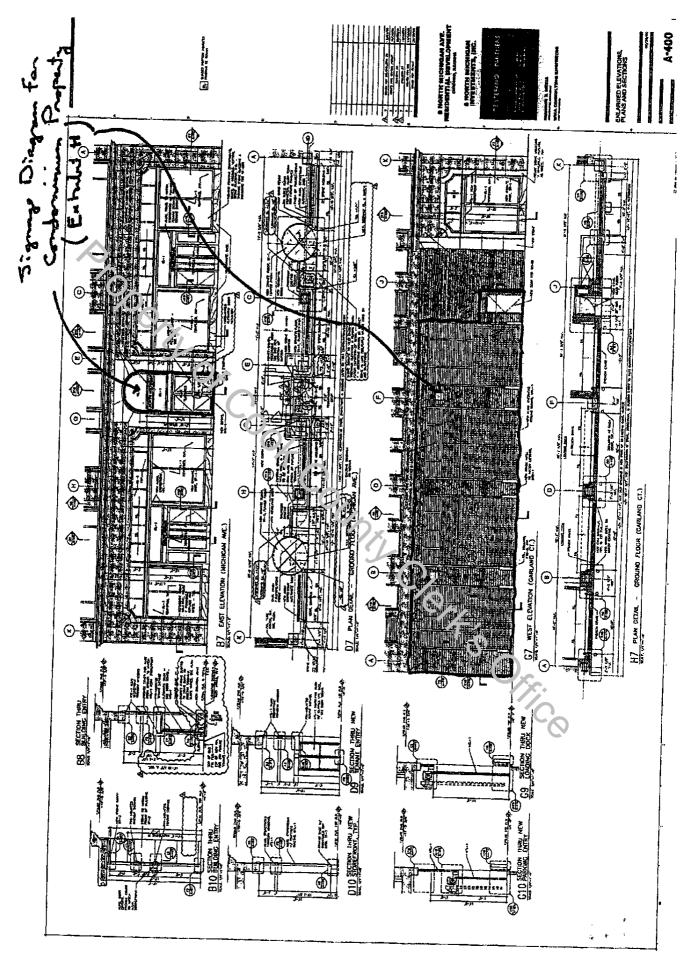
EXHIBIT H
Signage Diagram for the Condominium Property



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### SCHEDULE 1.22 List of Condominium Easement Facilities

- 1 Cables, conduits, pipes and wiring (including ancillary accessories) (collectively, the "Lines"), as well as ductwork, located on the Retail Property. Except as otherwise provided in this Agreement, the Owner of the Condominium Property shall have the non-exclusive right to subsequently install additional Lines in those locations of the Retail Property where similar Lines benefiting the Condominium Property currently exist (the "Existing Locations"), provided that: (i) the Owner of the Condominium Property gives prior written notice thereof to the Owner of the Retail Property; (ii) space is available in such locations; (iii) such installation will not unreasonably interfere with the reasonable use and enjoyment of the Retail Property by the Owner thereof; and (iv) the Owner of the Condominium Property is responsible for all costs relating to the installation, maintenance and removal of the additional Lines (including, without limitation, repairing any damage resulting therefrom). Subject to Section 24.1 the Owner of the Condominium Property may not install Lines in any locations of the Retail Property (other than the Existing Locations) without the prior written consent of the Owner of the Retail Property, such consent not to be unreasonably withheld or delayed.
- 2. Storm drainage piping from the roof, running within the Retail Property into a storm system.
- 3. Security system devices, junction boxes, equipment supports and Lines located at the exterior walls within the sign band above the first floor exterior entrance to the corridor and to the north of the first floor exterior intrance to the Condominium Building at the Condominium vestibule.

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### SCHEDULE 1.69 List of Retail Easement Facilities

- 1 Cables, conduits, pipes and wiring (including ancillary accessories) (collectively, the "Lines"), as well as ductwork, located on the Condominium Property. The owner of the Retail Property shall have the non-exclusive right to subsequently install additional Lines in those locations of the Condominium Property where similar Lines benefiting the Retail Property currently exist (the "Existing Locations"), provided that: (i) the Owner of the Retail Property gives prior notice thereof to the Owner of the Condominium Property; (ii) space is available in such locations; (iii) such installar on will not unreasonably interfere with the reasonable us and enjoyment of the Condomirium Property by the Owner thereof; and (iv) the Owner of the Retail Property is responsible for all costs relating to the installation, maintenance and removal of the a Litional Lines (including, without limitation, repairing any damage resulting therefrom) Except as otherwise provided in this Agreement, the Owner of the Retail Property may not install Lines in any locations of the Condominium Property (other than the l'xisting Locations) without the prior written consent of the Owner of the Condominium Property, such consent not to be unreasonably withheld or delayed.
- 2 Retail HVAC supply and return piping and exhaust ductwork; electrical conduit; and electrical power, temperature control and communications wiring servicing the first floor Retail Property and running vertically to beiter and chiller facilities in the Condominium Property.
- 3. Retail water meters located within the Trash Room and associated domestic water piping running into the Retail Property.

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#### SCHEDULE 1.79 List of Shared Facilities

Structural members, footings, caissons, foundations, columns and beams and any other supporting components located within or constituting a part of the Building (other than the facades of the Building).

Facilities located within the walls, floor and ceiling of the loading dock (including, but not limited to the two overhead garage doors and rear steel door leading to the service corridor) and Gariand Court door.

Any portion of any utility system (including, without limitation, sanitary sewer) which passes through both the Confominium Property and the Retail Property.

Boilers and chillers which supply the HVAC system, including the cost of gas and electricity to supply the boilers and chillers (the costs for the operation, Maintenance, repair and replacement of which shall be shared by the Owners in accordance with the following percentages: Owner of the Condo minium Property, 95%; Owner of the Retail Property, 5%)

Main control system for boilers and chillers (the costs for the operation, Maintenance, repair and replacement of which shall be shared by the Owners in accordance with the following percentages: Owner of the Condominium Projecty, 95%; Owner of the Retail Property, 5%).

Fire sprinkler system pumps and controls.

Main water pump and controls (the costs for the operation, Maintenance, repair and replacement of which shall be shared by the Owners in a cordance with the following percentages: Owner of the Condominium Property, 95%; Owner of the Retail Property, 5%).

Corridor 105 and Loading Dock: maintenance of floor coverings, painting, light fixtures, Office heaters and pest control.

Generator and controls.

All Roof Areas for the Building.

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#### SCHEDULE 4.2(A)(i) List of Retail Property Use Prohibitions

The following uses shall be prohibited within the Retail Property, either as a primary use or secondary use:

- 1. Uses entailing environmental hazards, including, without limitation:
  - a. dry cleaning establishments having dry cleaning plants on premises; or
  - any manufacturing type uses of any kind or nature.
- 2. Adult book or video stores or similar uses involving the sale of pornographic material's...
- 3. Uses including live nude or semi-nude entertainment, including so-called "gentlemen's chibs" or strip clubs
- 4. Motion picture theatres displaying "NC-17" or "X" rated movies.
- 5. Gambling establishments, including, without limitation, off-track betting facilities (even if permitted by the Zoning Ordinance), unless approved by all of the Owners.
- Sunty Clark's Office 6. Pet shop, veterinary clinic, or animal raising.
- 7. Any use of pyrotechnics.

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#### **SCHEDULE 4.2(A)(ii) Retail Property Signage Restrictions**

Any and all exterior Building signage permitted by this Agreement shall:

- comply with the Zoning Ordinance and any other applicable law including, but not (i) limited to, any Landmarks ordinance;
- be installed, maintained and operated in a first-class manner; (ii)
- (iii) signs must be professionally designed and fabricated;
- (iv) if lighted, be backlit; and
- Instruct be instruction in the control of the contr (v)

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# SCHEDULE 4.2(B) Condominium Property Signage Restrictions

Any and all exterior Building signage permitted by this Agreement shall:

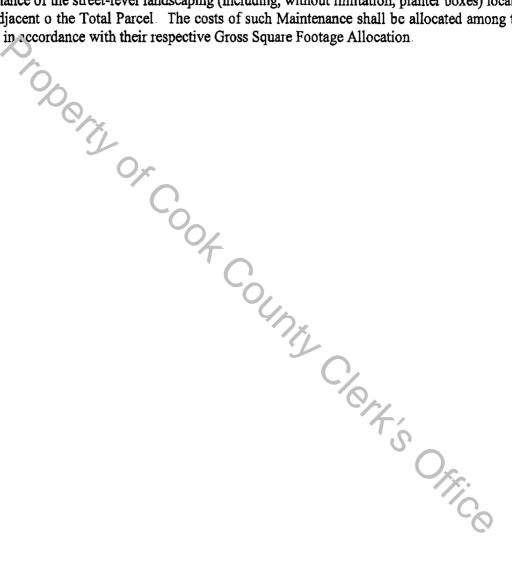
- (i) comply with the Zoning Ordinance and any other applicable law including, but not limited to, any Landmarks ordinance;
- (ii) be installed, maintained and operated in a first-class manner;
- (iii) signs must be professionally designed and fabricated;
- (iv) if lighted, Le backlit; and
- (v) not contain any "aplight" component, neon or similar lighting, strobe lights, moving parts or day-glow colors.

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#### SCHEDULE 6.4 Services Provided by Owners

The Owner of the Condominium Property shall be responsible for: (i) snow removal, cleaning and other Maintenance of the public sidewalks and driveways bordering the Total Parcel; and (ii) Maintenance of the street-level landscaping (including, without limitation, planter boxes) located on or adjacent o the Total Parcel. The costs of such Maintenance shall be allocated among the Owners in accordance with their respective Gross Square Footage Allocation.



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# APPENDIX 1 TO FIRST AMENDMENT TO OPERATION AND RECIPROCAL EASEMENT AGREEMENT

#### **LEGAL DESCRIPTION OF THE PROJECT**

(Attached hereto)

