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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

for

875 N. MICHIGAN AVENUE  
CHICAGO, ILLINOIS

DATED AS OF JUNE 25, 2012

BY

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a Delaware limited liability company

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Exhibit B	Legal Description of the Office Parcel
Exhibit C	Legal Description of the Restaurant Parcel
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Exhibit E	Legal Description of the Retail Parcel
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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS** is made as of June 25, 2012, by W2007 GOLUB JHC REALTY, L.L.C., a Delaware limited liability company ("**Declarant**").

### RECITALS:

A. The terms used in the Recitals, if not otherwise defined in the Recitals, shall have the meanings ascribed to them in **Article I** of this Declaration.

B. The building and improvements constructed upon the Entire Property (the "**Building**") consist of a 100-story mixed-use tower containing (i) retail space, (ii) office space, (iii) restaurant space; (iv) an observatory; (v) a parking garage (vi) broadcast facilities and equipment, and (vii) residential condominium units. The Building is commonly known in Chicago, Illinois as the John Hancock Center.

C. The Building has been vertically separated into two primary components: the Existing Residential Property and the Commercial Property. The Commercial Property currently contains the following uses: retail, restaurant, office, an observatory, broadcast towers and a parking garage, with related common areas and amenities. The Existing Residential Property contains six hundred twenty five (625) residential condominium units and related common elements and amenities. The interrelationship between the Existing Residential Property and the Commercial Property is governed by the Grant Deed and by the Residential Condominium Operating Agreement.

D. Declarant has or intends to vertically separate further and divide the Commercial Property into several different vertically subdivided components as generally depicted on **Exhibit J**: the Retail Property, the Office Property, the Restaurant Property, the Observatory Property and the Broadcast Property. Each of the Retail Property, the Office Property, the Restaurant Property, the Observatory Property and the Broadcast Property will be structurally and/or functionally dependent on one or more of the others and will depend upon one or more of the others, to some extent, for structural support, enclosure, ingress and egress, utility services and certain other facilities and services necessary for their respective operation and use.

E. Declarant desires by this Declaration to provide for the efficient operation of the different components of the Commercial Property, to assure the harmonious relationship of the owners of each such Property, and to protect the respective values of the different components of the Commercial Property by providing for, declaring and creating certain easements, covenants, conditions and restrictions benefiting and burdening each of the Retail Property, the Office Property, the Restaurant Property, the Observatory Property, and the Broadcast Property. The Office Owner will be the Owner responsible for supervising the management of the Commercial Property, but may delegate any or all of these obligations to a Commercial Property Manager or some other service provider by contract as provided in **Article XVI**.

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F. The interrelationship of the Commercial Property with the Existing Residential Property will continue to be governed by the Residential Condominium Operating Agreement and the Grant Deed, and nothing in this Declaration is intended to alter the terms and conditions contained in those agreements and the manner in which the interrelationship between the Commercial Property and the Existing Residential Property is governed by those agreements.

NOW, THEREFORE, the Declarant hereby declares that the Commercial Property and any part thereof is and shall be owned, held, operated, occupied, mortgaged, transferred, assigned, sold, conveyed and accepted subject to this Declaration. Declarant does hereby further declare that this Declaration and each of the provisions, easements, covenants, conditions, restrictions, burdens, uses, privileges and charges set forth herein or created hereunder shall exist at all times hereafter among, 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 Commercial Property, and each of the foregoing shall run with the land, property and space encumbered by this Declaration.

## ARTICLE I

### DEFINITIONS

1.1 **Definitions.** Whenever used in this Declaration, the following terms shall have the respective meanings specified below:

“**2012 Equivalent Dollars**” has the meaning set forth in **Section 32.23**.

“**AAA**” has the meaning set forth in **Section 17.2**.

“**Act**” means the Illinois Condominium Property Act of the State of Illinois, 765 ILCS 605/1 et seq., as amended from time to time.

“**Actual Costs**” shall mean the reasonable out-of-pocket costs and expenses incurred by or on behalf of the Office Owner in furnishing a particular service or item under this Declaration (it being agreed that the Office Owner shall not be required to competitively bid the cost of every such service or item which is expected to cost less than Fifty Thousand Dollars (\$50,000), or unless expressly required herein), without any profit or mark-up to the Office Owner on account thereof, including the cost of providing supplies, materials, contractors, architects, engineers, consultants, and Commercial Building personnel in furnishing such service or item.

“**Additional Facilities**” has the meaning set forth in **Section 16.16**.

“**Alteration**” has the meaning set forth in **Article XXVI**.

“**Altering Owner**” has the meaning set forth in **Section 26.1**.

“**Annual Reconciliation Statement**” has the meaning set forth in **Section 16.3(A)(ii)**.

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**“Appetito Retail Lease”** means that certain lease between Declarant’s predecessor in interest and Luino, Inc., an Illinois corporation d/b/a L’ Appetito dated as of December 1, 1994, as amended by that certain first amendment dated March 8, 2004, and by that certain second amendment dated May 12, 2011, as may be further amended from time to time, for space in the Retail Property.

**“Architect”** has the meaning set forth in **Article XXI**.

**“Artwork”** has the meaning set forth in **Section 29.2**.

**“Assessment”** has the meaning set forth in **Section 16.3(A)(i)**.

**“Assessor”** means the Assessor of Cook County, Illinois, or any replacement governmental official or unit of government responsible for performing the functions performed by the Assessor as of the Effective Date of this Declaration.

**“Association”** means the Existing Association and any New Association, as the context requires.

**“Award”** has the meaning set forth in **Section 19.1**.

**“Broadcast Component Emergency Generator”** means the emergency generator located in the Parking Garage helix owned by the Broadcast Owner and reserved for the exclusive use of the Broadcast Owner.

**“Broadcast Component Expansion Easement”** means the area located above the top of the ceiling of the 99th floor of the Building, extending to the highest vertical delineation of the Broadcast Parcel, and bounded on the sides by the boundaries of the Building, extended vertically from the roof of the Building, as delineated on **Exhibit N** attached hereto and made a part hereof.

**“Broadcast Component Transmission Shaft Easement”** means the conduit, cables, equipment and transmission lines serving the Broadcast Parcel, connecting to the Facilities and Component Facilities located in the west transmission shaft and the east transmission shaft of the Broadcast Parcel, as shown on **Exhibit O** attached hereto and made a part hereof.

**“Broadcast Grid Extension Structure”** means the metal structure used for mounting equipment and Facilities and Component Facilities located on the roof of the Building, serving the Broadcast Parcel.

**“Broadcast Facilities”** has the meaning set forth in **Section 6.1(R)**.

**“Broadcast Owner”** means the Person that owns fee simple title to the Broadcast Parcel.

**“Broadcast Parcel”** means that part of the Commercial Parcel legally described in **Exhibit A** attached hereto.

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**“Broadcast Property”** means the Broadcast Parcel, together with all Alterations, improvements, build-outs and fixtures located within the Broadcast Parcel.

**“Building”** has the meaning set forth in the recitals hereof.

**“Building Signage Plan”** the meaning set forth in **Section 7.1(E)**.

**“Business Day(s)”** means all days, excluding Saturdays, Sundays, and all days observed by the City of Chicago, the State of Illinois, or the United States of America.

**“Capital Project”** or **“Capital Projects”** means any project (or projects) for the construction, renovation, replacement or improvement of real property, fixtures or equipment, the costs of which may be defined in accordance with generally accepted accounting principles as being of a capital nature, including, without limitation, capital improvements, capital repairs, capital equipment, and capital tools.

**“Casualty Affected Owners”** has the meaning set forth in **Section 14.3**.

**“Casualty Insurance Notice”** has the meaning set forth in **Section 13.2(B)**.

**“Cheesecake Factory Retail Lease”** means that certain lease between Declarant’s predecessor in interest and the Cheesecake Factory, Inc. dated as of February 25, 1994, as may be amended from time to time, for space in the Retail Property.

**“Chicago”** or **“City of Chicago”**, when used in this Declaration, means and refers to the municipal corporation constituting the City of Chicago, Cook County, Illinois, and its departments and agencies, and any successor or replacement municipal corporation or entity.

**“Closing Owner”** has the meaning set forth in **Section 11.5(G)**.

**“Closing Program”** has the meaning set forth in **Section 11.5(F)**.

**“Combination”** has the meaning set forth in **Section 26.6**.

**“Combination Amendment”** has the meaning set forth in **Section 26.6**.

**“Commercial Building”** means all structures and improvements located on or appurtenant to the Commercial Parcel, including, the footings, foundations, columns, piles, Exterior Facade, fixtures, Facilities and Component Facilities, sidewalks, plaza area, walkways, barriers, driveways, ramps and landscaping now or hereafter located in, on, under, within or upon the Commercial Parcel, including all alterations, modifications, replacements and additions thereto, but excluding any portion of the Existing Residential Building.

**“Commercial Parcel”** means the land, property and space (including air rights) legally described in **Exhibit I** attached hereto (excluding the Commercial Building).

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**“Commercial Permittees”** means (i) any Commercial Property Manager, if applicable and (ii) all Persons entitled by lease or license to use or occupy space within the Commercial Building (including Tenants), and their respective agents, employees, contractors, guests, invitees and licensees.

**“Commercial Policy”** has the meaning set forth in **Section 13.1(A)(i)**.

**“Commercial Property”** means the Commercial Parcel improved with the Commercial Building.

**“Commercial Property Expense Account”** has the meaning set forth in **Article XVI** hereof.

**“Commercial Property Expense Allocation(s)”** means the percentage share or other method of allocation of joint or common expenses assessed or incurred with respect to the Commercial Property, attributable to each Owner, as established and provided in **Article XVI** and in **Exhibit 16.1** and **Exhibit 16.2**, as such percentages may be adjusted pursuant to **Section 16.1**.

**“Commercial Property Expense Budget”** has the meaning set forth in **Article XVI** hereof.

**“Commercial Property Expenses”** means any and all costs and expenses that an Owner is obligated to pay pursuant to this Declaration for the performance of any and all Commercial Property Maintenance Obligations, including all Operating Expenses and all Net Capitalized Costs of Replacement for the Maintenance provided, the service furnished, or the Capital Project performed.

**“Commercial Property Maintenance Obligations”** means the obligations required to be performed and services furnished by the Office Owner with respect to the Commercial Property, as defined in and more fully described in **Section 16.1**.

**“Commercial Property Management Fee”** refers to the fee payable to or at the direction of the Office Owner, charged to and shared by the Owners as described in **Article XVI**.

**“Commercial Property Manager”** means the entity selected and engaged (if any) by the Office Owner from time to time to undertake the management of those portions of the Commercial Property, Commercial Property Public Common Areas, the Facilities and the Facilities Areas the Office Owner is required to manage under the terms of this Declaration, on behalf of all the Owners, as provided in **Article XVI** hereof, which entity and its controlled or controlling affiliates (A) (i) shall have had at least ten (10) years experience managing other first-class, high-rise buildings in the City of Chicago or other major metropolitan areas, (ii) shall at that time manage at least three (3) million square feet of other first-class, high-rise buildings, and (iii) such entity is of a good character and reputation, or (B) shall be approved by a majority of the Owners.



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**“Commercial Property Public Common Areas”** means those portions of the Commercial Property generally depicted on **Exhibit S** attached hereto and made a part hereof, reserved for use in common by the Owners and their respective Commercial Permittees, subject to the Rules and Regulations promulgated by the Office Owner, as provided in this Declaration, together with any other limitations on use established in this Declaration. The Commercial Property Public Common Areas may be enlarged, reduced or modified from time to time and at any time by the Office Owner, (i) in the sole discretion of the Office Owner, exercised in good faith, with respect to those portions of the Commercial Property Public Common Areas located in the first floor of the Commercial Building; (ii) with the consent of the Retail Owner (which consent shall not be unreasonably withheld), for portions of the Commercial Property Public Common Areas located in the concourse area of the Commercial Building (including, without limitation, the Outdoor Concourse Space), and (iii) in the reasonable discretion of the Office Owner, with respect to any other portions of the Commercial Property Public Common Areas, provided that in all cases such changes do not materially impair access to, or the use, operation, and enjoyment of, the Commercial Property by an Owner or by such Owner’s Commercial Permittees, or materially increase such Owner’s operating costs, unless the Office Owner obtains the written consent of such affected Owner, which consent shall not be unreasonably withheld; provided, however, that an affected Owner may withhold consent in its sole discretion in the event any enlargement, reduction or modification of the Commercial Property Public Common Areas would result in (a) an easement right granted to such Owner being revoked, or (b) a reduction in the size of such Owner’s Parcel, other than a reduction which only has a de minimis adverse effect on the use, enjoyment, operation of, or access to, such Owner’s Parcel and does not materially, unreasonably or inequitably increase the operating costs of such Owner (excepting any additions, replacements or supplements to facilities within any Property as described in **Section 16.17**).

**“Commercial Property Services”** means any and all services including heating, ventilation and air conditioning, cleaning, engineering, security, fire protection, electricity, sewer and water, snow removal, insurance procurement and similar operational service requirements or matters, required to be provided or furnished to the Owners under this Declaration to enable an Owner to own, access, operate, use and enjoy such Owner’s portion of the Commercial Property, all as generally described in **Article XVI** and in **Exhibit 16.1**.

**“Commercial Unit”** means any Unit established or created to be legally used for commercial, and not residential, purposes.

**“Commercial Unit Owner”** means any owner of the fee simple interest in a Commercial Unit.

**“Common Areas”** has the meaning set forth in **Section 16.14**.

**“Comparable Building(s)”** means any first-class, class A, high rise (of at least ten (10) stories), mixed-use (including office and retail) building located on North Michigan Avenue and the immediate vicinity thereof, which, as of the Effective Date, shall primarily mean Water Tower Place, 900 N. Michigan Avenue, 940 N. Michigan Avenue (also known as One Mag Mile) and 108 East Superior Street.

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**“Component Facilities”** means any and all facilities, fixtures, machines, and equipment, including annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment (including heating, ventilating, air conditioning, exhaust and plumbing equipment), fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring, any air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, and window washing which serve only one Parcel, the major components of which are more particularly set forth on **Exhibit H** attached hereto, and any replacement of, modifications, upgrades or additions to, any of the items described in this definition.

**“Component Facilities Maintenance”** has the meaning set forth in **Section 14.1(B)**.

**“Condominium Property”** means the portion of any Parcel which has been divided into a condominium regime pursuant to the Act after the Effective Date to create separate condominiums.

**“Construction Coordination Fee”** means a fee payable to the Office Owner for coordination of construction activities of an Owner or an Owner’s Tenant, with respect to improvements being made to an Owner’s portion of the Commercial Building, together with the review of any impact of such construction activities on the Commercial Building or any of its Facilities. The Construction Coordination Fee shall be in an amount equal to two percent (2%) of the Construction Costs of the project in question, but not to exceed Thirty Thousand and No/100 Dollars (\$30,000.00). The Construction Coordination Fee shall be paid contemporaneously with payments of the Construction Costs. In the event that the Office Owner elects to retain a Commercial Property Manager in connection with such construction activities, no additional fees may be charged to the applicable Owner(s) or Owner(s)’ Tenant (but the foregoing shall not limit the right to be reimbursed for any reasonable out-of-pocket third party costs incurred in connection with any construction projects and activities).

**“Construction Costs”** means the lesser of (a) the total actual hard costs (but not soft costs) incurred for any construction project authorized or approved by the Office Owner pursuant to this Declaration for the Commercial Property and (b) the amount of hard costs (but not soft costs) in the approved Commercial Property Expense Budget for such project or in a revised Commercial Property Expense Budget based on upgrades and/or changes in the scope of work for such project.

**“Construction Supervision Fee”** means a fee payable to the Office Owner for supervising and administering the construction projects and activities undertaken by the Office Owner in connection with the performance of the Office Owner’s Commercial Property Maintenance Obligations pursuant to this Declaration. The Construction Supervision Fee shall be in an amount equal to: (i) four percent (4%) of the Construction Costs of the project and activity in question when such Construction Costs are equal to or less than Five Hundred Thousand Dollars (\$500,000); (ii) three percent (3%) of the Construction Costs of the project and



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activity in question when such Construction Costs are greater than Five Hundred Thousand Dollars (\$500,000) but less than or equal to One Million Five Hundred Thousand Dollars (\$1,500,000); and(iii) two and one-half percent (2.5 %) of the Construction Costs of the project and activity in question when such Construction Costs are greater than One Million Five Hundred Thousand Dollars (\$1,500,000); provided, however that in no event shall such fee exceed Five Million Dollars (\$5,000,000). The Construction Supervision Fee may be increased from time to time with the consent of all of the Owners, which consent shall not be unreasonably withheld. The Construction Supervision Fee shall be paid to the Office Owner contemporaneously with payments of the Construction Costs. In the event that the Office Owner elects to retain a Commercial Property Manager in connection with such construction activities, no additional construction supervisory fees may be charged to the applicable Owner(s) or Owner(s)' Tenant (but the foregoing shall not limit the right to be reimbursed for any reasonable out-of-pocket third party costs incurred in connection with any construction projects and activities).

**"Consumer Price Index"** has the meaning set forth in **Section 32.23**.

**"Creditor Owner"** except where otherwise defined under this Declaration in a specific context, means an Owner to whom a payment of money or other duty or obligation is owed under this Declaration by any other Owner who 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.

**"CZO"** has the meaning set forth in **Section 11.5(A)**.

**"Declarant"** has the meaning set forth in the preamble.

**"Declaration"** means this Declaration of Covenants, Conditions, Restrictions and Easements, including all exhibits, appendices, amendments, restatements and supplements thereto.

**"Default Rate"** means the interest rate charged a Defaulting Owner, and payable to a Creditor Owner, as provided in **Section 15.5**.

**"Defaulting Owner"** except where otherwise defined under this Declaration in a specific context, means an Owner who has failed to make a payment of money owed under this Declaration to any other Owner or 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.

**"Depositary"** has the meaning set forth in **Section 22.1**.

**"Disputing Parties"** has the meaning set forth in **Section 17.1(B)**.

**"Divided Parcel"** means any Parcel for which all or any portion of such Parcel is a Condominium Property and/or a Subdivision Property or in which the fee simple interest is otherwise divided into two or more parts, or has two or more owners under a similar ownership

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structure, the effect of which is that there are multiple Persons which own a fee simple interest in different parts of such Parcel.

**“Divided Parcel Owner”** has the meaning set forth in **Article XXV**.

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

**“Effective Date”** means the date set forth above in the preamble of this Declaration.

**“Eligibility Requirements”** means, with respect to any Person, that such Person (i) has total assets (in name or under management or advisement) in excess of \$650,000,000, and (ii) is regularly engaged in the business of making or owning (or, in the case of a pension advisory firm or similar fiduciary, regularly engaged in managing investments in) commercial real estate loans (including mezzanine loans to direct or indirect owners of commercial properties, which loans are secured by pledges of direct or indirect ownership interests in the owners of such commercial properties) or operating commercial properties.

**“Emergency Situation”** means (a) a situation impairing or imminently likely to impair structural support to all or any portion of the Building (including the Commercial Building) or cause a cessation of Commercial Property Services; or (b) a situation causing or imminently likely to cause bodily injury to Persons or substantial physical damage to all or any portion of the Building (including the Commercial Building) or any property within or about the Building (including the Commercial Building); or (c) a situation involving the Building causing or imminently likely to cause substantial economic loss to any Owner; or (d) a situation which materially interferes with the beneficial use of any Owner of its respective portion of the Commercial Property and, with respect to subsections (c) and (d) above only, which remains in existence three (3) days following written notice to the Owner or Owners whose respective portion of the Commercial Property would be affected by the exercise of the rights afforded to the other Owners under this Declaration as a result of the existence of an Emergency Situation or who are responsible for rectifying or eliminating such situation pursuant to the terms of this Declaration. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

**“Entire Property”** means the Commercial Property and the Existing Residential Property.

**“Estoppel Certificate”** has the meaning set forth in **Section 24.1**.

**“Existing Agreements”** has the meaning set forth in **Article VIII**.

**“Existing Association”** means the 175 East Delaware Place Homeowner’s Association, an Illinois not-for-profit corporation, formed for the purpose of administering the Existing Residential Property pursuant to the Act.

**“Existing Residential Building”** means the building and improvements located within the Existing Residential Parcel.

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**“Existing Residential Condominium Declaration”** means the Declaration of Condominium Ownership and Easements, Restrictions, Covenants and By-laws for 175 East Delaware Place Homeowner’s Association recorded August 10, 1973, with the Recorder as document number 22434263, as amended from time to time.

**“Existing Residential Condominium Operating Agreement”** means the Operating Agreement for the Building dated August 8, 1973 and recorded as document number 22434264 against the Entire Property, by and between the John Hancock Mutual Life Insurance Company, a Massachusetts corporation and 175 East Delaware Place Homeowner’s Association, an Illinois not-for-profit corporation, as amended from time to time.

**“Existing Residential Parcel”** means that part of the Entire Property legally described in **Exhibit F** attached hereto, which is the 175 East Delaware Place Condominium.

**“Existing Residential Permittees”** means the Residential Unit Owners, of Units in the Existing Residential Building, and all Persons now or hereafter entitled by lease or license to use or occupy space within the Existing Residential Building, and their respective agents, employees, contractors, guests, invitees and licensees.

**“Existing Residential Property”** means the Existing Residential Parcel improved with the Existing Residential Building.

**“Existing Zoning”** means Downtown Mixed Use District DX 12 (or any new or replacement zoning classification under the Chicago Zoning Ordinance applicable to the Commercial Property).

**“Exterior Appearance Review Event”** has the meaning set forth in **Section 11.5(F)**.

**“Exterior Façade”** means the exterior building envelope of the Commercial Building, including the exterior wall, exterior façade, joints, seals, windows, window systems and the columns, braces, beams, and trusses providing structural support for these elements.

**“Facilities”** means any and all facilities, fixtures, machines, and equipment, including annunciators, antennae, boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment (including, without limitation, heating, ventilating, air conditioning, exhaust and plumbing equipment), fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, switches, switchboards, systems, tanks, transformers, valves, wiring, air conditioning, alarm, antenna, circulation, cleaning, communication, cooling, electric, elevator, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, window washing, and the like used in providing services from time to time in any part of the Commercial Building, the major components of which are more particularly set forth on **Exhibit H** attached hereto, and any replacement of, modifications, upgrades or additions to, any of the items described in this definition, which serve more than one Owner and/or which are required to be Maintained by the Office Owner for the benefit of the

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other Owners in accordance with Article XVI. The definition of "Facilities" shall not include any Component Facilities. For example, the items described above which are part of the heating, ventilating and air conditioning system serving the Commercial Building shall be included within the definition of "Facilities" up to the point of distribution to a Parcel, but the fans and ductwork located within the Parcel which serve only that Parcel shall not be included within the definition of "Facilities," but will be part of the "Property" of that Parcel and owned by the Parcel Owner.

**"Facilities Area"** or **"Facilities Areas"** means the rooms and/or areas in which the Facilities and/or Component Facilities are located in the Commercial Building.

**"First Class Standard"** means, with respect to any duty or obligation, the performance of such duty or obligation in a manner that is consistent with the performance of similar duties and obligations at Comparable Buildings.

**"Fundamental Use Change"** has the meaning set forth in Section 11.5(C).

**"GNMAA"** means the Greater North Michigan Avenue Association, which provides guidelines and design criteria for signage, landscaping, lights and seasonal decorations for businesses located on North Michigan Avenue, Chicago, Illinois from Wacker Drive to Oak Street, or any replacement association or organization to the Greater North Michigan Avenue Association, entrusted with a comparable mission.

**"Grant Deed"** means the Deed from the John Hancock Mutual Life Insurance Company, a Massachusetts corporation, as grantor, dated July 27, 1973 and recorded with the Recorder as Document Number 22418957, to LaSalle National Bank, a National Banking Association, as Trustee under Trust Agreement dated February 15, 1973 and known as Trust Number 45450, as grantee.

**"Hazardous Materials"** as used herein shall mean: (A) any oil, flammable substances, explosives, raw materials, commercial building materials, radioactive materials, hazardous wastes or substances, toxic wastes, wastes or substances or any other materials or pollutants (other than materials customarily used in connection with the operation of the Facilities and in each Owner's operation of their Property, provided, however, that any such materials are used and stored only as permitted by Law) which (1) pose a hazard to the Commercial Building or to Persons on or about the Commercial Building or (2) cause the Commercial Building to be in violation of any Hazardous Materials Laws; (B) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of applicable OSHA Action Levels or such other comparable standard imposed by the United States Environmental Protection Agency; (C) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the

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Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and (D) any other chemical, material or substance (other than materials customarily used in connection with the operation of the Facilities and in each Owner's operation of their Property, provided, however, that any such materials are used and stored only as permitted by Law), exposure to which is prohibited, limited or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Commercial Building or the owners and/or occupants of property adjacent to or surrounding the Commercial Building.

**"Hazardous Materials Laws"** as used herein shall mean any Laws now in effect or hereafter enacted pertaining to the environment, any Hazardous Materials (including, without limitation, the existence, use, handling, transportation, production, disposal, discharge, storage, cleanup or remedy of contamination thereof), health, industrial hygiene, or the environmental conditions on, under or about the Commercial Building, including, without limitation, soil, indoor and ambient air and ground water conditions.

**"Impacted Owners"** has the meaning set forth in Section 11.5(F).

**"Indemnifying Owner"** has the meaning set forth in Section 11.4.

**"Indemnitees"** mean the Owner in question and the direct and indirect partners, members, beneficiaries, stockholders, directors, officers, agents, employees, and managers of the Owner in question and their respective successors and assigns.

**"Insurance Escrow Agent"** has the meaning set forth in Section 13.9.

**"Insurance Escrow Agreement"** has the meaning set forth in Section 13.9.

**"Insurance Escrow Deposits"** has the meaning set forth in Section 13.9.

**"Insurance Escrow Fund"** has the meaning set forth in Section 13.9.

**"Law"** or **"Laws"** means all federal, state and local laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordinary or extraordinary, which now or at any later time may be applicable to the Entire Property or any part thereof.

**"LoC Tax Security"** has the meaning set forth in Section 12.5.

**"Maintenance"** or **"Maintaining"** or **"Maintain"** means and includes operation, maintenance, repair, replacement, reconditioning, refurbishing, reconfiguration, upgrading, altering, improving, modifying, inspecting, testing, cleaning, painting, installation, restoration, reconstruction, removal and replacement when necessary or desirable to Maintain the Commercial Building or Facilities and, to the extent applicable, the Building, and includes the



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right of access to, the right to install barriers and protective scaffolding at the Entire Property, if reasonably determined to be necessary or desirable by the Office Owner to avoid injury to Person or Persons or as required by Law, and the right to remove from the Commercial Building portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration. As used in **Article XVI**, with respect to the Office Owner, the term Maintenance excludes obligations for which another Owner is responsible under this Declaration. Actual Costs for Maintenance shall include utilities.

**“Maintenance Standard”** means, with respect to any obligation or right to perform Maintenance under this Declaration, the performance of such Maintenance to a First Class Standard, in a good and safe order and condition, consistent with all Laws and Rules and Regulations.

**“Marks”** has the meaning set forth in **Section 27.1(A)**.

**“Material Notices”** has the meaning set forth in **Section 32.19(B)**.

**“Dispute”** or **“Disputes”** has the meaning set forth in **Section 17.2**.

**“Maximum Observatory Sign Area”** has the meaning set forth in **Section 7.5**.

**“Maximum Office Sign Area”** has the meaning set forth in **Section 7.5**.

**“Maximum Restaurant Sign Area”** has the meaning set forth in **Section 7.5**.

**“Maximum Retail Sign Area”** has the meaning set forth in **Section 7.5**.

**“Monthly Assessment”** has the meaning set forth in **Section 16.3(A)(i)**.

**“Monument”** has the meaning set forth in **Section 2.1(R)**.

**“Mortgage”** has the meaning set forth in **Section 32.19**.

**“Mortgagee”** has the meaning set forth in **Section 32.19**.

**“NCCR Funding Schedule”** has the meaning set forth in **Section 16.3(B)**.

**“NCCR Reserve”** means the reserve account established by the Office Owner on behalf of the other Owners, on the terms and conditions contained in **Section 16.3(B)**, to fund the cost of paying Net Capitalized Cost of Replacements, when and as such expenditures are required under this Declaration.

**“NCCR Reserve Deposit”** shall have the meaning set forth in **Section 16.3(B)**.

**“Net Capitalized Cost of Replacement”** or **“Net Capitalized Cost of Replacements”** shall mean costs incurred as part of a construction or Maintenance project which is required to be capitalized pursuant to generally accepted accounting principles as adjusted to reflect any insurance recovery and salvage value. For any Capital Project or other item, the Net Capitalized

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Cost of Replacement means the Installed Cost of a replacement, repair, alteration, modification or improvement thereof over the sum of (a) any insurance recovery plus (b) the Net Salvage Value of said item which is replaced. The “**Installed Cost**” of a capital item is the sum of (i) all Actual Costs incurred in acquiring or leasing the item in question, together with all applicable labor and related material costs; (ii) a commercially reasonable contractor’s fee and subcontractor’s fee; (iii) design and engineering review fees; (iv) legal fees and costs, (v) the Construction Supervision Fee; (vi) consulting, professional, permit and legal fees relating to the capital item or installation in question; (vii) if the Capital Project has been financed, financing costs, fees and interest; and (viii) any other Actual Costs reasonably incurred in acquiring, transporting, installing and testing any such item.

“**Net Salvage value**” means the amount actually received for any capital item replaced, altered, modified or improved, less any commercially reasonable expenses incurred in connection with the sale or preparation of the item for sale, or, if not sold, but retained, the amount that could have been received for an item if sold unless intended to be re-used in the Commercial Building.

“**New Association**” means any condominium association formed for the purpose of administering any Condominium Property which was created after the Effective Date.

“**Non-Compliant Coverage**” has the meaning set forth in **Section 13.3**.

“**Non-Performing Owner**” has the meaning set forth in **Article XVIII**.

“**Non-Visible Signs**” has the meaning set forth in **Section 7.1(E)**.

“**Objecting Party**” has the meaning set forth in **Section 26.1(C)**.

“**Observatory Easement Area**” has the meaning set forth in **Section 3.1(U)**.

“**Observatory Mark**” has the meaning set forth in **Section 27.1(A)**.

“**Observatory Owner**” means the Person that owns fee simple title to the Observatory Parcel.

“**Observatory Parcel**” means that part of the Commercial Parcel legally described in **Exhibit D** attached hereto.

“**Observatory Patron Queue Area**” means the areas shown as the Concourse Queuing Area and the Concourse Queuing Entrance on **Exhibit L** located in the concourse area of the Commercial Building.

“**Observatory Property**” means the Observatory Parcel, together with all Alterations, improvements, build-outs and fixtures located within the Observatory Parcel.

“**Observatory Signage**” has the meaning set forth in **Section 7.1(D)**.



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**“Observatory Vitrine”** has the meaning set forth in **Section 3.1(S)**.

**“Office Owner”** means the Person that owns fee simple title to the Office Parcel.

**“Office Parcel”** means that part of the Commercial Parcel legally described in **Exhibit B** attached hereto. For purposes of this Declaration, the Office Parcel will be deemed to include all Vault Space, but no portion of such Vault Space will be deemed to be added to the rentable square footage of the Office Parcel.

**“Office Property”** means the Office Parcel, together with all Alterations, improvements, build-outs and fixtures located within the Office Parcel. All Facilities located in or serving the Commercial Property, which are not otherwise identified as Component Facilities which are owned by an Owner other than the Office Owner shall be deemed to be owned by the Office Owner and included as part of the Office Property. The Office Property shall also include all portions of the Commercial Building (including, for clarification, the Exterior Façade and the Structural Supports of the Commercial Building) not included as part of any other Property.

**“Operating Expenses”** shall mean and shall consist of any and all of the Actual Costs paid by or on behalf of the Office Owner in connection with the performance of the Commercial Property Maintenance Obligations under **Article XVI** or any other obligations required to be performed by the Office Owner on behalf of the Owners under this Declaration (other than those costs, expenses and disbursements falling within the definition of Net Capitalized Cost of Replacement), including the following:

- (A) Labor costs (including wages, salaries and fees of employees plus related taxes, insurance, benefits, dues and reimbursable expenses);
- (B) Materials, parts, equipment, supplies, tools and cost of third party contractors and suppliers;
- (C) Except as separately metered and to the extent used for the sole benefit of an Owner or its Tenant, and paid solely by such Owner or its Tenant directly to the service provider or utility, the cost of the water, gas, power, fuel, electricity and other utilities including those serving the Commercial Property Public Common Areas;
- (D) Actual Costs of professional service fees directly related to the services provided in **Article XVI** (including inspection and consulting services), or otherwise on behalf of the Owners, as modified in this Declaration, including without limitation, the Actual Costs of attorneys’ fees and disbursements, accounting and auditing fees, architect’s and engineer’s fees and other professional fees and expenses (provided, however, that any legal expenses related to lawsuits brought against the Office Owner in its role as a landlord, as distinguished from its role as the Declarant under this Declaration, shall be excluded from Operating Expenses);
- (E) Insurance;

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(F) The costs for office space at the Building for the Commercial Building manager;

(G) Permits and licenses, but if not applicable to the entire Commercial Building, then allocated as applicable to the Owners; and

(H) All other Actual Costs paid or incurred in respect of such obligations performed by or on behalf of the Office Owner, in accordance with accepted principles of sound management and accounting practices as applied to the Maintenance of, and furnishing of Commercial Property Services to, high-rise, mixed-use office, retail and commercial buildings in downtown Chicago.

Operating Expenses shall not include:

(i) costs or other items included within the meaning of the term "Taxes" (as hereinafter defined) or any type of taxes and other matters specifically excluded from the definition of "Taxes" hereunder;

(ii) interest or amortization payments on any mortgage or other indebtedness,

(iii) depreciation or amortization charges,

(iv) rental under any ground or underlying lease or leases,

(v) cost or expenses representing an amount paid to a related entity or entity not dealt with on an "arm's length" basis, which is in excess of the amount which would be paid in the absence of such relationship,

(vi) wages, salaries, bonuses, insurance, fees, benefits, taxes, reimbursable expenses and other direct compensation and fringe benefits of personnel or employees of the Office Owner or any manager above the grade of Commercial Building manager (also known as the Commercial Building's General Manager) and executive level employees of the Office Owner (including the cost of office space at the Building for such excluded personnel, but not the cost of office space for included personnel which shall be included in Operating Expenses),

(vii) organizational costs and expenses incurred in maintaining the corporate, partnership or other business existence of an Owner and the books and records relating thereto,

(viii) Net Capitalized Costs of Replacement collected by the Office Owner pursuant to **Article XVI**,

(ix) fines, penalties, interest or any other related costs incurred by the Office Owner on account of the Office Owner's failure to comply with any Law,

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failure to make any payment of expenses when due, or willful breach of any contract or undertaking (unless due to acts or omissions or failures to pay by other Owners) to the extent the same result from the Office Owner's willful misconduct or gross negligence,

(x) costs of defending any lawsuits and any damages awarded against the Office Owner or other costs incurred directly by reason of the Office Owner's willful breach of any agreement or for the Office Owner's gross negligence or willful misconduct except due to any acts, omissions or breach of this Declaration by other Owners,

(xi) costs, expenses or fees paid to the extent paid solely for the benefit of one Owner and capable of being separately billed to such Owner which are required to be reimbursed by such Owner to the Office Owner hereunder,

(xii) expenses for repairs, Maintenance or replacements for which the Office Owner is actually reimbursed from or pursuant to warranties, guaranties, insurance or condemnation proceeds,

(xiii) costs, other than those incurred for ordinary Maintenance, security and insurance, for sculpture, paintings or other objects of art located within Commercial Property Public Common Areas, and

(xiv) costs arising from the Office Owner's political or charitable contributions, except for contributions to the Building Owners and Managers Association.

**"Operating Reserve"** has the meaning set forth in **Section 16.3**.

**"Operating Reserve Deposit"** has the meaning set forth in **Section 16.3(A)(iii)**.

**"Operator's Platform and System"** means the window cleaning rig and repair platform and related equipment and Facilities, together with all rails, davits, pegs, intermittent stabilization buttons, supports, accessories and related Facilities used to store the rig on the 100th floor of the Commercial Building and to transport the rig to and from the several portions of Commercial Building for purposes of washing the exterior windows of the Commercial Building and for Maintaining the Exterior Façade of the Commercial Building. The Office Owner is the owner of the Operator's Platform and System.

**"Outdoor Concourse Space"** means the outdoor area located adjacent to and west of the concourse area of the Commercial Building, as shown on **Exhibit K**. As of the Effective Date, the Outdoor Concourse Space is part of the Office Parcel and is owned by the Office Owner, but may be conveyed by the Office Owner to another Owner, as provided in **Section 32.20**.

**"Overage Statement"** has the meaning set forth in **Section 16.3(A)(i)**.

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**“Owner”** means the Retail Owner, the Broadcast Owner, the Restaurant Owner, the Observatory Owner, the Office Owner, and, if applicable pursuant to Section 26.5, the Parking Garage Owner, and pursuant to Article XXV a Representative Owner (with the Representative Owner acting as the Retail Owner, Broadcast Owner, Restaurant Owner, Observatory Owner, Office Owner or Parking Garage Owner, as applicable), as the context requires. **“Owners”** means all or more than one of such Owners (as the context requires), collectively. In the case of an Owner that is an Illinois land trust, the term Owner shall include the beneficiary of such land trust. Owner or Owners does not include the Residential Unit Owners. For purposes of this Declaration there shall be only one “Owner” for each Parcel, which Owner shall be designated by signing this Declaration as such, executing a joinder as set forth in Section 32.22 or as otherwise designated pursuant to Article XXV for a Divided Parcel or a TIC Parcel.

**“Owner’s Insured Property and Fixtures”** has the meaning set forth in Section 13.1(A)(i).

**“Parcel”** or **“Parcels”** means any one or more of the Broadcast Parcel, the Office Parcel, the Restaurant Parcel, the Observatory Parcel, the Retail Parcel, and, if created pursuant to Section 26.5, the Parking Garage Parcel, as the context requires.

**“Parking Garage”** means that portion of the Commercial Building used for the parking of passenger automobiles, generally located on the fourth (4th) through the twelfth (12th) floors of the Commercial Building.

**“Parking Garage Owner”** means the Person that owns fee simple title to the Parking Garage Parcel, if such Parcel is created by subdividing the Parking Garage from the Office Parcel pursuant to Section 26.5.

**“Parking Garage Ramp”** means the ramp providing ingress and egress to and from the Parking Garage, to and from the entrance and exit drives on the east side of the Commercial Building, which entrance and exit drives provide access to and from Chestnut Street and to and from Delaware Street.

**“Parking Garage Subdivision”** has the meaning set forth in Section 26.5(A).

**“Parking Garage Subdivision Amendment”** has the meaning set forth in Section 26.5(A).

**“Permitted Observatory Signs”** has the meaning set forth in Section 7.1(D).

**“Permitted Restaurant Signs”** has the meaning set forth in Section 7.1(C).

**“Permitted Retail Signs”** has the meaning set forth in Section 7.1(B).

**“Permittees”** means, collectively, the Commercial Permittees and the Existing Residential Permittees.

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“**Person**” means individuals, partnerships, limited liability companies, associations, corporations, trusts, land trusts, and any other form of business or not-for-profit organization, or one or more of them.

“**Property**” means any one or more of the Broadcast Property, the Office Property, the Restaurant Property, the Observatory Property, the Retail Property, and, if applicable pursuant to Section 26.5, the Parking Garage as the context requires.

“**Property Insurer**” has the meaning set forth in Section 13.2(A).

“**Qualified Institutional Lender**” means (A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan; (B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended; (C) an institution substantially similar to any of the foregoing entities described in clause (A) or (B); or (D) an affiliate of any of the foregoing entities described in the foregoing clauses (A), (B) or (C), provided that any such Person referred to in the foregoing clauses (A), (B), (C) or (D) satisfies the Eligibility Requirements.

“**Real Estate Tax Percentage**” has the meaning set forth in Section 12.1.

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

“**Representative Owner**” means (i) for a Divided Parcel, the Divided Parcel Owner and (ii) for a TIC Parcel, the TIC Parcel Owner.

“**Residential Unit**” means any Unit established or created to be legally used for residential purposes, including, to the extent applicable in the context, the Units in the Existing Residential Building.

“**Residential Unit Owner**” means any owner of the fee simple interest in a Residential Unit.

“**Restaurant Owner**” means the Person that owns fee simple title to the Restaurant Parcel.

“**Restaurant Parcel**” means that part of the Commercial Parcel legally described in Exhibit C attached hereto.

“**Restaurant Patron Queue Area**” means the area shown on Exhibit M located in the elevator lobby area of the Office Parcel, which is, as of the date hereof, used by patrons of the Restaurant Parcel to queue and wait for access to the Restaurant Parcel, as such area may be relocated and/or modified from time to time as provided herein (including in Section 5.1(R)).

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**“Restaurant Property”** means the Restaurant Parcel, together with all Alterations, improvements, build-outs and fixtures located within the Restaurant Parcel.

**“Restaurant Signage”** has the meaning set forth in **Section 7.1(C)**.

**“Restoration”** or “Restore” or “Restoring” means and includes any repair to or restoration or rebuilding of the Commercial Property or any part thereof following damage thereto by fire or other casualty, or by condemnation, as provided in this Declaration.

**“Retail Event”** has the meaning set forth in **Section 2.1(P)**.

**“Retail Option Vitrine”** has the meaning set forth in **Section 2.1(R)**.

**“Retail Owner”** means the Person that owns fee simple title to the Retail Parcel.

**“Retail Parcel”** means that part of the Commercial Parcel legally described in **Exhibit E** attached hereto.

**“Retail Plaza User”** has the meaning set forth in **Section 2.1(P)**.

**“Retail Property”** means the Retail Parcel, together with all Alterations, improvements, build-outs and fixtures located within the Retail Parcel.

**“Retail Seating Area”** has the meaning set forth in **Section 2.1(R)**.

**“Retail Signage”** has the meaning set forth in **Section 7.1(B)**.

**“Retail Tenants”** mean those Persons who have been granted a leasehold, license or other occupancy interest in the Retail Parcel, as a tenant, pursuant to a written lease, license or other written agreement granting use and occupancy of the specified portion of the Retail Parcel.

**“Retail Tenant Vitrine”** has the meaning set forth in **Section 2.1(R)**.

**“Retail Vitrines”** means the vitrines the Retail Owner has a right to use at any given time.

**“Rules and Regulations”** means the Rules and Regulations for the Commercial Property, promulgated and amended from time to time by the Office Owner as permitted in **Section 16.14**. The current Rules and Regulations for the Commercial Property are attached as **Exhibit G** and made a part of this Declaration.

**“SCB”** has the meaning set forth in **Section 21.1**.

**“Second Floor Roof Setback Element”** means the roof located on the terrace setback area on the second floor of the Commercial Building, in front of the windows of the Retail Tenants located on the second floor of the Retail Parcel. The Second Floor Roof Setback Element is owned by the Retail Owner.



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**“Site Plan Approval”** has the meaning set forth in the CZO.

**“Skyline Viewing Attraction”** means all or any portion of any Property which is open to the general public and (i) is dedicated, advertised or promoted to the general public, solely as a place to view the skyline of the City of Chicago or (ii) which contains one or more of telescopes, enhanced viewing devices, audio or visual tours relating to the skyline of Chicago, diagrams identifying various landmarks and buildings or similar devices and accessories customarily found in observatories.

**“Special Amendment”** has the meaning set forth in **Section 32.21**.

**“Subsequent Naming Agreement”** has the meaning set forth in **Section 27.1(C)**.

**“Supplemental Assessment”** has the meaning set forth in **Section 16.3(A)(i)**.

**“Structural Supports”** means all construction elements (including, without limitation, structural members, footings or foundations, slabs, caissons, columns, beams, braces and trusses) of the Building which are load bearing, or which are necessary for the structural integrity of any portion of the Building, including both the Commercial Building and the Existing Residential Building, to the extent applicable.

**“Subdivision Property”** means the portion of any Parcel legally subdivided after the Effective Date (but not pursuant to the Act) into separate fee simple interests creating multiple parcels within the Parcel.

**“Supplemental Objection Notice”** has the meaning set forth in **Section 26.5(B)**.

**“Survey”** means the Plat of Survey identified as Order No. 07.06003, revised February 23, 2012 prepared by the Surveyor, delineating the boundaries of the Entire Property and showing among other things, the Commercial Building.

**“Surveyor”** means Chicago Guarantee Survey Company, 601 South LaSalle Street, Suite 400, Chicago, Illinois 60605 and any successor surveyor selected the Office Owner in its reasonable determination from time to time.

**“Taking Affected Owners”** has the meaning set forth in **Section 19.4**.

**“Tax Cash Security”** has the meaning set forth in **Section 12.5**.

**“Taxes”** shall mean all taxes, assessments (whether general or special), excises, transit charges, housing fund assessments or other housing charges, improvement districts, special service area assessments, levies or fees, ordinary or extraordinary, unforeseen as well as foreseen, of any kind, which are assessed, levied, charged, confirmed or imposed on the land, building or improvements comprising the Commercial Property, and shall also include any other tax, fee or other excise, however described, which may be levied or assessed in lieu of, as a substitute (in whole or in part) for, or as an addition to, any other Taxes on an Owner with respect to the portion of the Commercial Property owned by such Owner. Notwithstanding the



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foregoing, there shall be excluded from Taxes all excess profit taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, transfer taxes, mortgage or intangible taxes or fees, estate taxes and federal, state or local income taxes.

“**Tax Escrow Agent**” has the meaning set forth in **Section 12.2**.

“**Tax Escrow Agreement**” has the meaning set forth in **Section 12.2**.

“**Tax Escrow Deposits**” has the meaning set forth in **Section 12.2**.

“**Tax Escrow Fund**” has the meaning set forth in **Section 12.2**.

“**Tax Security**” has the meaning set forth in **Section 12.5**.

“**Tax Security Obligation**” as the meaning set forth in **Section 12.5**.

“**Tenants**” mean those Persons who have been granted the right to use or occupy a portion of an Owner’s Parcel, pursuant to a written lease, sublease, license or other written agreement, granting use and occupancy of the specified portion.

“**TIC Owner(s)**” has the meaning set forth in **Article XXV**.

“**TIC Parcel**” has the meaning set forth in **Article XXV**.

“**TIC Parcel Owner**” has the meaning set forth in **Article XXV**.

“**Tilt Feature**” has the meaning set forth in **Section 11.5(B)**.

“**Trademark License Agreement**” has the meaning set forth in **Section 27.1**.

“**Unavoidable Delay**” has the meaning set forth in **Section 18.1**.

“**Unit**” means (i) for any Condominium Property and for the Existing Residential Property, any part thereof which is described as a “Unit” or similar ownership interest in the applicable condominium declaration (including the Existing Condominium Declaration) under the Act, and (ii) for any Subdivision Property, each separately transferable parcel or unit created within the Subdivision Property and which is owned in fee simple, as the context requires.

“**Unit Organizational Agreement**” means the condominium declaration, operating agreement or other document or documents governing the rights and obligations between and among the various Unit Owners within any Divided Parcel.

“**Unit Owner(s)**” means the Person or Persons which own the fee simple title to a Unit (including for a Unit in a Condominium Property, the entire Unit Ownership).

“**Unit Ownership**” means (i) for any condominium regime established for any Parcel that is a part of the Commercial Property pursuant to the Act and for a part of the Existing Residential Property submitted to the Act, one Unit plus any undivided interest in the common elements

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attributable to such Unit as described in the applicable condominium declaration and (ii) for any Parcel which is subdivided other than pursuant to the Act, each Unit, together with any rights in other portions of such Parcel as are appurtenant to the ownership of such Unit, as the context requires.

**“Vault Space”** means the vault and corridor space owned by the City of Chicago and located underneath the sidewalk on Chestnut and Delaware Streets adjacent to the Building, for which a license for use has been issued to the Declarant, as evidenced by the Vault Permit, as such Vault Space is shown on **Exhibit U**. Vault Space shall not be considered Commercial Public Common Areas for purposes of this Declaration.

**“Vault Permit”** means Permit Number 1035877 pursuant to Vault ordinance issued on 11/30/2004 by the City Council of Chicago, authorizing the use of the Vault Space and any other permit or permits issued from time to time by the City Council of Chicago or any other governmental authority for use of the Vault Space.

## ARTICLE II

### EASEMENTS BENEFITING THE RETAIL PARCEL

2.1 **Easements Declared.** Subject to the Rules and Regulations, the following perpetual (except as otherwise set forth below) easements benefiting the Retail Parcel and burdening the other Parcels and any other portions of the Commercial Property are hereby declared and created:

(A) **Structural Support.** A non-exclusive easement in and to all Structural Supports at any time located within or constituting a part of the Commercial Property for the support of (i) the Retail Parcel and (ii) any Facilities or other portions of the Commercial Property with respect to which the Retail Owner is granted an easement or rights under this Declaration.

(B) **Ingress and Egress.** A non-exclusive easement (i) for ingress and egress by the Owners over the Commercial Property Public Common Areas, (ii) for ingress and egress by persons, vehicles, material and equipment over, under and through such portions of the Commercial Property as may be necessary to permit the exercise of the rights granted to the Retail Owner hereunder during any period in which said rights may be exercised, and (iii) over, under and through such portions of the Commercial Property as may be necessary to enable the Retail Owner to perform its obligations under this Declaration. All rights of use under this **Section 2.1(B)** may be exercised by the Permittees of the Owners.

(C) **Encroachments.** An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Commercial Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Commercial Building, any part of the Retail Parcel encroaches or shall hereafter encroach upon any part of the Commercial Parcel.

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Such easement to maintain encroachments shall exist only as long as the encroaching portion of the Commercial Building continues to exist.

(D) **Facilities.** A non-exclusive easement for the use by the Retail Owner of any Facilities and Component Facilities (including any replacements thereof or additions thereto) or Facilities Area serving or benefiting the Retail Parcel located in, on or about other portions of the Commercial Property.

(E) **Loading Dock.** A non-exclusive easement for ingress and egress by persons, vehicles, material and equipment over, on, across and through the truck ramps, the trucking concourse and loading dock located on the east side of the ground floor of the Office Parcel, as modified from time to time, for the purposes described in this Declaration and for such other purposes as are customary for the operation and use of a similar high-rise building, in all cases, subject, however, to the terms and conditions set forth in **Article 16** hereof and **Exhibit 16.1** attached hereto.

(F) **Deliveries and Scavenger Service.** A non-exclusive easement for the use of the trucking concourse (including truck berths), loading docks, dock levelers, trash areas, service corridors and ramps located on the east side of the ground floor of the Office Parcel, the receipt, transport, loading and unloading of materials and equipment and disposal of trash and for any other similar purposes for which such areas are customarily used in the operation and use of a similar high-rise building; in all cases subject, however, to the terms and conditions set forth in **Article XVI** hereof and **Exhibit 16.1** attached hereto.

(G) **Emergency and Service Access.** A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through (i) those sections of the fire stairways located, from time to time, in the Commercial Property and any corridors, hallways or vestibules located in the Commercial Property which are necessary for ingress to or egress from such stairways, (ii) the service corridors located on the ground floor of the Commercial Property, and (iii) the employee entrances located on the ground floor of the Commercial Property.

(H) **Emergency Generator.** A temporary non-exclusive easement during the existence of an Emergency Situation for ingress and egress by persons, material and equipment over, on, across and through the emergency generator room located in the Office Parcel and use of the Facilities located therein for restoring temporary electrical power to portions of the Retail Parcel. Any such use of the Emergency Generator under this **Section 2.1(H)** shall be subject to the reasonable restrictions and operational guidelines imposed by the Office Owner from time to time including the specific capacity for each Parcel.

(I) **Self-Help.** During such time as any Owner of any part of the Commercial Property is a Defaulting Owner with respect to any of its Maintenance obligations hereunder, to the extent the Retail Owner has the right pursuant to this Declaration to perform any such repair or Maintenance, a non-exclusive, temporary easement for ingress

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and egress by persons, material and equipment over, on, across and through the portion of the Commercial Property owned by the Defaulting Owner for the purpose of, and to the extent necessary to, exercise any such right of repair or Maintenance.

(J) **Maintenance Access.** A non-exclusive easement for persons, materials and equipment over, on, across and through those portions of the Commercial Property which are reasonably necessary (i) to permit the Maintenance or Restoration of the Retail Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easement rights set forth in this Section, or (ii) to construct and Maintain substitute or additional structural support required by **Article IX** hereof. Any use of the easements described in this **Section 2.1(J)** shall be reasonably coordinated with the Office Owner. If access is required to any space leased to any Tenant, the Retail Owner shall coordinate with the Owner of such Tenant space to gain such access as is necessary and reasonable to perform the Maintenance, and, if requested by the burdened Owner, the burdened Owner shall be permitted to perform the work and be reimbursed by the Retail Owner for any reasonable expenses incurred by the burdened Owner in connection therewith.

(K) **Freight and Passenger Elevator.** The non-exclusive easement for the use of four freight elevators identified as Elevator Car numbers 5, 6, F7 and F8 as shown on **Exhibit P** attached hereto, which are owned by the Office Owner, for use in common with all of the other Owners, which are and shall at all times be capable of stopping at required levels of the Commercial Building for ingress to or egress from the Retail Parcel for persons, materials and equipment (A) for Maintenance of Facilities and Component Facilities in the Retail Parcel, (B) to perform its obligations under this Declaration, (C) in an Emergency Situation and (D) for loading and deliveries of goods and merchandise required by the Retail Tenants in connection with their normal business operations.

(L) **Janitor and Security Room.** A non-exclusive easement for maintenance and security staff employed or engaged by the Retail Owner to use facilities located on the 16th floor of the Building, provided for such staff, including the lunch room and washroom facilities.

(M) **Parking Garage Ramp.** A non-exclusive easement for use of the Parking Garage Ramp for ingress and egress to and from the Parking Garage, and to and from the entrance and exit drives on the east side of the Commercial Building leading to Chestnut Street and Delaware Street.

(N) **Locker Room.** A non-exclusive easement for use by the maintenance and security and support staff employed by the Retail Owner to use the two (2) locker room facilities located on the concourse level of the Commercial Building.

(O) **Common Walls, Ceilings and Floors.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs existing in and along the common boundaries of the Retail Parcel and other Parcels in the

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Commercial Parcel which also serve as walls, ceilings or floors for these other parcels of the Commercial Building.

(P) **Outdoor Concourse Space.** The Retail Owner shall have the non-exclusive right to provide the use of Outdoor Concourse Space to its Retail Tenants for seasonal dining and other food and beverage service uses commensurate with the restaurant operation then being conducted within the Retail Parcel, provided such use is in compliance with the terms of this **Section 2.1(P)**, Laws and a First Class Standard and in keeping with the quality, use, appearance and nature generally of the Commercial Building. Subject to the rights of existing Retail Tenants in the Outdoor Concourse Space as described on **Exhibit 2.1**, each instance where a Retail Tenant (as used in this **Section 2.1(P)**), together with the Retail Owner, a "Retail Plaza User") desires to use the Outdoor Concourse Space, the Retail Owner, having first reviewed and approved the request from a proposal Retail Plaza User, shall deliver to the Office Owner a written request for such use explaining in reasonable detail the proposed purpose, hours, duration and general terms and conditions. If such request is consistent with the terms and conditions set forth in this Section, the Office Owner shall reasonably approve the request. By way of example only, and not by way of limitation, if Retail Owner wishes to provide the use of such designated space in the Outdoor Concourse to a Retail Tenant operating a restaurant and associated service operation may submit a written request to the Office Owner specifying the details of such use. In such case, the Retail Owner, having first approved the request of such Retail Tenant, would submit the request to the Office Owner, describe in reasonable detail the hours and plan of use and operation, proposed location, furniture, and confirm that all licenses and permits required by the City can be obtained. In such case, if such request is consistent with the terms, conditions and standards of operation specified herein and the requested use will not unreasonably interfere with the use, enjoyment, operation, or access to, the Building by the general public or any Commercial Permittees, then the Office Owner's approval for the specific time period requested shall not be unreasonably withheld. Once approved, the Retail Tenant, as the authorized Retail Plaza User, will have the right to use the Outdoor Concourse Space during the term of its lease (or shorter period if so designated by the Retail Owner) for the approved use and in accordance with the terms hereof. No permanent Alterations or structures shall be permitted in the Outdoor Concourse Space. All furniture and other temporary installations relating to any use so permitted hereunder shall be non-invasive (i.e., not involve any drilling, coring, boring, anchoring, etc.) unless otherwise approved in writing by the Office Owner, and shall be secured and stored by a Retail Plaza User at its sole cost and expense each evening or when not in use in locations reasonably approved by the Office Owner. The following general restrictions and requirements shall apply to the use of Outdoor Concourse Space by any Retail Plaza User in addition to any other special terms and conditions imposed when the request was granted: (1) a Retail Plaza User shall procure and at all times maintain general liability insurance (and, if applicable, liquor liability insurance) in types and amounts and naming additional insureds as are reasonable and customary in the marketplace, and reasonably determined by the Office Owner (with reasonable evidence of such insurance provided to the Office Owner prior to such use); (2) a Retail Plaza User shall use the Outdoor Concourse Space in compliance with applicable Laws, including procuring and at all



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times maintaining all permits, licenses and approvals required in accordance with applicable Laws for such use; (3) a Retail Plaza User shall not perform any boring, coring, drilling, anchoring or other invasive or install or construct permanent improvements, installations, modifications or alterations to the Outdoor Concourse Space or the Building in connection with any such use, unless otherwise approved in writing by the Office Owner in its sole discretion; (4) all outdoor furniture and furnishings in connection shall be of a design, style and quality consistent with the kind and quality used for comparable mixed-use, mixed ownership projects in downtown Chicago, and in the reasonable judgment of the Office Owner shall be in keeping with the aesthetic design and quality of the Building, and the Outdoor Concourse Space and shall be kept in good condition and repair and replaced as necessary so as at all times to be consistent with a First Class Standard; (5) no use of the Outdoor Concourse Space or the placement of any furniture or furnishings related thereto shall in any way obstruct or block the walkways or entrances serving the Building and the Outdoor Concourse Space, and all such walkways and entrances shall be kept clear and unobstructed at all times to allow for uninterrupted pedestrian ingress and egress; (6) the Retail Plaza User shall keep the portion of the Outdoor Concourse Space used by it in a neat, clean, safe and sanitary condition and shall promptly and properly dispose of any trash; (7) no Retail Plaza Users or any of their Permittees shall disturb or permit loud music or other loud noise to emanate from the Outdoor Concourse Space; and (8) the furniture and furnishings for any such function shall be of a design, structural integrity and anchored such that they are able to withstand typical and customary wind gusts or storms.

Subject to the terms hereof, the Outdoor Concourse area may also be used by the Retail Owner for certain periodic events (such as promotional and media events, grand opening activities, sidewalk sales and parties conducted by the Retail Owner or Retail Tenants for the purpose of promoting holiday events and the sales of the Retail Tenants) (each a "**Retail Event**"), provided that such Retail Events comply with the requirements described in clauses (1) through (8) in the immediately preceding paragraph and are conducted in a manner which reasonably minimizes any adverse impact on the business operations of the Office Parcel (including the business operations of the Office Parcel Tenants) and the Observatory Parcel. Notwithstanding the foregoing, the Retail Owner acknowledges and agrees that the Office Owner reserves the right to sponsor, conduct or permit periodic events and functions to be held in the Outdoor Concourse Space (e.g., the summer concert series, blacktie and charity functions, City of Chicago events and special events during the holiday seasons), to be conducted in a manner which reasonably minimizes any adverse impact on the business operation of the Retail Parcel (including the business operations of the Retail Tenants); provided, however, that (i) any such use shall comply with the requirements described in clauses (1) through (8) in the immediately preceding paragraph (to the extent applicable and taking into account the temporary nature of such events or functions and the time of day when such events or functions will take place), and (ii) no such use will be primarily for the sale of merchandise. The Office Owner and the Retail Owner shall notify each other of scheduled events and uses of the Outdoor Concourse Space as soon as reasonably practicable and shall cooperate at all times and in good faith to coordinate use of the Outdoor Concourse Space. In the event of a scheduling conflict or conflict over the

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portion of the Outdoor Concourse Space being used, the Office Owner and the Retail Owner will work in good faith to resolve such conflict. Any increased Commercial Property Expenses directly incurred in connection with any such event shall be paid solely by the Owner or Owners scheduling such event. The Office Owner agrees to give the Observatory Owner reasonable advance notice of events being sponsored by the Office Owner in the Outdoor Concourse Space and the Retail Owner agrees to give the Observatory Owner reasonable advance notice of any Retail Events.

The Office Owner is the sole and exclusive Owner with the right, power and authority to enforce the provisions contained in this **Section 2.1(P)**, except that the Retail Owner may object to the Office Owner's use, or granting of use to other parties not otherwise permitted under the Declaration, of the Outdoor Concourse Space which is not in compliance with this **Section 2.1(P)**.

(Q) **Broadcast Component Extension Grid Easement.** A non-exclusive easement to locate, install, Maintain and remove two (2) antennae or satellite dishes used in conjunction with normal retail and/or office use on the Broadcast Component Extension Grid, subject to such reasonable requirements as may be imposed by the Broadcast Owner from time to time.

(R) **Tenant Rights.** In addition to the easement rights granted in this **Article II**, the Retail Owner shall have a temporary easement to accommodate the space rights set forth on **Exhibit 2.1**, including the rights for two vitrines located in the Office Parcel lobby (which vitrines are part of the Office Parcel and which are owned and controlled by the Office Owner) for use by the Retail Tenants as set forth on **Exhibit 2.1**; provided, however, that the Retail Owner shall have the right to use one of the vitrines, at Retail Owner's election made within ninety (90) days of the Effective Date, in perpetuity, regardless of whether the lease with the current Tenant using such vitrine has expired or terminated (the "**Retail Tenant Vitrine**"). Retail Owner has the option, within ninety (90) days of the Effective Date, to exchange the Retail Tenant Vitrine with the vitrine set forth on **Exhibit 7.2** and identified as the "**Retail Option Vitrine**", and the use of such Retail Option Vitrine shall continue in perpetuity and Retail Owner's rights to use the Retail Tenant Vitrine shall terminate. Retail Owner shall be responsible for all Maintenance required for the Retail Vitrines. These easement rights shall expire on the same date that the rights of the Tenants under the applicable leases expire or terminate (for the purpose of clarification, these easement rights shall continue for any renewal or extension periods granted in accordance with the terms of the leases as those rights exist as of the date hereof). All rights granted to Retail Tenants under leases or license agreements in effect as of the Effective Date shall not be revoked by the Office Owner. The Retail Owner shall have the right to grant the use of those portions of the Outdoor Concourse Space designated on **Exhibit 2.1(R)** (the "**Retail Seating Area**") (which Retail Seating Area is the areas currently being used by the tenants under the Cheesecake Factory Retail Lease and the Appetito Retail Lease) for use by its Retail Tenants as Retail Plaza Users for seasonal dining and other food and beverage service uses commensurate with the restaurant operation then being conducted by such Retail Tenant within the Retail Parcel, such use to be in accordance with the terms of **Section 2.1(P)** (including



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clauses (1) through (8) thereof), except that, to the extent the same conflict with the terms of **Section 2.1(P)**, the rights relating to the placement of outdoor dining facilities previously granted to the Retail Tenant under the Cheesecake Factory Retail Lease will supersede the requirements of **Section 2.1(P)** and that no notice to or prior approval of the Office Owner (or any other Owner) shall be required for the use permitted hereunder by either such Retail Tenant. The Retail Owner's right to grant the use of the Retail Seating Area to Retail Tenants as specified in the immediately preceding sentence shall survive the expiration or termination of the Cheesecake Factory Retail Lease or any other lease currently existing and will remain an easement for the benefit of the Retail Owner in perpetuity in the Retail Seating Area, subject to the Laws, terms and conditions of this **Article II**, this Declaration and the Existing Agreements. A non-exclusive easement to place and Maintain, on behalf of one Retail Tenant, a sculptural brand element monument which does not include any signage and which is further described on **Exhibit 2.1(R)** (the "**Monument**"), in the space indicated on **Exhibit 2.1(R)**, subject to the Laws, terms and conditions of this **Article II** (including those specifically relating to exterior signs), this Declaration and the Existing Agreements; provided, however, that the Office Owner shall at all times have reasonable approval over the size, design and placement of the monument sign. For purposes of this Declaration, the Monument shall be deemed to be exterior signage of the Retail Owner. Retail Owner shall also have a non-exclusive easement for the placement of benches in the areas where benches are currently located as shown on **Exhibit 2.1(R)**. Such benches shall be consistent with a First Class Standard.

(S) **Storage Easement.** An exclusive permanent easement to use, solely for storage, the 862 square feet of storage space located in the Parking Garage and more particularly depicted on **Exhibit 2.1(T)**, and leased to one or more Retail Tenants as set forth on **Exhibit 2.1(T)** pursuant to leases in effect on the Effective Date, at no charge to the Retail Owner (except that the Retail Owner shall reimburse the Office Owner for any applicable utility costs associated with such storage space). Such storage space may be relocated from time to time at the sole discretion of the Office Owner, at the Office Owner's sole cost and expense (such costs and expense to be reasonable); provided that the new storage space is on a floor and in a location that has elevator access reasonably consistent with the elevator access used for the original storage space and, to the extent utilities are currently being used in such original storage space, utilities that are reasonably consistent therewith. For purposes of Maintenance, Restoration, repairs, insurance and indemnification, the storage spaces shall be considered a part of the Retail Parcel, including for purposes of Maintenance, Restoration, repairs, insurance and indemnification.

The easements granted in this **Section 2.1** are granted to the Retail Owner. The Retail Owner may, subject to the terms of this Declaration, grant the easement rights set forth in **Section 2.1(B), (E), (F), (K), (M), (P), (O), (R), and (S)** to its Commercial Permittees consistent with the Retail Owner's easement rights, provided, however, that the use of the easements granted hereunder by the Retail Owner's Commercial Permittees shall not increase the burden on the burdened Owner's Parcel any more than the rights granted to the Retail Owner under this **Article II**. The granting of easement rights to Commercial Permittees under this **Section 2.1**

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shall not, in any way, increase the Retail Owner's rights, reduce the Retail Owner's obligations under this Declaration, or create any privity between the other Owners and any such Commercial Permittees.

2.2 **Access.** Each Easement created under this **Article II** which provides or requires, for its enjoyment, ingress and egress on, over, across or through any portion of the Commercial Property shall (i) include such required rights of ingress and egress, and (ii) be in all respects subject to such reasonable limitations as the Owner of the portion of the Commercial Property burdened may, from time to time after consultation with the Office Owner, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use, enjoyment, operation, or access to, the Commercial Property, or material increase in operating costs to any Owner and in order to ensure the reasonable security of the Commercial Property affected; provided, however, that any such limitations shall not preclude or unreasonably restrict access to, or the use enjoyment of, any such Easement for the normal business operations of the benefited portion of the Commercial Property. In utilizing an easement created under this **Article II**, the Retail Owner shall, to the extent reasonably practicable, minimize the impact of its exercise on the operations of the burdened Parcel, taking into consideration any disruption on the operations of the burdened Parcel. To the extent any easement granted under this **Article II** may interfere with the operations of the Owner of the burdened Parcel, the Retail Owner shall exercise commercially reasonable efforts to minimize such interference. The Retail Owner shall use, and shall cause the Retail Tenants to use, the easements granted in this **Article II** in a commercially reasonable and orderly manner such that the use thereof will not unreasonably interfere with the easement rights granted to the other Owners and their Tenants under this Declaration or unreasonably interfere with any Owner's ownership rights in their respective Parcels.

2.3 **Binding.** Easements provided for, declared or created (a) under **Section 2.1** shall be binding upon the Owners of any portion of the Commercial Property burdened thereby and, subject to the provisions of **Article XXV**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the portion of Commercial Property so benefited. Notwithstanding the easements granted in this Declaration, each Owner retains and reserves any and all other rights of ownership with respect to its Parcel.

2.4 **Relocation.** Each of the Owners of the Commercial Property burdened by the easements set forth herein shall have the right, at its respective sole cost and expense, to relocate within its Parcel any Facilities, Component Facilities and Easements which burden its Parcel and benefit the Retail Parcel, other than Easements declared or created under **Section 2.1(C)** and **Section 2.1(P)**, so long as such relocation is reasonable and does not have a material adverse effect on the use, operation, operating cost, enjoyment of, or access to, the Retail Parcel.

2.5 **Security Control and Temporary Closure.** The Owner whose Parcel is burdened by the Easements granted in this **Article II**, or the Office Owner, as applicable, may, (1) in connection with the performance of Commercial Property Maintenance Obligations, or (2) in an Emergency Situation, or (3) to prevent a dedication of, or an accruing of rights by, the public in and to the use of any portion of the Entire Property: temporarily prevent, close off or

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restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. In addition, provided there is no material adverse impact on ingress and egress, the Office Owner may, from time to time, impose reasonable security controls and access limitations consistent with the operation of the Building and applicable Law and install any overall security system for the Entire Property. In imposing the foregoing controls, the Office Owner shall take into consideration the (i) reasonable needs and requirements of the user of the Easement consistent with Comparable Buildings, (ii) the circumstances giving rise to such controls, and (iii) controls imposed at Comparable Buildings.

## ARTICLE III

### EASEMENTS BENEFITING THE OBSERVATORY PARCEL

3.1 **Easement Declared**. Subject to the Rules and Regulations, the following perpetual (except as otherwise set forth below) easements benefiting the Observatory Parcel and burdening the other Parcels and any other portions of the Commercial Property are hereby declared and created:

(A) **Structural Support**. A non-exclusive easement in and to all Structural Supports at any time located within or constituting a part of the Commercial Property for the support of (i) the Observatory Parcel and (ii) any Facilities or other portions of the Commercial Property with respect to which the Observatory Owner is granted an easement under this Declaration.

(B) **Ingress and Egress**. A non-exclusive easement (i) for ingress and egress by the Owners over the Commercial Property Public Common Areas, (ii) for ingress and egress by persons, vehicles, material and equipment over, under and through such portions of the Commercial Property as may be necessary to permit the exercise of the rights granted to the Observatory Owner hereunder during any period in which said rights may be exercised, and (iii) over, under and through such portions of the Commercial Property as may be necessary to enable the Observatory Owner to perform its obligations under this Declaration. All rights of use under this **Section 3.1(B)** may be exercised by the Permittees of the Owners.

(C) **Encroachments**. An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Observatory 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 Building continues to exist.

(D) **Facilities**. A non-exclusive easement for the use by the Observatory Owner of any Facilities and Component Facilities (including any replacements thereof or

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additions thereto) or Facilities Areas serving or benefiting the Observatory Parcel located in, on or about other portions of the Commercial Property.

(E) **Loading Dock**. A non-exclusive easement for ingress and egress by persons, vehicles, material and equipment over, on, across and through the truck ramps, the trucking concourse and loading dock located on the east side of the ground floor of the Office Parcel, as modified from time to time for the purposes described in this Declaration and for such other purposes as are customary for the operation and use of a similar high-rise building, in all cases, subject, however, to the terms and conditions set forth in **Article XVI** hereof and **Exhibit 16.1** attached hereto.

(F) **Deliveries and Scavenger Service**. A non-exclusive easement for the use of the trucking concourse (including truck berths), loading docks, dock levelers, trash areas, service corridors and ramps located on the on the east side of ground floor of the Office Parcel, for the receipt, transport, loading and unloading of materials and equipment and disposal of trash and for any other similar purposes for which such areas are customarily used in the operation and use of a similar high-rise building; in all cases subject, however, to the terms and conditions set forth in **Article XVI** hereof and **Exhibit 16.1** attached hereto.

(G) **Emergency and Service Access**. A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through (i) those sections of the fire stairways located, from time to time, in the Commercial Property and any corridors, hallways or vestibules located in the Commercial Property which are necessary for ingress to or egress from such stairways, (ii) the service corridors located on the ground floor of the Commercial Property, and (iii) the employee entrances located on the ground floor of the Commercial Property.

(H) **Window Washing**. A non-exclusive easement for access to and the right to the use of the Operator's Platform and System for the purpose of cleaning the exterior windows of the Observatory Parcel. Use of the Operator's Platform and System for window washing shall be governed by the terms and conditions set forth in **Article XVI** hereof and **Exhibits 16.1** and **16.2**.

(I) **Emergency Generator**. A temporary non-exclusive easement during the existence of an Emergency Situation for ingress and egress by persons, material and equipment over, on, across and through the emergency generator room located in the Office Parcel and use of the Facilities located therein for restoring temporary electrical power to portions of the Observatory Parcel. Any such use of the Emergency Generator under this **Section 3.1(I)** shall be subject to the reasonable restrictions and operational guidelines imposed by the Office Owner from time to time including the specific capacity for each Parcel.

(J) **Self-Help**. During such time as any Owner of any part of the Commercial Property is a Defaulting Owner with respect to any of its Maintenance obligations hereunder, to the extent the Observatory Owner has the right pursuant to this Declaration



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to perform any such repair or Maintenance, a non-exclusive, temporary easement for ingress and egress by persons, material and equipment over, on, across and through the portion of the Commercial Property owned by the Defaulting Owner for the purpose of, and to the extent necessary to, exercise any such right of repair or Maintenance.

(K) **Maintenance Access**. A non-exclusive easement for persons, materials and equipment over, on, across and through those portions of the Commercial Property which are reasonably necessary (i) to permit the Maintenance or Restoration of the Observatory Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easement rights set forth in this Section, or (iii) to construct and Maintain substitute or additional structural support required by **Article IX** hereof. Any use of the easements described in this **Section 3.1(K)** shall be reasonably coordinated with the Office Owner. Any use of the easements described in this **Section 3.1(K)** shall be reasonably coordinated with the Office Owner. If access is required to any space leased to any Tenant, the Observatory Owner shall coordinate with the Owner of such Tenant space to gain such access as is necessary and reasonable to perform the Maintenance, and, if requested by the burdened Owner, the burdened Owner shall be permitted to perform the work and be reimbursed by the Observatory Owner for any reasonable expenses incurred by the burdened Owner in connection therewith.

(L) **Freight Elevator**. The non-exclusive easement for the use of two freight elevators identified as Elevator Cars numbers 5 and 6, which are owned by the Office Owner, for use in common with all of the other Owners, and the non-exclusive easement for the use of one freight elevator in common with the Restaurant Owner and the Broadcast Owner (and, to the extent provided in **Article IV**, the Office Owner), identified as Elevator Car number 4, which is owned by the Office Owner. All of these freight elevators are shown on **Exhibit P** attached hereto, and shall at all times be capable of stopping at each level of the Commercial Building for ingress to or egress from the Observatory Parcel for persons, materials and equipment (A) for Maintenance of Facilities and Component Facilities in the Observatory Parcel, (B) to perform its obligations under this Declaration and (C) in an Emergency Situation.

(M) **Janitor and Security Room**. A non-exclusive easement for maintenance and security staff employed by the Observatory Owner to use Facilities located on the 16th floor of the Building, provided for such staff including the lunch room and washroom Facilities.

(N) **Parking Garage Ramp**. A non-exclusive easement for use of the Parking Garage Ramp for ingress and egress to and from the Parking Garage, and to and from the entrance and exit drives on the east side of the Commercial Building leading to Chestnut Street and Delaware Street.

(O) **Locker Room**. A non-exclusive easement for use by the maintenance, security and support staff employed by the Observatory Owner to use the two (2) locker room facilities located on the concourse level of the Commercial Building.

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(P) **Common Walls, Ceilings and Floors.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs existing in and along the common boundaries of the Observatory Parcel and other Parcels in the Commercial Parcel which also serve as walls, ceilings or floors for these other parcels of the Commercial Building.

(Q) **Passenger Elevator.** A nonexclusive easement for the use of passenger Elevator Car number 2, as shown on **Exhibit P** attached hereto, in common with the Restaurant Owner, for ingress and egress to and from the Observatory Parcel for the Permittees of the Observatory Owner. The use of Elevator Car number 2 shall be reserved for the Observatory Owner and the Restaurant Owner, based on the Schedule attached hereto as **Exhibit Q** and made a part hereof. Changes to this schedule shall be made only with the consent of both the Observatory Owner and the Restaurant Owner, and the parties hereby agree to revisit such schedule in good faith upon the expiration of the existing lease for the operation of the Restaurant Parcel. Any dispute regarding the use of Elevator Car number 2 shall be subject to resolution in accordance with the provisions of **Article XVII**. The Observatory Owner and the Restaurant Owner shall have the exclusive right to make mutually and reasonably agreeable improvements, alterations and/or upgrades to Elevator Car number 2, and the Restaurant Owner hereby agrees that the Observatory Owner shall be permitted to install audio and/or visual features (not to include any third party advertisements) consistent with the operation of a first class observatory business in the interior of Elevator Car number 2 subject to the Restaurant Owner's approval, not to be unreasonably withheld, that such features (i) are not inconsistent with the First Class Standard (taking into account the unique characteristics of the operation of an observatory business), (ii) do not materially impact the structure or operation of Elevator Car number 2, (iii) shall not be heard from in an unreasonably loud manner, and shall not otherwise pose an unreasonable nuisance to a reasonable customer of a first-class white tablecloth restaurant that shares a common elevator with a first-class observatory (e.g., no unreasonably jarring visual effects or unreasonably loud or annoying sound effects, the Retail Owner hereby acknowledging that the fact that the elevator includes audio and/or visual features of the observatory experience would not in and of itself pose an unreasonable nuisance), (iv) do not unreasonably disturb, or create an unreasonable nuisance for, any Commercial Permittees, (v) comply with Laws, or (vi) do not otherwise pose a danger to the health or safety of the Restaurant Owner or its Permittees; and subject to the Office Owner's approval, not to be unreasonably withheld that such features shall not be heard from in an unreasonably loud manner, and shall not unreasonably disturb any Commercial Permittees in any Common Areas or other Owner's Parcel. Notwithstanding anything to the contrary, no audio, visual or other features will be permitted to be installed within Elevator Car 2 if any music, sounds or other noise can be heard from outside of Elevator Car 2 when such elevator car is on either the lower concourse level or the street-level floor and the elevators doors are open, and no visual effects or non-customary elevator lighting shall be visible from outside of Elevator Car 2 when the elevator car is on the street level floor and the doors are open.



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(R) **Public Restrooms.** A non-exclusive perpetual easement for access to, and use of, the restrooms located within the Retail Parcel on the concourse level of the Commercial Building as identified on Exhibit L, at all times that the concourse level of the Commercial Building is open. Such restroom shall serve as the public restrooms for the Commercial Building.

(S) **Tenant Rights.** In addition to the easement rights granted in this Article II, the Observatory Owner shall have a temporary easement to accommodate the space rights set forth on Exhibit 3.1. These easement rights shall expire on the same date that the rights of the Tenants under the applicable leases expire or terminate (for the purpose of clarification, these easement rights shall continue for any renewal or extension periods granted in accordance with the terms of the leases as those rights exist as of the date hereof). All rights granted to Tenants of the Observatory Owner under the leases, licenses or other agreements in effect as of the Effective Date and listed on Exhibit 3.1 shall not be revoked by the Office Owner or the Retail Owner, and the Observatory Owner shall continue to have such rights for so long as the Observatory Owner provides the related services in the operation of its business (whether pursuant to the existing agreement, any replacement agreement or it elects to provide such services itself). The Observatory Owner is also granted an easement in perpetuity for the vitrine shown on Exhibit 7.2 and labeled as the "Observatory Vitrine." The Observatory Owner shall be responsible for all Maintenance required for the Observatory Vitrine.

(T) **Storage Easement.** An exclusive permanent easement to use, solely for storage, the 240 square feet of storage space more particularly set forth on Exhibit 3.1(T), at no charge to the Observatory Owner (except that the Observatory Owner shall reimburse the Office Owner for any applicable utility costs associated with such storage space). Such storage space may be relocated from time to time at the sole discretion of the Office Owner at the Office Owner's sole cost and expense (such costs and expense to be reasonable), provided that the new storage space is on a floor and in a location that has reasonable elevator access reasonably consistent with the original storage space. For purposes of Maintenance, Restoration, repairs, insurance and indemnification, the storage space shall be considered a part of the Observatory Parcel, and the Observatory Owner shall use such storage space consistent with all Laws and Rules and Regulations.

(U) **Observatory Elevator Ingress and Egress Easement.** An easement is granted for patrons of the Observatory Component to exit the Observatory Parcel, in the area shown as the "Observatory Easement Area" on Exhibit L attached hereto, located in the concourse area of the Commercial Building. The right to the use the Observatory Easement Areas shall be limited to those days and those hours that the ticket office and/or the Observatory Component is open for business to the public (or open for scheduled private parties or events), and shall be subject to reasonable Rules and Regulations promulgated by the Office Owner with respect to the use of this area.

The easements granted in this Section 3.1 are granted to the Observatory Owner. The Observatory Owner may, subject to the terms of this Declaration, grant the easement rights set forth in Section 3.1(B), (E), (F), (L), (N), (O), (R), (S) and (T) to its Commercial Permittees

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consistent with the Observatory Owner's easement rights, provided, however, that the use of the easements granted hereunder by the Observatory Owner's Commercial Permittees shall not increase the burden on the burdened Owner's Parcel any more than the rights granted to the Observatory Owner under this **Article III**. The granting of easement rights to Commercial Permittees under this **Section 3.1** shall not, in any way, increase the Observatory Owner's rights, reduce the Observatory Owner's obligations under this Declaration, or create any privity between the other Owners and any such Commercial Permittees.

3.2 **Access.** Each Easement created under this **Article III** which provides or requires, for its enjoyment, ingress and egress on, over, across or through any portion of the Commercial Property shall (i) include such required rights of ingress and egress, and (ii) be in all respects subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the portion of the Commercial Property burdened may, from time to time after consultation with the Office Owner, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use, enjoyment, operation, or access to, the Commercial Property, or material increase in operating costs to any Owner, and in order to ensure the reasonable security of the Commercial Property affected; provided, however, that any such limitations shall not preclude or unreasonably restrict access to, or the use enjoyment of, any such Easement for the normal business operations of the benefited portion of the Commercial Property. In utilizing an easement created under this **Article III**, the Observatory Owner shall, to the extent reasonably practicable, minimize the impact of its exercise on the operations of the burdened Parcel, taking into consideration any disruption on the operations of the burdened Parcel. To the extent any easement granted under this **Article III** may interfere with the operations of the Owner of the burdened Parcel, the other the Observatory Owner shall exercise commercially reasonable efforts to minimize such interference. The Observatory Owner shall use, and shall cause its Tenants to use, the easements granted in this **Article III** in a commercially reasonable and orderly manner such that the use thereof will not unreasonably interfere with the easement rights granted to the other Owners and their Tenants under this Declaration or unreasonably interfere with any Owner's ownership rights in their respective Parcels.

3.3 **Binding.** Easements provided for, declared or created (a) under **Section 3.1** shall be binding upon the Owners of any portion of the Commercial Property burdened thereby and, subject to the provisions of **Article XXV**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the portion of the Commercial Property so benefited. Notwithstanding the easements granted in this Declaration, each Owner retains and reserves any and all other rights of ownership with respect to its Parcel.

3.4 **Relocation.** Each of the Owners of the Commercial Property burdened by the easements set forth herein shall have the right, at its respective sole cost and expense, to relocate within its Parcel any Facilities, Component Facilities and Easements which burden its Parcel and benefit the Observatory Parcel, other than Easements declared or created under **Section 3.1(C)**, so long as such relocation is reasonable and does not have a material adverse effect on the use, operation, operating cost, enjoyment of, or access to, the Observatory Parcel.

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3.5 **Security Controls and Temporary Closure.** The Owner whose Parcel is burdened by the Easements granted in **Article III**, or the Office Owner, as applicable, may, (1) in connection with the performance of Commercial Property Maintenance Obligations, or (2) in an Emergency Situation, or (3) to prevent a dedication of, or an accruing of rights by, the public in and to the use of any portion of the Entire Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. In addition, provided there is no material adverse impact on ingress and egress, the Office Owner may, from time to time, impose reasonable security controls and access limitations consistent with the operation of the Building and applicable Law and install any overall security system for the Entire Property. In imposing the foregoing controls, the Office Owner shall take into consideration the (i) reasonable needs and requirements of the user of the Easement consistent with Comparable Buildings, (ii) the circumstances giving rise to such controls, and (iii) controls imposed at Comparable Buildings.

## **ARTICLE IV**

### **EASEMENTS BENEFITING THE OFFICE PARCEL**

4.1 **Easement Declared.** Subject to the Rules and Regulations, the following perpetual (except as otherwise set forth below) easements benefiting the Office Parcel and burdening the other Parcels and any other portions of the Commercial Property are hereby declared and created:

(A) **Structural Support.** A non-exclusive easement in and to all Structural Supports at any time located within or constituting a part of the Commercial Property for the support of (i) the Office Parcel and (ii) any Facilities or other portions of the Commercial Property with respect to which the Office Owner is granted an easement under this Declaration.

(B) **Ingress and Egress.** A non-exclusive easement (i) for ingress and egress by the Owners over the Commercial Property Public Common Areas, (ii) for ingress and egress by persons, vehicles, material and equipment over, under and through such portions of the Commercial Property as may be necessary to permit the exercise of the rights granted to the Office Owner hereunder during any period in which said rights may be exercised, and (iii) over, under and through such portions of the Commercial Property as may be necessary to enable the Office Owner to perform its obligations under this Declaration. All rights of use under this **Section 4.1(B)** may be exercised by the Permittees of the Owners.

(C) **Encroachments.** An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Office Parcel encroaches or shall hereafter encroach upon any part of the Commercial Parcel. Such easement to maintain

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encroachments shall exist only as long as the encroaching portion of the Building continues to exist.

(D) **Facilities.** A non-exclusive easement for the use and Maintenance of all Facilities and Component Facilities (including any replacements thereof or additions thereto) and Facilities Areas located in, on or about the Commercial Property, whether as the Owner of the Office Parcel, or in the role the Office Owner has as the operator of the Building as specified herein.

(E) **Emergency and Service Access.** A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through (i) those sections of the fire stairways located, from time to time, in the Commercial Property and any corridors, hallways or vestibules located in the Commercial Property which are necessary for ingress to or egress from such stairways, (ii) the service corridors located on the ground floor of the Commercial Property, and (iii) the employee entrances located on the ground floor of the Commercial Property.

(F) **Facade Maintenance and Cleaning and Window Washing.** A non-exclusive easement for access to and the right to use the Operator's Platform and System for the purpose of (i) cleaning the exterior windows of the Office Parcel; and (ii) Maintaining the Exterior Façade of the Commercial Building, or any portion thereof, and any portion of the exterior façade, windows and wall and exterior façade, windows and wall Structural Supports of the Existing Residential Property that is required to be Maintained, if any, by the Owners under the Residential Condominium Operating Agreement. Maintenance of the Exterior Façade of the Commercial Building shall be at the cost and expense of the Owner in whose Parcel the portion of the Exterior Façade being Maintained is located, as more fully described in **Article XVI** hereof and **Exhibits 16.1** and **16.2** attached hereto.

(G) **Self-Help.** During such time as any Owner of any part of the Commercial Property is a Defaulting Owner with respect to any of its Maintenance obligations hereunder, to the extent the Office Owner has the right pursuant to this Declaration to perform any such repair or Maintenance, a non-exclusive, temporary easement for ingress and egress by persons, material and equipment over, on, across and through the portion of the Commercial Property owned by the Defaulting Owner for the purpose of, and to the extent necessary to, exercise any such right of repair or Maintenance.

(H) **Maintenance Access.** A non-exclusive easement for persons, materials and equipment over, on, across and through those portions of the Commercial Property which are reasonably necessary (i) to permit the performance of the Commercial Property Maintenance Obligations, the Maintenance or Restoration of the Office Parcel and the performance of any Capital Project, as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to use the Easement rights set forth in this Section, or (iii) to construct and Maintain substitute or additional structural support required by **Article IX** hereof. If access is required to any space leased to any Tenant, the Office Owner shall coordinate with the Owner of such Tenant space to gain such access as is



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necessary and reasonable to perform the Maintenance, and, if requested by the burdened Owner, the burdened Owner shall be permitted to perform the work and be reimbursed by the Office Owner for any reasonable expenses incurred by the burdened Owner in connection therewith.

(I) **Public Restrooms.** A non-exclusive perpetual easement for access to, and use of, the restrooms located within the Retail Parcel on the concourse level of the Commercial Building as identified on **Exhibit L**, including access to, and use of, the "slop sink" located therein, at all times that the concourse level of the Commercial Building is open. Such restroom shall serve as the public restrooms for the Commercial Building.

(J) **Janitor and Security Rooms.** A non-exclusive easement for maintenance, security, and support staff employed by the Office Owner to use Facilities located on the 16th floor of the Building, provided for such staff, including the lunch room and washroom Facilities.

(K) **Locker Room** A non-exclusive easement for use by the maintenance and security staff employed by the Office Owner to use the two (2) locker room facilities located on the concourse level of the Commercial Building.

(L) **Common Walls, Ceiling, and Floors.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs existing in and along the common boundaries of the Office Parcel and other Parcels in the Commercial Parcel which also serve as walls, ceiling or floors for these other parcels of the Commercial Building.

(M) **Commercial Property Signage.** An exclusive easement is hereby granted to the Office Owner, to be used in accordance with the provisions **Section 7.1** and **Section 7.2**, to approve, locate, install, use, operate, modify, remove, relocate, Maintain and replace any and all interior and exterior signage, identification elements, advertising medium and other Building directories and signage, in, on or about any portion of the Commercial Property. The Office Owner also may grant and extend such rights to another Owner or such Owner's Tenants in accordance with the provisions of **Section 7.2**. Except for the existing signage described in **Section 7.1**, the Office Owner is hereby granted and reserved the sole and absolute power, right and authority to establish, approve, locate, install, use, operate, relocate and replace the signage in the Commercial Property, all in compliance with **Section 7.1(E)** and **Section 7.2**.

(N) **Broadcast Component Extension Grid Easement.** A non-exclusive easement to locate, install, Maintain and remove twelve (12) antennae or satellite dishes used in conjunction with normal retail and/or office use on the Broadcast Component Extension Grid, subject to such reasonable requirements as may be imposed by the Broadcast Owner from time to time. If more space is needed by the Office Owner, the Broadcast Owner shall use commercially reasonable efforts to make appropriate space available.

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(O) **Tenant Rights.** In addition to the easement rights granted in this **Article II**, the Office Owner shall have a temporary easement to accommodate the space rights set forth on **Exhibit 4.1**. These easement rights shall expire on the same date that the rights of the Tenants under the applicable leases expire or terminate (for the purpose of clarification, these easement rights shall continue for any renewal or extension periods granted in accordance with the terms of the leases as those rights exist as of the date hereof).

The easements granted in this **Section 4.1** are granted to the Office Owner. The Office Owner may, subject to the terms of this Declaration, grant the easement rights set forth in **Section 4.1(B), (D), (I), (K), (M), (N), and (O)** to its Commercial Permittees consistent with the Office Owner's easement rights, provided, however, that the use of the easements granted hereunder by the Office Owner's Commercial Permittees shall not increase the burden on the burdened Owner's Parcel any more than the rights granted to the Office Owner under this **Article IV**. The granting of easement rights to Commercial Permittees under this **Section 4.1** shall not, in any way, increase the Office Owner's rights, reduce the Office Owner's obligations under this Declaration, or create any privity between the other Owners and any such Commercial Permittees.

4.2 **Access.** Each Easement created under this **Article IV** which provides or requires, for its enjoyment, ingress and egress on, over, across or through any portion of the Commercial Property shall (i) include such required rights of ingress and egress, and (ii) be in all respects subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the portion of the Commercial Property burdened may, from time to time after consultation with the Office Owner, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use, enjoyment, operation, or access to, the Commercial Property, or material increase in operating costs to any Owner, and in order to ensure the reasonable security of the Commercial Property affected; provided, however, that any such limitations shall not preclude or unreasonably restrict access to, or the use enjoyment of, any such Easement for the normal business operations of the benefited portion of the Commercial Property. In utilizing an easement created under this **Article IV**, the Office Owner shall, to the extent reasonably practicable, minimize the impact of its exercise on the operations of the burdened Parcel, taking into consideration both the Office Owner's obligations under this Declaration and any disruption on the operations of the burdened Parcel. To the extent any easement granted under this **Article IV** may interfere with the operations of the Owner of the burdened Parcel, the Office Owner shall exercise commercially reasonable efforts to minimize such interference. The Office Owner shall use, and shall cause its Tenants to use, the easements granted in this **Article IV** in a commercially reasonable and orderly manner such that the use thereof will not unreasonably interfere with the easement rights granted to the other Owners and their Tenants under this Declaration or unreasonably interfere with any Owner's ownership rights in their respective Parcels, taking into account the Office Owner's obligations under this Declaration.

4.3 **Binding.** Easements provided for, declared or created (a) under **Section 4.1** shall be binding upon the Owners of any portion of the Commercial Property burdened thereby and,



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subject to the provisions of **Article XXV**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the portion of the Commercial Property so benefited. Notwithstanding the easements granted in this Declaration, each Owner retains and reserves any and all other rights of ownership with respect to its Parcel.

4.4 **Relocation.** Each of the Owners of the Commercial Property burdened by the easements set forth herein shall have the right, at its respective sole cost and expense, to relocate within its Parcel any Facilities, Component Facilities and Easements which burden its Parcel and benefit the Office Parcel, other than Easements declared or created under **Section 4.1(C)**, so long as such relocation is reasonable and does not have a material adverse effect on the use, operation, operating cost, enjoyment of, or access to, the Office Parcel.

4.5 **Security Controls and Temporary Closure.** The Owner whose Parcel is burdened by the Easements granted in this **Article IV**, or the Office Owner, as applicable, may, (1) in connection with the performance of Commercial Property Maintenance Obligations and the performance of its other obligations under this Declaration, or (2) in an Emergency Situation, or (3) to prevent a dedication of, or an accruing of rights by, the public in and to the use of any portion of the Entire Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. In addition, provided there is no material adverse impact on ingress and egress, the Office Owner may, from time to time, impose reasonable security controls and access limitations consistent with the operation of the Building and applicable Law and install any overall security system for the Entire Property. In imposing the foregoing controls, the Office Owner shall take into consideration the (i) reasonable needs and requirements of the user of the Easement consistent with Comparable Buildings, (ii) the circumstances giving rise to such controls, and (iii) controls imposed at Comparable Buildings.

## ARTICLE V

### EASEMENTS BENEFITING THE RESTAURANT PARCEL

5.1 **Easement Declared.** Subject to the Rules and Regulations, the following perpetual (except as otherwise set forth below) easements benefiting the Restaurant Parcel and burdening the other Parcels and any other portions of the Commercial Property are hereby declared and created:

(A) **Structural Support.** A non-exclusive easement in and to all Structural Supports at any time located within or constituting a part of the Commercial Property for the support of (i) the Restaurant Parcel and (ii) any Facilities or other portions of the Commercial Property with respect to which the Restaurant Owner is granted an easement under this Declaration.

(B) **Ingress and Egress.** A non-exclusive easement (i) for ingress and egress by the Owners over the Commercial Property Public Common Areas, (ii) for ingress and egress by persons, vehicles, material and equipment over, under and through such

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portions of the Commercial Property as may be necessary to permit the exercise of the rights granted to the Restaurant Owner hereunder during any period in which said rights may be exercised, and (iii) over, under and through such portions of the Commercial Property as may be necessary to enable the Restaurant Owner to perform its obligations under this Declaration. All rights of use under this **Section 5.1(B)** may be exercised by the Permittees of the Owners.

(C) **Encroachments.** An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Restaurant 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 Building continues to exist.

(D) **Facilities.** A non-exclusive easement for the use by the Restaurant Owner of any Facilities and Component Facilities (including any replacements thereof or additions thereto) or Facilities Area serving or benefiting the Restaurant Parcel located in, on or about other portions of the Commercial Property.

(E) **Loading Dock.** A non-exclusive easement for ingress and egress by persons, vehicles, material and equipment over, on, across and through the truck ramps, the trucking concourse and loading dock located on the east side of the ground floor of the Office Parcel, as modified from time to time for the purposes described in this Declaration and for such other purposes as are customary for the operation and use of a similar high-rise building, in all cases, subject, however, to the terms and conditions set forth in **Article XVI** hereof and **Exhibit 16.1** attached hereto.

(F) **Deliveries and Scavenger Service.** A non-exclusive easement for the use of the trucking concourse (including truck berths), loading docks, dock levelers, trash areas, service corridors and ramps located on the east side of the ground floor of the Office Parcel, for the receipt, transport, loading and unloading of materials and equipment and disposal of trash and for any other similar purposes for which such areas are customarily used in the operation and use of a similar high-rise building.

(G) **Emergency and Service Access.** A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through (i) those sections of the fire stairways located, from time to time, in the Commercial Property and any corridors, hallways or vestibules located in the Commercial Property which are necessary for ingress to or egress from such stairways, (ii) the service corridors located on the ground floor of the Commercial Property, and (iii) the employee entrances located on the ground floor of the Commercial Property.

(H) **Window Washing.** A non-exclusive easement for access to and the right to the use of the Operator's Platform and System for the purpose of cleaning the exterior windows of the Restaurant Parcel, or any portion thereof. Use of the Operator's Platform

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and System for window washing shall be governed by the terms and conditions set forth in Article XVI hereof and Exhibits 16.1 and 16.2.

(I) **Emergency Generator**. A temporary non-exclusive easement during the existence of an Emergency Situation for ingress and egress by persons, material and equipment over, on, across and through the emergency generator room located in the Office Parcel and use of the Facilities located therein for restoring temporary electrical power to portions of the Restaurant Parcel. Any such use of the Emergency Generator under this **Section 5.1(I)** shall be subject to the reasonable restrictions and operational guidelines imposed by the Office Owner from time to time including the specific capacity for each Parcel.

(J) **Self-Help**. During such time as any Owner of any part of the Commercial Property is a Defaulting Owner with respect to any of its Maintenance obligations hereunder, to the extent the Restaurant Owner has the right pursuant to this Declaration to perform any such repair or Maintenance, a non-exclusive, temporary easement for ingress and egress by persons, material and equipment over, on, across and through the portion of the Commercial Property owned by the Defaulting Owner for the purpose of, and to the extent necessary to, exercise any such right of repair or Maintenance.

(K) **Maintenance Access**. A non-exclusive easement for persons, materials and equipment over, on, across and through those portions of the Commercial Property which are reasonably necessary (i) to permit the Maintenance or Restoration of the Restaurant Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easement rights set forth in this Section, or (ii) to construct and Maintain substitute or additional structural support required by **Article IX** hereof. Any use of the easements described in this **Section 5.1(K)** shall be reasonably coordinated with the Office Owner. If access is required to any space leased to any Tenant, the Restaurant Owner shall coordinate with the Owner of such Tenant space to gain such access as is necessary and reasonable to perform the Maintenance, and, if requested by the burdened Owner, the burdened Owner shall be permitted to perform the work and be reimbursed by the Restaurant Owner for any reasonable expenses incurred by the burdened Owner in connection therewith.

(L) **Freight Elevator**. The non-exclusive easement for the use of two freight elevators identified as Elevator Car numbers 5 and 6, which are owned by the Office Owner, to be used in common with all of the other Owners and the non-exclusive easement for the use of one elevator in common with the Broadcast Owner and the Observatory Owner (and, to the extent provided in **Article IV**, the Office Owner) identified as Elevator Car number 4, which is owned by the Office Owner. These freight elevators are shown on **Exhibit P** attached hereto, which are and shall at all times be capable of stopping at each level of the Commercial Building for ingress to or egress from the Restaurant Parcel for persons, materials and equipment (A) for Maintenance of Facilities and Component Facilities in the Restaurant Parcel, (B) to perform its obligations under this Declaration and (C) in an Emergency Situation.

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(M) **Janitor and Security Rooms.** A non-exclusive easement for maintenance security and support staff employed by the Restaurant Owner to use Facilities located on the 16th floor of the Building, provided for such staff, including the lunch room and washroom Facilities.

(N) **Parking Garage Ramp.** A non-exclusive easement for use of the Parking Garage Ramp for ingress and egress to and from the Parking Garage, and to and from the entrance and exit drives on the east side of the Commercial Building leading to Chestnut Street and Delaware Street.

(O) **Locker Room.** A non-exclusive easement for use by the maintenance and security staff employed by the Restaurant Owner to use the two (2) locker room facilities located on the concourse level of the Commercial Building.

(P) **Common Walls, Ceilings and Floors.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs existing in and along the common boundaries of the Restaurant Parcel and other Parcels in the Commercial Parcel which also serve as walls, ceilings or floors for these other parcels of the Commercial Building.

(Q) **Passenger Elevator.** A nonexclusive easement for the use of passenger Elevator Car number 2, as shown on **Exhibit P** attached hereto, in common with the Observatory Owner, for ingress and egress to and from the Restaurant Parcel for the Permittees of the Restaurant Owner. The use of Elevator Car number 2 shall be reserved for the Restaurant Owner and the Observatory Owner, based on the Schedule attached hereto as **Exhibit Q** and made a part hereof. Changes to this schedule shall be made only with the consent of both the Restaurant Owner and the Observatory Owner, and the parties hereby agree to revisit such schedule in good faith upon the expiration of the existing lease for the operation of the Restaurant Parcel. Any dispute regarding the use of Elevator Car number 2 shall be subject to resolution in accordance with the provisions of **Article XVII**. The Restaurant Owner and the Observatory Owner shall have the exclusive right to make mutually and reasonably agreeable improvements, alterations and/or upgrades to Elevator Car number 2, and the Restaurant Owner hereby agrees that the Observatory Owner shall be permitted to install audio and/or visual features (not to include any third party advertisements) consistent with the operation of a first class observatory business in the interior of Elevator Car number 2 subject to the Restaurant Owner's approval, not to be unreasonably withheld, that such features (i) are not inconsistent with the First Class Standard (taking into account the unique characteristics of the operation of an observatory business), (ii) do not materially impact the structure or operation of Elevator Car number 2, (iii) shall not be heard from in an unreasonably loud manner, and shall not otherwise pose an unreasonable nuisance to a reasonable customer of a first-class white tablecloth restaurant that shares a common elevator with a first-class observatory (e.g., no unreasonably jarring visual effects or unreasonably loud or annoying sound effects, the Restaurant Owner hereby acknowledging that the fact that the elevator includes audio and/or visual features of the observatory experience would not in and of itself pose an unreasonable nuisance), (iv) do not unreasonably disturb, or create



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an unreasonable nuisance for, any Commercial Permittees, (v) comply with Laws, or (vi) do not otherwise pose a danger to the health or safety of the Restaurant Owner or its Permittees; and subject to the Office Owner's approval, not to be unreasonably withheld that such features shall not be heard from in an unreasonably loud manner, and shall not unreasonably disturb any Commercial Permittees in any Common Areas or other Owner's Parcel. Notwithstanding anything to the contrary, no audio, visual or other features will be permitted to be installed within Elevator Car 2 if any music, sounds or other noise can be heard from outside of Elevator Car 2 when such elevator car is on either the lower concourse level or the street-level floor and the elevators doors are open, and no visual effects or non-customary elevator lighting shall be visible from outside of Elevator Car 2 when the elevator car is on the street level floor and the doors are open.

(R) **Restaurant Patron Queue Area**. A non-exclusive easement is granted in and to the area shown on **Exhibit M** attached hereto, located in the lobby area of the Office Parcel, for patrons of the Restaurant Parcel to queue, line-up and wait for access to the Restaurant Component. The Office Owner may relocate and/or modify the Restaurant Patron Queue Area from time to time, provided that the Restaurant Owner is given fifteen (15) Business Days' advance written notice of such relocation or change, the new area is within the lobby area of the first floor of the Commercial Building and such relocation or change does not materially disrupt or adversely affect the normal business operations of the Restaurant Parcel. The right to use the Restaurant Patron Queue Area shall be limited to those days and those hours that the Restaurant Parcel is open for business to the public (or open for scheduled private parties or events).

(S) **Tenant Rights**. In addition to the easement rights granted in this **Article II**, the Restaurant Owner shall have a temporary easement to accommodate the space rights set forth on **Exhibit 5.1**. These easement rights shall expire on the same date that the rights of the Tenants under the applicable leases expire or terminate (for the purpose of clarification, these easement rights shall continue for any renewal or extension periods granted in accordance with the terms of the leases as those rights exist as of the date hereof).

(T) **Public Restrooms**. A non-exclusive perpetual easement for access to, and use of, the restrooms located within the Retail Parcel on the concourse level of the Commercial Building as identified on **Exhibit L**, at all times that the concourse level of the Commercial Building is open. Such restroom shall serve as the public restrooms for the Commercial Building.

The easements granted in this **Section 5.1** are granted to the Restaurant Owner. The Restaurant Owner may, subject to the terms of this Declaration, grant the easement rights set forth in **Section 5.1(B), (E), (F), (L), (N), (O), (R), (S) and (T)** to its Commercial Permittees consistent with the Restaurant Owner's easement rights, provided, however, that the use of the easements granted hereunder by the Restaurant Owner's Commercial Permittees shall not increase the burden on the burdened Owner's Parcel any more than the rights granted to the Restaurant Owner under this **Article V**. The granting of easement rights to Commercial Permittees under this **Section 5.1** shall not, in any way, increase the Restaurant Owner's rights,

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reduce the Restaurant Owner's obligations under this Declaration, or create any privity between the other Owners and any such Commercial Permittees.

5.2 **Access.** Each Easement created under this **Article V** which provides or requires, for its enjoyment, ingress and egress on, over, across or through any portion of the Commercial Property shall (i) include such required rights of ingress and egress, and (ii) be in all respects subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the portion of the Commercial Property burdened may, from time to time after consultation with the Office Owner, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use, enjoyment, operation, or access to, the Commercial Property, or material increase in operating costs to any Owner, and in order to ensure the reasonable security of the Commercial Property affected; provided, however, that any such limitations shall not preclude or unreasonably restrict access to, or the use enjoyment of, any such Easement for the normal business operations of the benefited portion of the Commercial Property. In utilizing an easement created under this **Article V**, the Restaurant Owner shall, to the extent reasonably practicable, minimize the impact of its exercise on the operations of the burdened Parcel, taking into consideration any disruption on the operations of the burdened Parcel. To the extent any easement granted under this **Article V** may interfere with the operations of the Owner of the burdened Parcel, the Restaurant Owner shall exercise commercially reasonable efforts to minimize such interference. The Restaurant Owner shall use, and shall cause its Tenants to use, the easements granted in this **Article V** in a commercially reasonable and orderly manner such that the use thereof will not unreasonably interfere with the easement rights granted to the other Owners and their Tenants under this Declaration or unreasonably interfere with any Owner's ownership rights in their respective Parcels.

5.3 **Binding.** Easements provided for, declared or created (a) under **Section 5.1** shall be binding upon the Owners of any portion of the Commercial Property burdened thereby and, subject to the provisions of **Article XXV**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the portion of the Commercial Property so benefited. Notwithstanding the easements granted in this Declaration, each Owner retains and reserves any and all other rights of ownership with respect to its Parcel.

5.4 **Relocation.** Each of the Owners of the Commercial Property burdened by the easements set forth herein shall have the right, at its respective sole cost and expense, to relocate within its Parcel any Facilities, Component Facilities and Easements which burden its Parcel and benefit the Restaurant Parcel, other than Easements declared or created under **Section 5.1(C)**, so long as such relocation is reasonable and does not have a material adverse effect on the use, operation, operating cost, enjoyment of, or access to, the Restaurant Parcel.

5.5 **Security Controls and Temporary Closure.** The Owner whose Parcel is burdened by the Easements granted in this **Article V**, or the Office Owner, as applicable, may, (1) in connection with the performance of Commercial Property Maintenance Obligations, or (2) in an Emergency Situation, or (3) to prevent a dedication of, or an accruing of rights by, the public in and to the use of any portion of the Entire Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through



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any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. In addition, provided there is no material adverse impact on ingress and egress, the Office Owner may, from time to time, impose reasonable security controls and access limitations consistent with the operation of the Building and applicable Law and install any overall security system for the Entire Property. In imposing the foregoing controls, the Office Owner shall take into consideration the (i) reasonable needs and requirements of the user of the Easement consistent with Comparable Buildings, (ii) the circumstances giving rise to such controls, and (iii) controls imposed at Comparable Buildings.

## ARTICLE VI

### EASEMENTS BENEFITING THE BROADCAST PARCEL

6.1 **Easement Declared.** Subject to the Rules and Regulations, the following perpetual (except as otherwise set forth below) easements benefiting the Broadcast Parcel and burdening the other Parcels and any other portions of the Commercial Property are hereby declared and created:

(A) **Structural Support.** A non-exclusive easement in and to all Structural Supports at any time located within or constituting a part of the Commercial Property for the support of (i) the Broadcast Parcel and (ii) any Facilities or other portions of the Commercial Property with respect to which the Broadcast Owner is granted an easement under this Declaration.

(B) **Ingress and Egress.** A non-exclusive easement (i) for ingress and egress by the Owners over the Commercial Property Public Common Areas, (ii) for ingress and egress by persons, vehicles, material and equipment over, under and through such portions of the Commercial Property as may be necessary to permit the exercise of the rights granted to the Broadcast Owner hereunder during any period in which said rights may be exercised, and (iii) over, under and through such portions of the Commercial Property as may be necessary to enable the Broadcast Owner to perform its obligations under this Declaration. All rights of use under this **Section 6.1(B)** may be exercised by the Permittees of the Owners.

(C) **Encroachments.** An exclusive easement to maintain encroachments in the event and to the extent that, by reason of the original construction of the Building, any reconstruction thereof, minor surveying errors, or the subsequent settlement or shifting of any part of the Building, any part of the Broadcast 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 Building continues to exist.

(D) **Facilities.** A non-exclusive easement for the use by the Broadcast Owner of any Facilities and Component Facilities (including any replacements thereof or

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additions thereto) or Facilities Area serving or benefiting the Broadcast Parcel located in, on or about other portions of the Commercial Property.

(E) **Loading Dock.** A non-exclusive easement for ingress and egress by persons, vehicles, material and equipment over, on, across and through the truck ramps, the trucking concourse and loading dock located on the east side of the ground floor of the Office Parcel, as modified from time to time for the purposes described in this Declaration and for such other purposes as are customary for the operation and use of a similar high-rise building, in all cases, subject, however, to the terms and conditions set forth in **Article XVI** hereof and **Exhibit 16.1** attached hereto.

(F) **Deliveries and Scavenger Service.** A non-exclusive easement for the use of the trucking concourse (including truck berths), loading docks, dock levelers, trash areas, service corridors and ramps located on the east side of the ground floor of the Office Parcel, for the receipt, transport, loading and unloading of materials and equipment and disposal of trash and for any other similar purposes for which such areas are customarily used in the operation and use of a similar high-rise building; in all cases subject, however, to the terms and conditions set forth in **Article XVI** hereof and **Exhibit 16.1** attached hereto.

(G) **Emergency and Service Access.** A non-exclusive easement for ingress and egress by persons, material and equipment over, on, across and through (i) those sections of the fire stairways located, from time to time, in the Commercial Property and any corridors, hallways or vestibules located in the Commercial Property which are necessary for ingress to or egress from such stairways, (ii) the service corridors located on the ground floor of the Commercial Property, and (iii) the employee entrances located on the ground floor of the Commercial Property.

(H) **Window Washing.** A non-exclusive easement for access to and the right to the use of the Operator's Platform and System for the purpose of cleaning the exterior windows of the Broadcast Parcel. Use of the Operator's Platform and System for window washing shall be governed by the terms and conditions set forth in **Article XVI** hereof and **Exhibits 16.1** and **16.2**.

(I) **Broadcast Component Emergency Generator.** A temporary non-exclusive easement during the existence of an Emergency Situation for ingress and egress by persons, material and equipment over, on, across and through the emergency generator room located in the Office Parcel and use of the Facilities located therein, including the exclusive use of the Broadcast Component Emergency Generator, for restoring temporary electrical power to portions of the Broadcast Parcel. Any such use of the Emergency Generator under this **Section 6.1(I)** shall be subject to the reasonable restrictions and operational guidelines imposed by the Office Owner from time to time including the specific capacity requirements of the Broadcast Parcel.

(J) **Self-Help.** During such time as any Owner of any part of the Commercial Property is a Defaulting Owner with respect to any of its Maintenance obligations

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hereunder, to the extent the Broadcast Owner has the right pursuant to this Declaration to perform any such repair or Maintenance, a non-exclusive, temporary easement for ingress and egress by persons, material and equipment over, on, across and through the portion of the Commercial Property owned by the Defaulting Owner for the purpose of, and to the extent necessary to, exercise any such right of repair or Maintenance.

(K) **Maintenance Access.** A non-exclusive easement for persons, materials and equipment over, on, across and through those portions of the Commercial Property which are reasonably necessary (i) to permit the Maintenance or Restoration of the Broadcast Parcel as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easement rights set forth in this Section, or (ii) to construct and Maintain substitute or additional structural support required by **Article IX** hereof. Any use of the easements described in this **Section 6.1(K)** shall be reasonably coordinated with the Office Owner. If access is required to any space leased to any Tenant, the Broadcast Owner shall coordinate with the Owner of such Tenant space to gain such access as is necessary and reasonable to perform the Maintenance, and, if requested by the burdened Owner, the burdened Owner shall be permitted to perform the work and be reimbursed by the Broadcast Owner for any reasonable expenses incurred by the burdened Owner in connection therewith.

(L) **Freight Elevator.** The non-exclusive easement for the use of two freight elevators identified as Elevator Cars numbers 5 and 6, which are owned by the Office Owner, to be used in common with all of the other Owners, and the non-exclusive easement for the use of one elevator in common with the Restaurant Owner, the Office Owner and the Observatory Owner, identified as Elevator Car number 4, which is owned by the Office Owner. These freight elevators are shown on **Exhibit P** attached hereto, and shall at all times be capable of stopping at each level of the Commercial Building for ingress to or egress from the Broadcast Parcel for persons, materials and equipment (A) for Maintenance of Facilities and Component Facilities in the Broadcast Parcel, (B) to perform its obligations under this Declaration and (C) in an Emergency Situation.

(M) **Janitor and Security Rooms.** A non-exclusive easement for maintenance and security staff employed by the Broadcast Owner to use Facilities located on the 16th floor of the Building, provided for such staff, including the lunch room and washroom Facilities.

(N) **Parking Garage Ramp.** A non-exclusive easement for use of the Parking Garage Ramp for ingress and egress to and from the Parking Garage, and to and from the entrance and exit drives on the east side of the Commercial Building leading to Chestnut Street and Delaware Street.

(O) **Locker Room.** A non-exclusive easement for use by the maintenance, security and support staff employed by the Broadcast Owner to use the two (2) locker room facilities located just off the loading dock in the South Corridor.

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(P) **Common Walls, Ceilings and Floors.** A non-exclusive easement for support, enclosure, use and Maintenance with respect to those walls and horizontal slabs existing in and along the common boundaries of the Broadcast Parcel and other Parcels in the Commercial Parcel which also serve as walls, ceilings or floors for these other parcels of the Commercial Building.

(Q) **Equipment and Substation Rooms.** An exclusive easement for use of the rooms and areas located on the 100th and 98th floors of the Office Parcel for use, operation, installation and Maintenance of broadcast equipment and substations for use in connection with the operation of the Broadcast Parcel, as shown on **Exhibit R** attached hereto. The Broadcast Owner shall Maintain these rooms and areas, at its sole cost and expense. In addition, if separately metered, the Broadcast Owner shall also pay for the cost of electricity used in these rooms. For purposes of Maintenance, Restoration, repairs, insurance and indemnification, these rooms and areas shall be considered a part of the Broadcast Parcel, and the Broadcast Owner shall use such rooms and areas consistent with all Laws and Rules and Regulations.

(R) **Broadcast Component Expansion Easement.** The Broadcast Owner currently is operating the broadcast towers, the Broadcast Grid Extension Structure and cables, wires, conduits, transmission lines and other equipment and facilities owned or used by the Broadcast Owner (the "Broadcast Facilities") or its Tenants related thereto largely within the Broadcast Parcel. The Owners acknowledge and agree that the Broadcast Owner, in compliance with **Article XXVI** and all applicable Laws, may decide to remove, alter, modify, replace, improve and upgrade the Broadcast Parcel and Broadcast Facilities, including the Broadcast Grid Extension Structure, as the Broadcast Owner may deem necessary or desirable for the successful use and operation of the Broadcast Parcel. Such changes may cause the improvements, broadcast towers and related Broadcast Facilities to encroach into the Office Parcel above the 99th floor and above the penthouse roof structure in a significant way. Consequently, the Broadcast Owner is hereby granted a non-exclusive easement to remove, alter, modify, replace, improve and upgrade the existing Broadcast Parcel towers, Broadcast Grid Extension Structure and Broadcast Facilities currently located within the Broadcast Parcel, in a manner which may encroach into the Office Parcel above the 99th floor and to use, operate, Maintain and Restore such altered, modified, improved, replaced and upgraded Broadcast Parcel towers, Broadcast Grid Extension Structure and Broadcast Facilities within the area shown on **Exhibit N** attached hereto, subject to the prior written consent of the Office Owner, which consent shall not be unreasonably withheld, provided that any such encroachment shall (i) comply with Laws, (ii) not have any adverse structural impact on the Building, (iii) not have any negative impact on the operation of the Building, and (iv) not have any material adverse impact on the access, use, enjoyment or operation of any other Owner, nor materially increase the operating costs of any Owner.

(S) **Broadcast Component Transmission Shaft Easement.** A non-exclusive easement to run, use, operate, Maintain and Restore the Broadcast Facilities and connect to Facilities and Broadcast Facilities located in the Broadcast Parcel east and west

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transmission shaft area of the Broadcast Parcel as shown on Exhibit O, required for the installation, use and operation of the Broadcast Parcel and Broadcast Facilities.

(T) **Broadcast Grid Extension Structure.** A non-exclusive easement to use and Maintain the Broadcast Grid Extension Structure located on the roof of the Building, used in connection with the operation of the Broadcast Parcel.

(U) **Tenant Rights.** In addition to the easement rights granted in this **Article II**, the Broadcast Owner shall have a temporary easement to accommodate the space rights set forth on Exhibit 6.1. These easement rights shall expire on the same date that the rights of the Tenants under the applicable leases expire or terminate (for the purpose of clarification, these easement rights shall continue for any renewal or extension periods granted in accordance with the terms of the leases as those rights exist as of the date hereof).

(V) **Public Restrooms.** A non-exclusive perpetual easement for access to, and use of, the restrooms located within the Retail Parcel on the concourse level of the Commercial Building as identified on Exhibit L, at all times that the concourse level of the Commercial Building is open. Such restroom shall serve as the public restrooms for the Commercial Building.

The easements granted in this **Section 6.1** are granted to the Broadcast Owner. The Broadcast Owner may, subject to the terms of this Declaration, grant the easement rights set forth in **Section 6.1(B), (E), (F), (L), (N), (O), (R), (S), (T), (U) and (V)** to its Commercial Permittees consistent with the Broadcast Owner's easement rights, provided, however, that the use of the easements granted hereunder by the Broadcast Owner's Commercial Permittees shall not increase the burden on the burdened Owner's Parcel any more than the rights granted to the Broadcast Owner under this **Article VI**. The granting of easement rights to Commercial Permittees under this **Section 6.1** shall not, in any way, increase the Broadcast Owner's rights, reduce the Broadcast Owner's obligations under this Declaration, nor shall it create any privity between the other Owners and any such Commercial Permittees.

6.2 **Access.** Each Easement created under this **Article VI** which provides or requires, for its enjoyment, ingress and egress on, over, across or through any portion of the Commercial Property shall (i) include such required rights of ingress and egress, and (ii) be in all respects subject (except in an Emergency Situation) to such reasonable limitations as the Owner of the portion of the Commercial Property burdened may, from time to time after consultation with the Office Owner, impose with respect to the establishment of limited paths of ingress and egress and limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use, enjoyment, operation, or access to, the Commercial Property, or material increase in operating costs to any Owner, and in order to ensure the reasonable security of the Commercial Property affected; provided, however, that any such limitations shall not preclude or unreasonably restrict access to, or the use enjoyment of, any such Easement for the normal business operations of the benefited portion of the Commercial Property. In utilizing an easement created under this **Article VI**, the Broadcast Owner shall, to the extent reasonably practicable, minimize the impact of its exercise on the



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operations of the burdened Parcel, taking into consideration any disruption on the operations of the burdened Parcel. To the extent any easement granted under this **Article VI** may interfere with the operations of the Owner of the burdened Parcel, the Broadcast Owner shall exercise commercially reasonable efforts to minimize such interference. The Broadcast Owner shall use, and shall cause its Tenants to use, the easements granted in this **Article VI** in a commercially reasonable and orderly manner such that the use thereof will not unreasonably interfere with the easement rights granted to the other Owners and their Tenants under this Declaration or unreasonably interfere with any Owner's ownership rights in their respective Parcels.

6.3 **Binding.** Easements provided for, declared or created (a) under **Section 6.1** shall be binding upon the Owners of any portion of the Commercial Property burdened thereby and, subject to the provisions of **Article XXV**, all of such Easements shall run in favor of and inure to the benefit of and be appurtenant to the portion of the Commercial Property so benefited. Notwithstanding the easements granted in this Declaration, each Owner retains and reserves any and all other rights of ownership with respect to its Parcel.

6.4 **Relocation.** Each of the Owners of the Commercial Property burdened by the easements set forth herein shall have the right, at its respective sole cost and expense, to relocate within its Parcel any Facilities, Component Facilities and Easements which burden its Parcel and benefit the Broadcast Parcel, other than Easements declared or created under **Section 6.1(C)**, so long as such relocation is reasonable and does not have a material adverse effect on the use, operation, operating cost, enjoyment of, or access to, the Broadcast Parcel.

6.5 **Security Controls and Temporary Closure.** The Owner whose Parcel is burdened by the Easements granted in this **Article VI**, or the Office Owner, as applicable, may, (1) in connection with the performance of Commercial Property Maintenance Obligations, or (2) in an Emergency Situation, or (3) to prevent a dedication of, or an accruing of rights by, the public in and to the use of any portion of the Entire Property: temporarily prevent, close off or restrict the flow of pedestrian or vehicular ingress, egress or use in, over, on, across and through any of the Easements, but only to the minimal extent and for the shortest time period reasonably necessary under the circumstances in order to minimize the effect on the user of such Easement. In addition, provided there is no material adverse impact on ingress and egress, the Office Owner may, from time to time, impose reasonable security controls consistent with the operation of the Building and applicable Law and install any overall security system for the Entire Property. In imposing the foregoing controls, the Office Owner shall take into consideration the (i) reasonable needs and requirements of the user of the Easement consistent with Comparable Buildings, (ii) the circumstances giving rise to such controls, and (iii) controls imposed at Comparable Buildings.



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## ARTICLE VII

### SIGNAGE

#### 7.1 Signage, Canopies and Other Identification Elements and Advertising Medium.

(A) **Office Parcel.** Subject to the terms of this Declaration and to Laws, the Office Owner is hereby granted an easement for the installation, use, operation and Maintenance of signage, canopies, awnings and other identification elements on, in or around the Exterior Facade and interior of the Commercial Property, which the Office Owner, in its sole discretion, but acting in good faith, determines to be necessary or desirable in connection with the use and operation of the Office Parcel, the Commercial Property and/or the Entire Property. This signage easement grant also includes the right (i) to perform or exercise any of the rights and obligations specified in **Section 7.2**, and (ii) to install, use, operate and Maintain all necessary connections and attachments of such Office Parcel signage, canopies, awnings and identification elements to the Building and all power and lighting elements serving such signage. Exterior and interior signage, canopies, awnings and other identification elements installed, used, operated and Maintained by the Office Owner at the Commercial Building are permitted in their current locations at the Commercial Building as of the Effective Date of this Declaration and as otherwise shown on **Exhibit 7.1(A)(1)**. Subject to the express rights of other Owners under **Section 7.1(B)**, **Section 7.1(C)**, and **Section 7.1(D)** the Office Owner may also relocate, install, use, operate and Maintain additional, replacement, and new exterior and interior signage, canopies, awnings and other identification elements in any location at the Entire Property as determined by the Office Owner in its sole discretion but acting in good faith, taking into consideration any adverse impact on the other Owners. If an Owner would be adversely impacted by such action by the Office Owner, the Office Owner shall provide the impacted Owner with fifteen (15) Business Days' advance written notice. The Office Owner shall Maintain all of its signage, awnings and other identification elements described in this Section at its expense, unless otherwise provided in this Declaration, in compliance with applicable Laws. All utilities required to operate the signage, canopies, awnings and other identification elements described in this **Section 7.1(A)** shall, if reasonably feasible, be obtained from the electrical panel serving the Office Owner (or its Tenants), which shall be billed by the utility provider directly to the Office Owner (or such Tenant). If any signage, canopies, awnings or identification elements described herein must obtain power from a common electrical panel, the Office Owner shall make an equitable allocation of the cost and bill the relevant parties in accordance with such allocation. Any additional power capacity required for new or additional signage, or any relocated signage, shall be provided, to the extent available, at the cost and expense of the requesting Owner. The Office Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install and operate its signage permitted under this Declaration, wherever located in the Commercial Property. In addition to the foregoing rights, the Office Owner shall have the right to install, Maintain use and operate Building identification signage, Building directories, service identification signage (indicating cab or valet or bus drop-off areas), Facilities and

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Facilities Areas identification signage, parking garage signage and information, pylon, pole, stand and monument signs, whether temporary or permanent, all in accordance with Laws and the terms of this Declaration, and the costs thereof (including utilities and permits) shall be included in Operating Expenses. The Office Owner agrees that any new lease the Office Owner enters into for any space in the Office Parcel shall not grant signage rights which materially and adversely affect the rights granted to the Retail Parcel, the Broadcast Parcel, the Restaurant Parcel, the Observatory Parcel, or, if applicable, the Parking Garage Parcel, under this Declaration. Notwithstanding anything in this Declaration to the contrary, except as otherwise expressly set forth in this Declaration, the Office Owner shall have the exclusive right to install and Maintain signage on the Office Parcel and no other Owner may install or Maintain any signage thereon without the Office Owner's prior written consent, which consent will not be unreasonably withheld; provided, however, that the foregoing restriction shall not apply to any Building identification signs, signs required by Laws, and any directional or way-finding signage (subject to the other provisions of this Declaration), nor to any signage that indicates the type or location of any Facilities, Component Facilities or Facilities Areas.

(B) **Retail Parcel.** Subject to the terms of this Declaration and to Laws, the Retail Owner is hereby granted an easement for the installation, use and Maintenance of the exterior and interior signage, canopies, awnings, advertising media (including without limitation televisions, electronic monitors and other LCD signage to the extent permitted by Law) and other identification elements identifying the Retail Tenants and Retail Parcel operations, in the current locations existing at the Commercial Building as of the Effective Date of this Declaration, as shown on Exhibit 7.1(B)(1) (as such signage may be modified or increased in accordance with this Declaration, including any additional signage permitted within the Maximum Retail Signage Area, the "Retail Signage"). The general size, design, quality and appearance of such Retail Signage permitted hereunder shall be equivalent to the signage shown on Exhibit 7.1(B)(1). This signage easement grant includes the right to install, use and Maintain all connections and attachments of the Retail Signage to the Building and all power and lighting elements serving such Retail Signage. The Retail Signage shown on Exhibit 7.1(B)(1) may be relocated, or new or additional Retail Signage installed, in new locations established and approved by the Office Owner, in accordance with Section 7.2; provided, however, that the consent of the Office Owner shall not be required for such relocation of, or new or additional, signage so long as such Retail Signage (1) is located in substantially the same space as the interior or exterior portion of the specialized Retail Parcel signage areas shown on Exhibit 7.1(B)(1), except any new or relocation of exterior Retail Signage installed on the Building façade to a new location or that will cause the Retail Owner to exceed the Maximum Retail Sign Area shall require the Office Owner's approval, which approval shall not be unreasonably withheld with respect to a new location, (2) is consistent with existing Retail Signage in the Commercial Building (or the then applicable signage program in effect for the Building) and with a First Class Standard, (3) complies with Laws, (4) such signage is professionally prepared, (5) the area then being used by the Retail Signage does not exceed the Maximum Retail Sign Area, (6) is for a Retail Tenant which is a nationally, internationally, regionally, or major locally recognized retail or

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restaurant entity similar in quality, prestige and reputation to other retail or restaurant tenants located on North Michigan Avenue between Oak Street and East Grand Avenue, (7) alteration, removal, placement or replacement is conducted in accordance with Section 26.1, and (8) otherwise complies with the terms of Section 7.2 (collectively, the "Permitted Retail Signs"). If a Retail Tenant (whose lease is in effect as of the Effective Date) is not a nationally, internationally, regionally, or major locally recognized retail or restaurant entity similar in quality, prestige and reputation to other retail or restaurant tenants located on North Michigan Avenue between Oak Street and East Grand Avenue, then such Retail Tenant shall only have the right to revise its existing sign, provided that such revised sign is of the same size as the current sign, is in the same location as the current sign, and otherwise complies with requirements 1-5, and requirement 7 set forth above. The Retail Owner and any Retail Tenant shall have the right, at their option, to submit Permitted Retail Signs to the Office Owner for confirmation that the Office Owner agrees such Permitted Retail Sign complies with the conditions set forth above. Subject to the conditions described above, the size, design and manner of operation of all replacement, new, relocated or additional Retail Signage desired by the Retail Owner and not otherwise shown on Exhibit 7.1(B)(1) shall be subject to the Office Owner's prior written consent, which may be given or withheld by the Office Owner in the Office Owner's reasonable discretion (such consent not to be conditioned on the payment of any fees, charges or other costs except for third party out-of-pocket costs if reasonably incurred by the Office Owner) and if consent is withheld, the Office Owner shall specify the reasons therefor. The Office Owner's approval shall not be required for replacement of Retail Signage in the existing locations with a Tenant's new trade name or logo, provided the Retail Signage otherwise complies with Section 7.1(E) or is otherwise a Permitted Retail Sign satisfying the conditions described above. The Office Owner may refuse to consent to any replacement, new, additional or relocated Retail Signage requested by the Retail Owner if, in the Office Owner's reasonable determination (i) the proposed Retail Signage is inconsistent with the quality and character of the other existing Retail Signage at the Commercial Building or with a first class high-rise mixed-use office, retail and commercial building located on North Michigan Avenue between Oak Street and East Grand Avenue, (ii) the proposed Retail Signage violates any existing lease or right or any Laws; (iii) an objection is raised by, and not resolved with, the GNMAA, any other neighborhood organization (applicable to the Building) or the City of Chicago regarding such proposed Retail Signage, or (iv) the proposed Retail Signage does not comply with clauses (2),(3), (4), (5), (7) and (8) in this Section 7.1(B). The Retail Owner, at its sole cost and expense, shall Maintain all Retail Signage described in this Section and shall be responsible for compliance of all such Retail Signage with all Laws. All utilities required to operate the Retail Signage described in this Section 7.1(B) shall, if reasonably feasible, be obtained from the electrical panel serving such Owner (or its Tenant) directly, which shall be billed by the utility provider directly to such Tenant or Owner. If any such Retail Signage or other elements must obtain power from a common electrical panel, the Office Owner shall make an equitable allocation of the cost and bill the relevant party directly. Any additional power capacity required for new or additional Retail Signage, or any replacement or relocated Retail Signage, shall be provided, to the extent available, but at

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the cost and expense of the Retail Owner. Subject to **Section 7.6**, the Retail Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install and operate the Retail Signage permitted under this Declaration, wherever located in the Commercial Property. Upon consent granted by the Retail Owner, which consent shall not be unreasonably withheld (except in an Emergency Situation, in which event no such consent shall be required), the Office Owner may, to the extent reasonably necessary, temporarily remove exterior Retail Signage during any period it is Maintaining the Exterior Façade of the Commercial Building, the Commercial Property Public Common Areas or performing Capital Projects, or, at the cost of the Retail Owner, at any time the Retail Owner fails to comply with its Maintenance obligations and there is, in the Office Owner's reasonable judgment, imminent danger to Persons or property, provided, however, that if the removal is for failure to Maintain, the Office Owner shall not remove such exterior Retail Signage without providing the Retail Owner with at least forty-eight (48) hours prior notice, and if the Retail Owner fails to cure within such forty-eight (48) hours, then the Office Owner has the right to remove the sign and cure the failure to Maintain, provided that in an Emergency Situation, no notice shall be required. In the event the Office Owner so removes such Retail Signage, the Office Owner shall diligently prosecute such Maintenance (and the restoration of such Retail Signage in the location and condition as immediately prior to such removal) in as expeditious a manner as is reasonably practicable and shall exercise commercially reasonable efforts to minimize the time period that such Retail Signage has been removed. The Retail Owner agrees that any new lease the Retail Owner enters into for any space in the Retail Parcel shall not grant signage rights which materially and adversely affect the rights granted to the Office Parcel, the Broadcast Parcel, the Restaurant Parcel, the Observatory Parcel, or, if applicable, the Parking Garage Parcel, under this Declaration. Notwithstanding anything in this Declaration to the contrary, except for existing signage otherwise depicted on **Exhibit 7**, the Retail Owner shall have the exclusive right to install and Maintain Retail Signage on the Retail Parcel storefronts and no other Owner may install or Maintain Tenant signage thereon without the Retail Owner's prior written consent, which consent will not be unreasonably withheld; provided, however, that the foregoing restriction shall not apply to any Building identification signs, signs required by Laws, and any directional or way-finding signage (subject to the other provisions of this Declaration), nor to any signage that indicates the type or location of any Facilities, Component Facilities or Facilities Areas.

(C) **Restaurant Parcel.** Subject to the terms of this Declaration and to Laws, the Restaurant Owner is hereby granted an easement for the installation, use and Maintenance of the signage and other identification elements identifying the restaurant being operated in the Restaurant Parcel, in the current locations existing at the Commercial Building as of the Effective Date of this Declaration, as shown on **Exhibit 7.1(C)(1)** (as such signage may be modified in accordance with this Declaration, the "Restaurant Signage"). The general size, design, quality and appearance of the Restaurant Signage permitted hereunder shall be equivalent to the signage shown on **Exhibit 7.1(C)(1)**. This signage easement grant includes the right to install, use and Maintain all connections and attachments of the Restaurant Signage to the Building and all power and lighting elements serving such Restaurant Signage. The Restaurant



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Signage shown on Exhibit 7.1(C)(1) may be relocated, or new or additional Restaurant Signage installed in new locations established and approved by the Office Owner, in accordance with Section 7.2; provided, however, that the consent of the Office Owner shall not be required for relocation of, or new or additional Restaurant Signage so long as such signage (1) is located in the interior portion of the specialized Restaurant Parcel signage areas shown on Exhibit 7.1(C)(1), (2) is consistent with existing Restaurant Signage in the Commercial Building (or the then applicable signage program in effect for the Building) and with a First Class Standard, (3) complies with Laws, (4) such Restaurant Signage is professionally prepared, (5) the portion of the Maximum Sign Area then used by the Restaurant Parcel does not exceed the Maximum Restaurant Sign Area, (6) is for a Tenant of the Restaurant Parcel which is a nationally, internationally, regionally, or major locally recognized restaurant entity similar in quality, prestige and reputation to other restaurant tenants located on North Michigan Avenue between Oak Street and East Grand Avenue, (7) all alterations, removals, replacements and modifications to Retail Signage shall be performed in accordance with Section 26.1, and (8) otherwise complies with the terms of Section 7.2 (collectively, the "Permitted Restaurant Signs"). The Restaurant Owner shall have the right, at its option, to submit Permitted Restaurant Signs to the Office Owner for confirmation that the Office Owner agrees such Permitted Retail Sign complies with the conditions set forth above. The size, design and manner of operation of all replacement, new, relocated or additional Restaurant Signage desired by the Restaurant Owner and not otherwise shown on Exhibit 7.1(C)(1) shall be subject to the Office Owner's prior written consent, which may be given or withheld by the Office Owner in the Office Owner's reasonable discretion (such consent not to be conditioned on the payment of any fees, charges or other costs except for third party out-of-pocket costs if reasonably incurred by the Office Owner) and if consent is withheld, the Office Owner shall specify the reasons therefor. Subject to the conditions described above, the Office Owner's approval shall not be required for replacement of Restaurant Signage in the existing locations with a Tenant's new trade name or logo, provided the Restaurant Signage otherwise complies with Section 7.1(E) or is otherwise a Permitted Restaurant Sign. The Office Owner may refuse to consent to any replacement, new, additional or relocated Restaurant Signage requested by the Restaurant Owner if (i) the proposed Restaurant Signage is inconsistent with the quality and character of the other existing Restaurant Signage at the Commercial Building or with a first class high-rise mixed-use office, retail and commercial building, (ii) the proposed Restaurant Signage violates any existing lease or right or any Laws; (iii) an objection is raised by, and not resolved with, the GNMAA, any other neighborhood organization (applicable to the Building) or the City of Chicago regarding such Restaurant Signage; or (iv) the proposed Restaurant Signage does not comply with clauses (2),(3), (4), (5), (7) and (8) in this Section 7.1(C). The Restaurant Owner, at its sole cost and expense, shall Maintain all Restaurant Signage described in this Section and shall be responsible for compliance of all Restaurant Signage with all Laws. All utilities required to operate the Restaurant Signage described in this Section 7.1(C) shall, if reasonably feasible, be obtained from the electrical panel serving the Restaurant Owner (or its Tenant) directly, which shall be billed by the utility provider directly to such Tenant or the Restaurant Owner. If any Restaurant Signage must obtain power from a



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common electrical panel, the Office Owner shall make an equitable allocation of the cost and bill the relevant party directly. Any additional power capacity required for new or additional Restaurant Signage, or any replacement or relocated Restaurant Signage, shall be provided, to the extent available, but at the cost and expense of the Restaurant Owner. Subject to Section 7.6, the Restaurant Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install and operate its Restaurant Signage permitted under this Declaration, wherever located in the Commercial Property. Upon reasonable advance notice to the Restaurant Owner and the Restaurant Owner's consent, which consent shall not be unreasonably withheld (except in an Emergency Situation in which event no such notice or consent shall be required but notice shall be given as soon as reasonably practicable and such notice may be oral), the Office Owner may temporarily remove exterior Restaurant Signage at the cost of the Restaurant Owner during any period it is Maintaining the Exterior Façade of the Commercial Building, the Commercial Property Public Common Areas or performing Capital Projects, or at any time the Restaurant Owner fails to comply with its Maintenance obligations and there is, in the Office Owner's reasonable judgment, imminent danger to Persons or property; provided, however, that the Office Owner shall, if requested, provide a reasonable area for use by the Restaurant Owner to install temporary Restaurant Signage. In the event the Office Owner so removes such Restaurant Signage, the Office Owner shall diligently prosecute such Maintenance (and the restoration of such Restaurant Signage in the location and condition as immediately prior to such removal) in as expeditious a manner as is reasonably practicable and shall exercise commercially reasonable efforts to minimize the time period that such Restaurant Signage has been removed. The Restaurant Owner agrees that any new lease the Restaurant Owner enters into for any space in the Restaurant Parcel shall not grant Tenant signage rights which materially and adversely affect the rights granted to the Office Parcel, the Broadcast Parcel, the Retail Parcel, the Observatory Parcel, or, if applicable, the Parking Garage Parcel, under this Declaration. Notwithstanding anything in this Declaration to the contrary, except for existing signage otherwise depicted on Exhibit 7, the Restaurant Owner shall have the exclusive right to install and Maintain Restaurant Signage on the Restaurant Parcel and no other Owner may install or Maintain any signage thereon without the Restaurant Owner's prior written consent, which consent will not be unreasonably withheld; provided, however, that the foregoing restriction shall not apply to any Building identification signs, signs required by Laws, and any directional or way-finding signage (subject to the other provisions of this Declaration), nor to any signage that indicates the type or location of any Facilities, Component Facilities or Facilities Areas.

(D) **Observatory Parcel**. Subject to the terms of this Declaration and to Laws, the Observatory Owner is hereby granted an easement for the installation, use and Maintenance of the signage and other identification elements identifying the observatory and related businesses being operated in the Observatory Parcel, in the current locations existing at the Commercial Building as of the Effective Date of this Declaration, as shown on Exhibit 7.1(D)(1) (as such signage may be modified in accordance with this Declaration, the "**Observatory Signage**"). The general size, design, quality and appearance of the Observatory Signage permitted hereunder shall be equivalent to signage shown on Exhibit 7.1(D)(1). This signage easement grant includes the right to

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install, use and Maintain all connections and attachments of the Observatory Signage to the Building and all power and lighting elements serving such Observatory Signage. The Observatory Signage shown on Exhibit 7.1(D)(1) may be relocated, or new or additional Observatory Signage installed in new locations established and approved by the Office Owner, in accordance with Section 7.2; provided, however, that the consent of the Office Owner shall not be required for relocation of, or new or additional Observatory Signage so long as such Observatory Signage (1) is located in substantially the same space as the interior portion of the specialized Observatory Parcel signage areas shown on Exhibit 7.1(D)(1) (2) is consistent with existing Observatory Signage in the Commercial Building (or the then applicable signage program in effect for the Building) and with a First Class Standard (taking into account the unique characteristics of the operation of an observatory business), (3) complies with Laws, (4) is professionally prepared, (5) the portion of the Maximum Signage Area then used by the Observatory Parcel does not exceed the Maximum Observatory Sign Area, (6) are not signs for a third party, (7) all alterations, removals, replacements and modifications to Observatory Signage shall be performed in accordance with Section 26.1, and (8) otherwise complies with the terms of Section 7.2 (collectively, the "Permitted Observatory Signs"). The Observatory Owner shall have the right, at its option, to submit Permitted Observatory Signs to the Office Owner for confirmation that the Office Owner agrees such Permitted Observatory Sign complies with the conditions set forth above. The size, design and manner of operation of all replacement, new, relocated or additional Observatory Signage desired by the Observatory Owner and not otherwise shown on Exhibit 7.1(D)(1) shall be subject to the Office Owner's prior written consent, which may be given or withheld by the Office Owner in the Office Owner's reasonable discretion (such consent not to be conditioned on the payment of any fees, charges or other costs except for third party out-of-pocket costs if reasonably incurred by the Office Owner) and if consent is withheld, the Office Owner shall specify the reasons therefor. Subject to the conditions described above, the Office Owner's approval shall not be required for replacement of Observatory Signage in the existing locations with a Tenant's or the Observatory Owner's new trade name or logo (or the new name of the Commercial Building or Observatory Parcel subject to Article XXVII hereof), provided the Observatory Signage otherwise complies with Section 7.1(E) or is otherwise a Permitted Observatory Sign. The Office Owner may refuse to consent to any replacement, new, additional or relocated Observatory Signage requested by the Observatory Owner if (i) the proposed Observatory Signage is inconsistent with the quality and character of the other existing Observatory Signage at the Commercial Building or with a first class high-rise mixed-use office, retail and commercial building, (ii) the proposed Observatory Signage violates any existing lease or right or any Laws; (iii) an objection is raised by, and not resolved with, the GNMAA, any other neighborhood organization (applicable to the Building) or the City of Chicago regarding such Observatory Signage; or (iv) the proposed Retail Signage does not comply with clauses (2),(3), (4), (5), (7) and (8) in this Section 7.1(D). The Observatory Owner, at its sole cost and expense, shall Maintain all Observatory Signage described in this Section and shall be responsible for compliance of all Observatory Signage with all Laws. All utilities required to operate the Observatory Signage described in this Section 7.1(D) shall, if reasonably feasible, be obtained from the electrical panel serving

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the Observatory Owner (or its Tenant) directly, which shall be billed by the utility provider directly to such Tenant or the Observatory Owner. If any Observatory Signage must obtain power from a common electrical panel, the Office Owner shall make an equitable allocation of the cost and bill the relevant party directly. Any additional power capacity required for new or additional Observatory Signage, or any replacement or relocated Observatory Signage, shall be provided, to the extent available, but at the cost and expense of the Observatory Owner. Subject to Section 7.6, the Observatory Owner shall pay for and obtain and maintain in effect all permits and licenses necessary to install and operate its Observatory Signage permitted under this Declaration, wherever located in the Commercial Property. Upon reasonable advance notice to the Observatory Owner and the Office Owner's consent, which consent shall not be unreasonably withheld (except in an Emergency Situation in which event no such notice or consent shall be required, but notice shall be given as soon as reasonably practicable and such notice may be oral), the Office Owner may temporarily remove exterior Observatory Signage during any period it is Maintaining the Exterior Façade of the Commercial Building, the Commercial Property Public Common Areas or performing Capital Projects, or at the cost of the Observatory Owner at any time the Observatory Owner fails to comply with its Maintenance obligations and there is, in the Office Owner's reasonable judgment, imminent danger to Persons or property; provided, however, that the Office Owner shall, if requested, provide a reasonable area for use by the Observatory Owner to install temporary Observatory Signage. In the event the Office Owner so removes such Observatory Signage, the Office Owner shall diligently prosecute such Maintenance (and the restoration of such Observatory Signage in the location and condition as immediately prior to such removal) in as expeditious a manner as is reasonably practicable and shall exercise commercially reasonable efforts to minimize the time period that such Observatory Signage has been removed. The Observatory Owner agrees that any new lease the Observatory Owner enters into for any space in the Observatory Parcel shall not grant signage rights which materially and adversely affect the rights granted to the Office Parcel, the Broadcast Parcel, the Retail Parcel, the Restaurant Parcel, or, if applicable, the Parking Garage Parcel, under this Declaration. Notwithstanding anything in this Declaration to the contrary, except for existing signage otherwise depicted on Exhibit 7, the Observatory Owner shall have the exclusive right to install and Maintain Observatory Signage on the Observatory Parcel and no other Owner may install or Maintain signage thereon without the Observatory Owner's prior written consent, which consent will not be unreasonably withheld; provided, however, that the foregoing restriction shall not apply to any Building identification signs, signs required by Laws, and any directional or way-finding signage (subject to the other provisions of this Declaration), nor to any signage that indicates the type location of any Facilities, Component Facilities or Facilities Areas.

(E) General Requirements. The Office Owner may from time to time develop and propose a signage plan for the interior and exterior Commercial Property signage which will include a plan for the directional signage pursuant to Section 7.2 and also specify any criteria, Maintenance or other requirements or restrictions for the Commercial Property signage, which signage plan, and any subsequent changes thereto, shall not conflict with the signage rights and requirements set forth in this Article VII or

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any other rights granted to any Owner hereunder and shall otherwise be subject to the reasonable review and approval of the other Owners prior to being effective (such signage plan as so approved and as modified from time to time, the "**Building Signage Plan**"). Until the approval of the initial Building Signage Plan, unless otherwise required herein, all new signs will be consistent with the signage existing at the Commercial Property on the Effective Date. All signs located on or within the Commercial Property (excepting only those signs which are located internally in an Owner's Parcel and which are not visible from outside of such Parcel, the "**Non-Visible Signs**") shall conform and comply in all respects with the Building Signage Plan. Except for the existing signage, Non-Visible Signs, Permitted Retail Signs and Permitted Restaurant Signs and advertising medium and identification elements described in **Sections 7.1(A), (B), (C) and (D)** and subject to any general signage restrictions and Maintenance requirements determined as set forth in the Building Signage Plan or below in **Section 7.2** and the rights of the Retail Owner regarding the Retail Parcel described in **Section 7.1(B)**, the use of all other areas of the interior and the exterior of the Commercial Building for signage, identification elements and advertising medium is hereby reserved exclusively to the Office Owner, which may be granted by the Office Owner to other Owners and their respective Tenants, as provided in **Section 7.2**. All existing signage, Non-Visible Signs, and advertising medium and identification elements described in **Sections 7.1(A), (B), (C) and (D)** and which are in compliance with such sections are hereby deemed approved and may be used and operated by an Owner, subject to compliance with the provisions of this **Article VII** and the Building Signage Plan. Without the prior written consent of the Retail Owner, which consent shall not be unreasonably withheld, the Office Owner shall not install building identification or directional signs on Retail Tenant storefronts unless replacing existing signage, or unless required by Law. Any and all Commercial Building signage permitted by this Section (including all signage installed by the Office Owner), or by the applicable other Section of this Declaration, must also comply with the following requirements:

(i) all signs, identification elements and advertising or promotional medium must comply with applicable Law and, except as expressly provided in this **Article VII**, must be approved by the Office Owner, in its reasonable discretion, and be of a design, quality and size in keeping with Building character reputation and operation, as reasonably determined by the Office Owner,

(ii) no Owner (except the Office Owner) shall affix or maintain upon any windows and, except for Non-Visible Signs, supports, doors, interior or exterior portions of any Parcel, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items without first receiving the written approval of the Office Owner as to size, type, color, location, copy, nature and display qualities, which such approval shall not be unreasonably withheld; provided, however, that Retail Tenants may place signs upon the interior facings of the windows of the Retail Parcel which signs are related to such Retail Tenant's operations, but such signs must comply with Law (including the Maximum Retail Sign Area to the extent a window sign is deemed



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an exterior sign under applicable Law) and shall be subject to the requirements of **Article 7**;

(iii) no sign shall employ exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers;

(iv) all signs must be professionally designed, fabricated, installed and Maintained and removed so as to minimize damage to the Commercial Building;

(v) no advertising medium shall be utilized by any Owner or its Tenants which can be heard or experienced from outside of any such Owner's space, including without limitation, flashing lights, search lights, loudspeakers, phonographs, or radios; and

(vi) No signage or other identification element or advertising medium shall violate the Trademark License Agreement (or any subsequent naming and signage agreement for the Commercial Building, as provided in **Section 27.1**).

Notwithstanding the foregoing, the Office Owner and other Owners hereby consent to the installation by the Observatory Owner of audio and/or visual features consistent with the operation of a first class observatory business in the Observatory Patron Queue Area, provided that the Observatory Owner adheres to a reasonable and good faith proposal of such audio and/or visual features submitted to the Office Owner and the Retail Owner, and subject to the Office Owner's and the Retail Owner's (as applicable) reasonable satisfaction that such features (i) are not inconsistent with the First Class Standard (taking into account the unique characteristics of the operation of an observatory business), (ii) do not materially impact the structure of the Building or otherwise pose a danger to the health or safety of the applicable Owner or its Permittees or (iii) do not unreasonably interfere with such Owner's access to, use, operation and enjoyment of its Parcel, or increase the operating costs of any Owner. The installation of any such audio and/or visual features in the Observatory Patron Queue Area, and the operation thereof, shall not unreasonably disturb Tenants and Commercial Permittees in the Retail Parcel, the Commercial Property Public Common Areas, and the Commercial Building.

**7.2 Relocation of Signage; New and Additional Signage Locations; Reserved Rights Regarding Signage.** The Declarant declares, and each Owner acknowledges and agrees, that the Commercial Building is an interdependent enterprise among different Owners, with different businesses, objectives and interests, and that the character and quality of the Commercial Building and the success of the businesses located therein will be enhanced by high-quality signage, Maintained and operated in a consistent manner. Although the provisions of this **Section 7.2** shall not be deemed to require an Owner or such Owner's Tenants to modify or replace any signage currently existing at the Commercial Building as of the Effective Date, as subject to and in accordance with **Section 7.1**, any replacement, modified, relocated, new or additional signage to be installed by an Owner (or such Owner's Tenants), except as otherwise expressly provided herein, must be first approved by the Office Owner, such approval given or withheld by the Office Owner in its reasonable discretion and must also comply with Laws and with the general requirements set forth in **Section 7.1(E)**. **Exhibit 7.2** depicts the five (5)



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vitrines located in the Office Parcel lobby of the Commercial Property Public Common Areas, and sets forth which Owner has rights to which vitrine. The Office Owner shall have the right to allow different Owners and such Owner's Tenants the right to use the vitrines which have not been granted to any other Owner pursuant to Exhibit 7.2, to identify their respective Tenants and the products and services of those Tenants, or other information reasonably deemed appropriate by the Office Owner, on terms and conditions reasonably determined by the Office Owner; provided that any such signage shall be at a First Class Standard. In addition, subject to the terms of this Article VII, the Office Owner in its sole discretion, exercised in good faith, shall have the exclusive right and power to designate and grant to an Owner, and an Owner's Tenants, when requested by an Owner, rights to use exterior or interior locations at the Commercial Building for new, replacement, modified, relocated or additional signage for the benefit of such Owner or its Tenants. In making such determination, the Office Owner shall reasonably consider the requirements of applicable Laws, terms and conditions of existing leases and rights, and the current signage located at the Commercial Property (including, without limitation, the adequacy of such current signage for the operation of the business of the respective Owners and any circumstances relating thereto which may reasonably require additional signage capacity). The Office Owner shall act in a good faith manner when considering the signage requests of the other Owners. The Office Owner may also decide, in good faith, whether such grant is permanent, for the benefit of the Owner, or if such grant is personal to such Owner or the Tenant of such Owner, or whether the grant is temporary in duration. Subject to the terms of this Article VII, each Owner, for itself, their Tenants and their Mortgagees, (i) acknowledges and agrees to the right and power and authority of the Office Owner to make these decisions regarding signage, identification elements, signage location and design guidelines, standards and requirements for signage, as may be established or modified by the Office Owner from time to time and at any time in accordance with this Section 7.2, and (ii) agrees to be bound by and comply with such decisions and require their respective Tenants and licensees to comply with such decisions, guidelines, requirements and standards. All Owners acknowledge and agree that the provisions of this Section 7.2 regarding signage are reasonable and necessary to protect the legitimate business interest of all Owners and each Owner's Tenants, and that any violation of the provisions of this Section 7.2 (not cured within the time frames set forth in this Declaration for a default by an Owner), would result in irreparable injury and entitle the Office Owner, or any other Owner adversely impacted by a violation of this Section 7.2, in addition to all other rights and remedies available to it under this Declaration, to seek injunctive relief, without the obligation of posting a bond or other security to seek such injunctive relief. The Office Owner acknowledges a need to prepare and implement an over-all plan for new directional and way-finding signage for the Commercial Building which directs patrons or other Commercial Permittees to the proper entry point for each Parcel, including any such signage located in the Commercial Public Common Areas and for the Observatory Parcel at the Commercial Building. The Office Owner will design and develop the overall directional signage plan for the Commercial Property in consultation with the other Owners, and each of the Owners agrees to reasonably cooperate with the preparation and implantation of any such directional signage plan which may be a part of the Building Signage Plan.

**7.3 Signage in the Public Way.** The Office Owner shall have the exclusive right to interface directly with the City of Chicago, the applicable alderman, and GNMAA with regards to any signs servicing the Commercial Property which are located in the public way including

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the holding of any necessary permits for such signs. The Office Owner shall have full and exclusive discretion (to be exercised in good faith) regarding all policies and practices affecting any signs in the public way.

**7.4 Scaffolding Affecting Signage.** In the event that any scaffolding is constructed and/or erected around any portion of the Retail Parcel, such scaffolding shall be of double-height design. The Owners and Retail Tenants whose signage is negatively impacted by the scaffolding shall have the right to install identification signage on such scaffolding, subject to compliance with Laws. All Owners negatively impacted by such scaffolding shall reasonably cooperate to agree on signage locations and allocations of space on such scaffolding, with priority given to those Owners and Retail Tenants whose signage is most negatively impacted by the scaffolding. Notwithstanding anything in this **Section 7.4** to the contrary, (a) only the Retail Owner shall be permitted to install identification signage on any scaffolding directly in front of any portion of the Retail Parcel fronting on North Michigan Avenue (except to the extent any other signage is blocked, in which case such signage may also be included on such scaffolding), (b) the Office Owner may place signs on the scaffolding in front of the Retail Parcel (limited to Building identification signage, and signage for other Owners and the Existing Residential Property) which does not front North Michigan Avenue, but in no event shall any such signs have a greater prominence than the signage of the Retail Tenants unless existing signs have greater prominence than such Retail Tenant signs, (c) no scaffolding shall be constructed or erected around any portion of the Retail Parcel between November 15<sup>th</sup> and January 5<sup>th</sup> (except to the extent necessary to comply with Laws or to address an Emergency Situation); provided, however that if scaffolding is in place on November 15<sup>th</sup>, the Office Owner will not be required to remove that scaffolding in order to comply with the foregoing requirement, and (d) the Office Owner will exercise commercially reasonable efforts to schedule any activities at the Building that might require scaffolding around any portion of the Retail Parcel to minimize the time during the restricted period described above during which such scaffolding affects the Retail Parcel. If any signage needs to be removed as part of Maintenance or a Capital Project, the cost of such removal shall be a Maintenance or Capital Project expense and shall be charged accordingly.

**7.5 Allocation of Building Signage.** Declarant has advised the Owners that the Building has been allocated a Maximum Total Sign Area of 800 square feet ("**Maximum Sign Area**"). Notwithstanding anything in this Declaration to the contrary, (a) the signage square footage that is used by the Retail Parcel as of the Effective Date (including, if deemed to be an exterior sign under Laws, the Monument, regardless of whether or not the Monument exists) plus an additional thirty square feet of exterior signage shall be collectively referred to herein as the "**Maximum Retail Sign Area**", (b) the signage square footage that is used by the Restaurant Parcel as of the Effective Date shall be referred to herein as the "**Maximum Restaurant Sign Area**", (c) the signage square footage that is used by the Office Parcel as of the Effective Date, plus any unused signage capacity existing as of the Effective Date shall be referred to herein as the "**Maximum Office Sign Area**" (which signage area may be shared by the Parking Garage Owner, if any), (d) the current signage square footage that is used by the Observatory Parcel as of the Effective Date shall be referred to herein as the ("**Maximum Observatory Sign Area**"), (e) in the event the Maximum Sign Area is increased in the future, the Maximum Retail Sign Area will be increased by forty percent (40%) of that additional Maximum Sign Area, the Maximum Office Sign Area will be increased by forty percent (40%) of that additional

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Maximum Sign Area, the Maximum Restaurant Sign Area will be increased by ten percent (10%) of that additional Maximum Sign Area, and the Maximum Observatory Sign Area will be increased by ten percent (10%) of that additional Maximum Sign Area, unless otherwise agreed to by the applicable Owners, and (f) except as relates to any hotel use or to a Tenant leasing space in the Office Parcel (provided that any hotel or Tenant sign shall not be located on or directly above any Retail Tenant storefront (i.e., on the floor immediately above a Retail Tenant storefront)), the Office Owner shall not install and shall not designate to any other Owner the right to install any signage, advertising or identification elements above the second (2<sup>nd</sup>) floor of the Building; provided, however, that if the Office Owner elects to install "high-rise building signs" (as such phrase is used in the CZO as of the date hereof), the Office Owner shall have the right to install such "high-rise building signs" as long as such signs do not violate the terms and conditions of any existing Retail Parcel lease based upon the terms and conditions contained in such existing leases as of the Effective Date. Notwithstanding the foregoing, for purposes of determining the Maximum Retail Sign Area, any signs in the window of any Retail Tenant space which are of a temporary nature shall not count towards determining the Maximum Retail Sign Area, regardless of whether or not such signs are visible outside of the Building. Within six (6) months after the Effective Date, the Office Owner will provide each other Owner with its good faith determination of the allocation of existing exterior signage for each Owner.

**7.6 Governmental and GNMAA Approval of Signage.** Notwithstanding anything in this **Article VII** to the contrary, in the event the City of Chicago, the applicable alderman or GNMAA approval is required by Law or by the Office Owner in connection with any signage, canopies, awnings or other identification elements regarding the Retail Parcel, the Restaurant Parcel, or the Observatory Parcel (a) the requests for such approval shall be filed and pursued jointly by the Office Owner and by the Owner of the portion of the Building requesting such signage and shall not require the joinder of the other Owners, (b) the Office Owner shall reasonably cooperate and coordinate with the Owner requesting that signage to diligently pursue any such required approvals, and (c) the Owner pursuing the signage approvals shall reimburse the Office Owner for all reasonable out-of-pocket costs incurred by Office Owner in connection with the Office Owner's activities hereunder.

## **ARTICLE VIII**

### **RESIDENTIAL CONDOMINIUM OPERATING AGREEMENT AND DEED LAWS**

The Commercial Property and this Declaration are subject to the terms and provisions of the (i) Grant Deed, (ii) Residential Condominium Operating Agreement, and (iii) Trademark License Agreement (collectively, the "**Existing Agreements**"). The Existing Agreements delineate the rights, obligations and privileges of the Declarant with respect to the interrelationship of the Commercial Property and the Existing Residential Parcel, and with certain naming rights more particularly set forth in **Article XXVII**. Each Owner and its respective Parcel is subject to, and shall comply with, the terms and provisions of the Existing Agreements and any prior rights or easements granted therein and no Owner shall breach, violate or default thereunder. Except as provided herein (including the preceding sentence) the Office Owner shall be responsible for fulfilling all of the obligations under the Existing Agreements for the benefit of the Existing Residential Parcel and providing the services required under the

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Existing Agreements and each Owner shall be responsible for its Commercial Property Expense Allocation of the Actual Costs incurred in connection therewith, and the Office Owner shall have sole control over the enforcement of the terms and obligations of the Existing Agreements as against the Existing Residential Parcel (but taking into account the best interests of the Commercial Building as a whole); provided, that to the extent such obligations and/or services apply only to one Parcel, the Owner of such Parcel shall be responsible for such obligations and services. Any amendment to the Residential Condominium Operating Agreement will be subject to the consent of any Owner adversely affected thereby, such consent to be given or withheld in accordance with the terms of Section 32.15. The Office Owner shall keep all affected Owners reasonably informed of any material issues which arise in relation to the Existing Agreements (i.e., economic matters involving amounts in excess of \$100,000 or matters involving litigation under the Existing Agreements). The Actual Costs due to compliance with the Existing Agreements shall be shared by the Owners based on the Commercial Property Expense Allocations and shall be included in the Commercial Property Expenses pursuant to terms of this Declaration. The use of the Commercial Property is subject to and shall be used and operated in compliance with the applicable terms of the Existing Agreements. In the event of any conflict between this Declaration and the Existing Agreements, the Existing Agreements shall control. All rights and benefits granted under this Declaration are subject to Laws.

## ARTICLE IX

### STRUCTURAL SUPPORT

9.1 **Structural Safety and Integrity.** No Owner shall take any action which would adversely affect the structural safety or integrity of the Building.

9.2 **Review of Structural Support.** If for any reason the structural support for any portion of the Building is hereafter reduced below the support required to maintain the structural safety or integrity of the Building, the Architect shall, at the request of any of the Owners, review 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, to the extent possible, the time reasonably necessary to provide adequate substitute or additional structural support.

9.3 **Construction of Additional Structural Support.** If substitute or additional Structural Supports are required in a portion of the Commercial Building in which the Structural Support shall have been reduced, then the Office Owner 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 or approved by the Architect and approved by the Office Owner. The Owner or Owners responsible for such reduction, (if any) (based, if more than one Owner is responsible, upon the relative degree of culpability of such Owners) shall pay all costs and expenses, including, without limitation, the Architect's and any other architectural fees, in connection with construction of the substitute or additional Structural Supports (and, as between two or more responsible Owners, such costs and expenses shall be allocated based upon the relative degree of culpability of such Owners). The Office Owner shall attempt in good faith to determine which Owner or Owners are responsible



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for such reduction and the relative degree of culpability of the responsible Owners (if more than one Owner is responsible). If the Office Owner is unable, within thirty (30) days after such reduction is discovered, to agree which Owner or Owners are responsible for such reduction and the relative degree of culpability of the responsible Owners (if more than one Owner is responsible) or on the sharing of such costs, the Office Owner shall request the advice of the Architect. If after receiving the Architect's advice, the Office Owner cannot agree on the sharing of such costs or on which Owner or Owners are responsible for such reduction and the relative degree of culpability of the responsible Owners (if more than one Owner is responsible), then such determination shall be made by arbitration pursuant to **Sections 17.2** through **17.6** hereof. Any costs and expenses which are not attributable to a specific Owner based upon culpability, shall be paid by all of the Owners in accordance with each Owner's Commercial Property Expense Allocation.

**9.4 Remedial Action.** In the event that the Office Owner 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 Structural Supports at the expense of the Defaulting Owner, and all costs and expenses incurred by Creditor Owner (which costs and expenses shall not include any general office overhead of the Creditor Owner) shall be due from the Defaulting Owner(s) on demand.

**9.5 Effect of Delay.** If delay in constructing substitute or additional Structural Supports would endanger the structural safety or integrity of the Building, then, without regard to which Owner or Owners shall be determined responsible for the reduction, the Owner of the portion of the Commercial Building 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 as soon as reasonably practicable), provide substitute or additional Structural Supports as and wherever may be required, or the Owners shall together undertake to provide substitute or additional Structural Supports; provided, however, the responsible Owner or Owners (based, if more than one Owner is responsible, upon the relative degree of culpability of such Owners) shall be liable for and pay all costs and expenses incurred as a result of any required substitute or additional Structural Supports (which costs and expenses shall not include any general office overhead of the Creditor Owner) (and, as between two or more responsible Owners, such costs and expenses shall be allocated based upon the relative degree of culpability of such Owners). If the responsible Owner or Owners cannot be determined, or if the reduction in Structural Supports results from a defect in the original construction or design of the Building, an act of God or force majeure, then the Owners shall share the cost of providing substitute or additional Structural Supports, including, without limitation, any fees of the Architect, in accordance with the Commercial Property Expense Allocations. 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 or on which Owner or Owners are responsible and their relative degree of culpability, then such dispute shall be resolved pursuant to **Article XVII** hereof. The foregoing shall not be deemed to limit any rights any of the Owners may have against third parties.



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## ARTICLE X

### [INTENTIONALLY RESERVED]

## ARTICLE XI

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

11.1 **Compliance with Laws.** Each Owner shall comply in all material respects with all Laws, the Rules and Regulations and the terms and provisions of the Existing Agreements. Specifically, no Owner shall:

- (i) subject the other Owners to civil or criminal liability;
- (ii) jeopardize the full force or effect of any certificate of occupancy issued to such other Owners or for the Commercial Building itself;
- (iii) jeopardize such other Owner's or Owners' right to occupy or utilize beneficially their respective portion or portions of the Commercial Property or any part thereof (including any Easements granted pursuant to this Declaration);
- (iv) result in the imposition of a lien against any of the Property of the other Owners; or
- (v) otherwise adversely affect the other Owners or their Tenants in any material respect.

11.2 **Insurance Rating Bureau.** Each Owner shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the portion of the Commercial Property owned by such Owner or any portion thereof and the requirements of any insurance policy affecting insurance coverage on any of the other Owners' portion of the Commercial Property, if noncompliance by it with respect to its portion of the Commercial Property or any portion thereof would:

- (i) increase the premiums of any policy of insurance maintained by the other Owners or the premiums of any policy of insurance maintained by all Owners (unless any such Owner which is in non-compliance therewith pays the costs of any such increase);
- (ii) render any of the other Owners' portion of the Commercial Property uninsurable;
- (iii) create a valid defense to any of the other Owners' right to collect insurance proceeds under policies insuring such other Owner's portion of the Commercial Property; or

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(iv) otherwise adversely affect the other Owners or their Tenants in any material respect.

Notwithstanding anything to the contrary set forth in this Declaration, (i) this **Section 11.2** shall not apply to insurance policies of individual Residential Unit Owners in the Commercial Property, but shall apply to all Commercial Unit Owners and all Representative Owners, as applicable; and (ii) if compliance pursuant to this **Section 11.2** is hereafter required of an Owner solely because of the nature of the use, possession or management of or activities in any of the other Owners' portion of the Commercial Property, such other Owner or Owners 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 shall not proceed diligently with any such compliance and such failure to proceed shall adversely and materially affect any of the other Owners, then any Owner may give written notice to such Owner specifying the respect or respects in which the cure of such noncompliance is not proceeding diligently and, if upon expiration of ten (10) days after the receipt of such notice, any such cure of the noncompliance is still not proceeding diligently, then each Creditor Owner may cause such compliance to occur by taking all appropriate steps to carry out the same. Each Creditor Owner shall be entitled to reimbursement upon demand from the Defaulting Owner for all costs and expenses incurred by such Creditor Owner in connection with causing any such compliance to occur; provided, however, that such costs and expenses shall not include any general office overhead of the Creditor Owner.

**11.3 Removal of Lien.** Each Owner shall remove, within thirty (30) days after the filing thereof, any mechanics', materialmen's or any other like lien on any other Parcel or any other Owner's portion of the Commercial Property, or on its portion of the Commercial Property if the existence or foreclosure of such lien on its portion of the Commercial Property would adversely affect any Easement created hereunder or the ability of the Office Owner to provide services to be furnished pursuant to Articles **XIV** or **XXVI** hereof, arising by reason of any work or materials ordered or any act taken, suffered or omitted by such Owner or its Tenants. In the event the Defaulting Owner fails to remove any such lien within such thirty (30) day period, each Creditor Owner may take such action as such Creditor Owner may deem necessary to remove such lien. Each Creditor Owner shall be entitled to reimbursement from the Defaulting Owner for all costs and expenses incurred by such Creditor Owner in removing or attempting to remove such lien. Notwithstanding the foregoing, the Defaulting Owner shall not be required to remove such lien, and within said thirty (30) day period no Creditor Owner shall have the right to take action in respect thereof, so long as within said thirty (30) day period such lien cannot be foreclosed and so long as, within said thirty (30) day period, the Defaulting Owner:

(A) shall in good faith commence and diligently proceed and continue to contest the same by appropriate proceedings and shall give written notice to each Creditor Owner of its intention to contest the validity or amount of such lien; and

(B) shall deliver to each Creditor Owner either: (i) cash or a surety bond from a responsible surety company acceptable to such Creditor Owner in an aggregate amount equal to one hundred twenty-five percent (125%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required

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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 (ii) other security reasonably acceptable to such Creditor Owner. In the event there are multiple Creditor Owners as to the same Defaulting Owner and the Defaulting Owner elects to deliver a surety bond hereunder, such Defaulting Owner shall only be required to deliver one such surety bond to the Creditor Owner which owns the largest number of square feet and such Creditor Owner shall be the recipient and beneficiary of the surety bond and shall hold such surety bond for the benefit of itself and the other Creditor Owners.

Notwithstanding the foregoing in this **Section 11.3**, the Defaulting Owner shall be required to remove of record any such lien which is in imminent danger of being foreclosed, and neither the Office Owner or any Creditor Owner shall be prevented from requiring the Defaulting Owner to remove said lien.

## 11.4 **Indemnification.**

To the fullest extent permitted by law, and subject to **Section 13.7** and **15.6**, each of the Owners (hereinafter in this **Section 11.4** the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify and to hold harmless the Indemnitees of the other Owners from and against any and all claims against the Indemnitees for losses, liabilities (civil or criminal), damages, judgments, costs and expenses (which costs and expenses shall not include any general office overhead of the Indemnitee), and any actions or proceedings arising therefrom, by or on behalf of any Person, firm, corporation or governmental or quasi-governmental authority, arising from, out of or in connection with (i) the Indemnifying Owner's (or any Person claiming by, through or under such Owner) use, possession or management of the Indemnifying Owner's portion of the Commercial Property or activities therein, (ii) any breach or violation of this Declaration by such Indemnifying Owner, (iii) any negligence or intentional misconduct of such Indemnifying Owner or any Tenant or other Commercial Permittee of such Indemnifying Owner (or any of their respective agents, representatives, principals, employees, contractors or invitees) and/or (iv) the performance by such Indemnifying Owner or any Tenant or other Commercial Permittee of such Indemnifying Owner (or any of their respective agents, representatives, principals, employees, contractors or invitees) of any work, Maintenance, use of Easements, Alterations or Capital Projects, and from and against all costs, expenses (provided, however, that such costs and expenses shall not include any general office overhead of the Indemnitee) attorneys' fees, and liabilities incurred with respect to any such claim, action or proceeding arising therefrom; except to the extent that such claim, action or proceeding arose from the negligence, willful misconduct or breach of this Declaration by such Indemnitees. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, the Office Owner shall not be liable to, nor be required to indemnify, any Indemnitees for any failures, breaches or omissions of the Office Owner when the Office Owner is acting in its capacity as the operator of the Commercial Property, unless and to the extent of the gross negligence or willful misconduct of the Office Owner. In case any action or proceeding is brought against any of the Indemnitees by reason of any such claim, the Indemnifying Owner, upon written notice from any such Indemnitees, covenants to defend and to resist such action or proceeding with legal counsel reasonably satisfactory to such Indemnitee. Any counsel for the insurance company providing insurance against such claim, action or

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proceeding shall be deemed to be reasonably satisfactory to the relevant Indemnitees. The Indemnifying Owner shall have the right to approve the institution, defense and settlement of any claim, action or proceeding with respect to which it is obligated to indemnify an Indemnitee hereunder; provided, that the Indemnifying Owner shall not approve the settlement of any litigation actually brought against any Indemnitee in a manner that would create a binding legal obligation on such Indemnitee without such Indemnitee's prior written consent if such settlement would provide for: (a) an admission of wrongdoing by such Indemnitee, (b) injunctive or declaratory relief against such Indemnitee, or (c) the imposition of criminal penalties or liabilities upon such Indemnitee. To the extent that an Indemnifying Owner fails or refuses to defend against any claim, action or proceeding under which an Indemnitee is entitled to indemnification from such Indemnifying Owner hereunder, then, without limiting the Indemnitee's rights and remedies by reason of such failure or refusal, the Indemnitee shall have the right (but not the obligation) to defend or resist such claim, action or proceeding itself (and to retain its own counsel in connection therewith), and to compromise, settle or otherwise to dispose of such claim, action or proceeding in such manner as such Indemnitee sees fit, in which event the Indemnifying Owner shall pay and reimburse the Indemnitee for all costs, expenses (such costs and expenses shall not include any general office overhead of the Indemnitee) and fees incurred by the Indemnitee in connection therewith (including reasonable attorneys' fees, costs of settlement or compromise and (if applicable) any amount awarded pursuant to the claim, action or proceeding).

## 11.5 Zoning; Use; Tilt Feature.

(A) Zoning Compliance. Without limiting the provisions of this Section 11.5, no Owner shall make any Alteration, allow any use of its respective portions of the Commercial Building, or take or fail to take any action with respect to its Parcel which would violate or cause the Commercial Building to be (i) in violation of the provisions of the Chicago Zoning Ordinance, as said ordinance may be amended from time to time ("CZO"), or the Existing Zoning; or (ii) in violation of any Site Plan Approvals granted by the City of Chicago as of the date hereof under the CZO or after the date hereof in compliance with Section 11.5(H), including any Site Plan Approvals issued by the City of Chicago.

(B) Designated Controlling Entity. Each Parcel comprising the Commercial Parcel (the Office Parcel, the Retail Parcel, the Restaurant Parcel, the Broadcast Parcel and the Observatory Parcel) is now treated collectively as one zoning lot for purposes of complying with the Existing Zoning. The Office Owner reserves and retains, and shall be entitled to exercise, in its sole discretion, for the benefit of the Office Parcel, any and all excess density and future development rights which are available for the Entire Property; provided, however, that, subject to Laws and the Existing Agreements, the Observatory Owner shall be allocated, if available, the necessary density to implement a tilting overlook feature (the "Tilt Feature") conceptually described for illustrative purposes on Exhibit T. For purposes of dealing with the City of Chicago regarding zoning and entitlement matters, the Office Owner shall be the designated controlling entity. The Office Owner, as the designated controlling entity for purpose of zoning and entitlement matters, without cost, expense or liability, shall reasonably cooperate with the other

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Owners in connection with any application or request for authorization or change which may be filed or submitted to the City of Chicago pursuant to **Section 11.5(H)** below (including the execution of consent authorizing such application, submission or filing, without liability, on behalf of the requesting Owner if same shall be required). In connection therewith, the Office Owner shall be entitled to reimbursement for Actual Costs incurred in cooperating with and/or participating in the proposed zoning or entitlement matter.

a. **Tilt Feature.** The Office Owner and each of the other Owners hereby acknowledge the importance of the Tilt Feature to the operation of the Observatory Parcel by the Observatory Owner and agrees to the concept of the Tilt Feature, provided it is located only on the south or north side of the Observatory Parcel. The Office Owner shall not unreasonably withhold consent to the final details of the Tilt Feature and the Office Owner shall reasonably cooperate in good faith with the Observatory Owner with the pursuit by the Observatory Owner of the applications for entitlements necessary for implementation of the Tilt Feature. For the purposes hereof, it shall only be deemed reasonable to withhold consent to the application for entitlements necessary for the implementation of the Tilt Feature if, and only if, (i) the requirements imposed by the relevant governmental authority as a condition to approval of the Tilt Feature would have a material adverse impact on any other Owner's legal and practical use, enjoyment, operation of, or access to, such Owner's Parcel, imposes any additional legal requirements on the Building or any Owner (other than the Observatory Owner) or changes or restricts the current abilities of any Owner (other than the Observatory Owner) to modify, supplement or remove any portion of its Parcel except to the extent that such impact can be remedied solely by the payment of a sum of money and the Observatory Owner pays such amount (without having the obligation to do so) to the affected Owner, or (ii) the Tilt Feature would (A) materially and adversely affect the structure of the Building or any Facilities, (B) create a danger to people or property, (C) not comply with Laws, or (D) is not located on the south or north side of the Observatory Parcel. The Observatory Owner hereby covenants to design, implement, install, operate and Maintain the Tilt Feature in a manner that will minimize vibrations, sound and any adverse impact (including any increased operating costs) on any other Owners and their Commercial Permittees. The Office Owner and each of the other Owners hereby agree to cooperate reasonably and in good faith with the Observatory Owner in the Observatory Owner's efforts to remedy or minimize any such vibrations, sound and adverse impact on any Owners or their Commercial Permittees, and to minimize the impact of the Tilt Feature on the use, enjoyment, operation or access to any other Owner's Parcel, or operating costs of any Owner; provided that the Observatory Owner shall reimburse the other Owners for any reasonable out-of-pocket expenses incurred in connection with such cooperation.

(C) **Use.** All Owners of the Commercial Property understand, acknowledge and agree that they own a portion of a unique, first-class mixed-use vertically separated



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project. The Declarant declares, and each Owner acknowledges and agrees, that the Commercial Building is an interdependent structure with components owned by different Owners, with different businesses and interests. It is the declared intention of all Owners, for themselves, their Tenants, Mortgagees (or any other holder of a Mortgage, or a secured party or other lender) and Permittees, that the use, operation, enjoyment and Maintenance of each Parcel shall be conducted in a manner intended to insure and to further the quality, character, design, appearance, functionality and economic value of the Commercial Property. Consequently, each Owner agrees for itself, its tenants and Permittees, except as otherwise expressly provided herein, that its portion of the Commercial Building shall be used solely and exclusively for those uses which are the same or comparable in quality, character and operation with the use currently made of their Parcel of the Commercial Building as of the date of execution of this Declaration, or as specified below in clauses (i) through (v) of this **Section 11.5(C)** with respect to each applicable Parcel. The permitted, exclusive and restricted uses specified in this **Article XI** for each Parcel shall be applicable not only to the Parcel Owner, but also to any other user of such Parcel, including the controlled or controlling affiliates of such Owner, affiliates under common control with such Owner and any Commercial Permittees of such Owners. Any use or activity in a Parcel that may be prohibited or restricted hereunder or made exclusive to one Parcel, may be waived or permitted in writing by the Owner of the Parcel entitled to the exclusive right or use in such Parcel Owner's sole and absolute discretion.

(i) the Retail Parcel for retail and service purposes (including the sale of services, the sale of merchandise, the operation of a fitness center, the conducting of Retail Events (in accordance with the terms of **Section 2.1(P)**), and food and beverage operations (including, without limitation, the sale of alcoholic beverages which are related to restaurant operations or to Retail Events which occur inside a Tenant space, or, if such Retail Event occurs outside a Tenant space, with the reasonable consent of the Office Owner); provided such uses comply with all requirements of this Declaration and are performed and/or conducted at a First Class Standard);

(ii) the Office Parcel for office and related uses, purposes and amenities in compliance with Law and consistent with the character of Comparable Buildings, or which otherwise in compliance with a First Class Standard as such uses, purposes and amenities may evolve over time (including without limitation, for (i) conference and meeting facilities, (ii) printing, mail handling, duplication, reproduction and photographic and other equipment and facilities, (iii) fitness and exercise facilities, (iv) medical and day-care facilities, (v) presentation facilities, (vi) concierge and service facilities benefitting tenants and occupants, (vii) educational, instructional, classroom and training uses, (viii) storage, (ix) cafeteria, private dining room or members-only restaurant located on any floor lower than the 20<sup>th</sup> floor of the Building (other than dining rooms primarily for a Tenant's own use and their employees and business invitees), (x) the Office Owner sponsored events specified in Section 2.1(P), and (xi) parking (until such time as the Parking Garage is subdivided pursuant to **Section 26.5(A)**);

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(iii) the Observatory Parcel to operate an observatory and special event venue ancillary to and consistent with the primary use as an observatory (including operating the Feature (if applicable), conducting events, operating seasonal attractions (e.g., a skating rink), serving food and beverages (including, without limitation, alcoholic beverages) in a café located on the 94<sup>th</sup> floor, and selling merchandise and goods);

(iv) the Broadcast Parcel for television, radio, cellular, broadband, wireless, electronic and other broadcast, microwave or wireless signals and supporting facilities; and

(v) the Restaurant Parcel for beverage, dining and food service to patrons, including, without limitation, the sale of alcoholic beverages which are related to restaurant operations).

Subject to Section 11.5(C)(2) and (4) below, notwithstanding the foregoing, uses which are related to, or ancillary to the primary use described in this Section 11.5(C) shall be permitted (e.g., area with tables next to windows in the Restaurant Parcel would not be deemed to violate an observatory exclusive) upon the prior reasonable written consent of the Office Owner. All uses permitted under this Section 11.5(C) shall be conditioned on the applicable Owner obtaining any and all permits required by Law or this Declaration for such uses prior to the commencement of any such use. No fundamental change in use by an Owner from the uses contemplated in this Section 11.5(c) ("Fundamental Use Change") will be permitted without the prior written consent of all of the Owners which would be adversely affected by such change, such consent to be obtained in accordance with Section 11.5(E), which consent shall not be unreasonably withheld; provided that each of the Owners hereby agrees that the addition and operation of the Tilt Feature to the Observatory Parcel shall not be a Fundamental Use Change and that no use change shall be permitted which violates any exclusive use granted to any Owner under this Declaration without the prior written consent of the affected Owner, which consent may be withheld in such Owner's sole discretion. In the absence of the consent by all of the Owners, the Fundamental Use Change may not occur. If an Owner fails to agree, and if the requesting Owner believes the failure to consent is unreasonable, the requesting Owner may submit the dispute to resolution in accordance with Article XVII. The Retail Owner may request the use of a certain area located in the exterior sidewalk space on the southern side of the Building to the east of the Office Parcel entrance for seasonal use by a single Retail Tenant to place reasonable outdoor seating, and the Office Owner shall consider such request in good faith, taking into account all applicable Laws and the nature and extent of the proposed use of such area, the then current and anticipated future use of the area, the impact the outdoor seating and such Retail Tenant operations in such area would have on the operations of the Office Parcel (including on ingress and egress from the Building) and the size, shape and location of the requested area. If Office Owner agrees, in its sole discretion, to permit such use, it shall be on terms and conditions to be more fully set forth in a separate agreement between the Office Owner and the Retail Owner (and, if required by the Office Owner, the Retail Tenant that uses such area), but in any event, such use (i) must be by the Retail Tenant which occupies the retail space in the Retail Parcel which is directly adjacent to such designated area, (ii) shall be subject to all of the requirements and conditions applicable to the use by the Retail Owner or a Retail

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Tenant of the Outdoor Concourse Space and (iii) must be in compliance with all Laws. Notwithstanding the foregoing or anything contained in this Section 11.5 or in the Declaration to the contrary, other than Section 11.5(C)(2) and Section 11.5(C)(3) to which the following remains subject, the Office Owner may change the use of all or any portion of the Office Parcel as follows: (AA) to a residential use or a hotel use (so long as such residential or hotel use does not also include (i) a gift shop that sells City of Chicago-themed and Building-themed items other than on a de minimis (i.e., less than 10% of gross sales) basis, or (ii) a Skyline Viewing Attraction, or (BB) if at any time there is a period of twelve (12) consecutive months or more where less than 2,000 rentable square feet of restaurant or food service in the Retail Parcel that is open to the general public, then the Office Owner thereafter shall be permitted to open and operate, or lease space to a Tenant to open and operate, a non-white table cloth restaurant or food service in the Office Parcel which is open to the general public, but which is designed primarily to service the Commercial Permittees of the Office Parcel, provided that such restaurant or food service areas shall not contain any Skyline Viewing Attraction; together with the right to conduct all ancillary and secondary uses and amenities, without the consent of the other Owners provided that such change in use complies with applicable Laws and remains subject to the terms of this Declaration, including any exclusive uses granted herein. Notwithstanding anything contained in this Declaration to the contrary, each of the Owners agrees that the following Owners shall have the exclusive rights in the Commercial Property as specified below:

(1) Exclusive Right to Sell Tourist Gift Shop Items. Subject to rights of existing Tenants under leases in effect as of the Effective Date for so long as such leases remain in effect, the Observatory Owner shall have the exclusive right to sell City of Chicago-themed and Building-themed items at the Commercial Building to the general public, except that (i) the Retail Owner may permit its Tenants to sell such items if such sales do not exceed the greater of (i) 10% of such Tenant's gross sales or (ii) 10% of such Tenant's selling area, in each case to the extent such sales are ancillary to a Tenant's primary use and (ii) if the Office Parcel is converted to a hotel use, the Office Owner may also permit such items to be sold on a de minimis (i.e., less than 10% of gross sales) basis. As used in this Declaration, the terms "Chicago-themed" and "Building-themed" items shall not include items related to Chicago sports teams or any logos or use of the names of entities that include the word "Chicago" (i.e., the "Chicago Tribune").

(2) Observatory Exclusive. Subject to rights of existing Tenants under leases in effect as of the Effective Date for so long as such leases remain in effect, the Observatory Owner shall have the exclusive right to operate an observatory business and the exclusive right to operate the Tilt Feature or a Skyline Viewing Attraction in the Commercial Building, and the Office Owner and each other Owner hereby agrees that no other Property (including the Restaurant Property or Broadcast Property) shall be permitted to (i) operate any portion of its Property, or hold itself out to the public, primarily as an observatory (the parties hereby acknowledging by way of example that advertising or promoting the Restaurant Property as a

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place to have a meal and/or a drink while enjoying the view of Chicago does not violate the foregoing restriction), (ii) advertise, market or promote itself using the words "observatory" or "observation deck", (iii) to have a feature that is similar to the Tilt Feature or (iv) to have a Skyline Viewing Attraction. To the extent the Office Owner is permitted under the Existing Agreements and under Laws, the Office Owner further hereby agrees that it shall not consent to the Existing Residential Property's addition of any observatory business or any attraction similar to the Tilt Feature or a Skyline Viewing Attraction. The Observatory Owner acknowledges and agrees that none of the current uses in effect at the Commercial Building (other than in the Observatory Parcel) as of the Effective Date constitute an observatory or a Skyline Viewing Attraction.

(3) *Restaurant Exclusive.* Subject to the rights of each other, the Restaurant Owner and the Retail Owner shall each have the exclusive right to operate a "white tablecloth", full service, fine dining establishment in the Commercial Property (the Restaurant Owner and the Retail Owner hereby acknowledging that the café operated in the Observatory Parcel does not constitute a "white tablecloth", full service dining establishment), subject to the rights of the Office Owner to operate a cafeteria, private dining room or members-only restaurant on a floor lower than the 20<sup>th</sup> floor of the building, and the potential right to operate a non-white table cloth restaurant or food service as set forth in Section 11.5(C) above (other than dining rooms primarily for Tenant's own use and their employees and business invitees, or in connection with the conversion of the Office Parcel to a hotel or residential use, to operate a "white tablecloth", full service, fine dining establishment on either of the lowest two floors of the hotel or residences).

(4) *Office Exclusive.* The Office Owner shall have the exclusive right to in the Commercial Property operate an office building and use the Office Parcel (or to permit its Tenants to use the Office Parcel) for general office purposes (other than office use which is ancillary to any use permitted in each other Parcel) or as medical or healthcare offices, clinics or facilities; provided, however, that the Retail Owner may lease space to a Retail Tenant which is a drug store or pharmacy with an on-site doctor that is ancillary to the pharmacy's primary business).

The exclusive Tenant rights set forth on Exhibits 2.1, 3.1, 4.1, 5.1 and 6.1 supersede all exclusives granted and/or set forth in this Declaration for so long as the underlying leases remain in effect. To the extent that a space lease or license of all or any portion of an Owner's Parcel existing as of the Effective Date requires the express consent of such Owner, as landlord or licensor, to an assignment of or subletting under that lease or license and such lease or license provides that such Owner may withhold its consent in its sole discretion, then, to the extent permitted by Law (including the duty to mitigate damages and to act in good faith) and to the extent such lease or license does not already prohibit or limit the Tenant's use thereunder so that



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the Tenant is already prohibited from the uses made exclusive herein, such Owner will use commercially reasonable efforts to obtain an amendment or supplement to the lease or license as a condition to such Owner consenting to the requested assignment or sublet, that prohibits such Tenant from violating the exclusive uses specifically described above in the applicable premises (1) through (4).

From and after the Effective Date, each Owner shall include a provision in each new space lease or license of all or any portion of its Parcel that such Tenant's use thereunder shall be subject to this Declaration, including any exclusive use granted to an Owner hereunder. Each Owner will use commercially reasonable efforts to enforce against its Tenants any use prohibition or use limitation then contained in any of such Tenant's space lease or license if the enforcement of such use prohibition or use limitation would preclude such Tenant from using its leased or licensed premises in a manner that violates any of the exclusive uses granted to another Owner as described above in the applicable premises (1) through (4), whether such leases or licenses existed before, or were created after, the Effective Date.

A portion of the Observatory Parcel has been designated as the Observatory Patron Queue Area which may be used by the Observatory Owner and the patrons of the Observatory Parcel, subject to the limitations set forth herein. The Observatory Owner and the patrons of the Observatory Parcel will use the Observatory Patron Queue Area to purchase tickets or register for access to and to queue, line-up, and wait for access to the Observatory Parcel in the area shown on Exhibit L attached hereto, located in the concourse area of the Commercial Building. The Observatory Owner may use the Observatory Patron Queue Area to operate ticket sales and for ancillary uses relating thereto (but in no event for the sale of any items other than tickets without the prior written approval of the Retail Owner, which approval shall not be unreasonably withheld), including installation and Maintenance of audio and/or visual features relating to the observatory, provided such operation and audio and/or visual features are consistent with the First Class Standard (taking into account the unique characteristics of the operation of the observatory business) subject only to the Office Owner's and the Retail Owner's approval, not to be unreasonably withheld, that such features are not inconsistent with the First Class Standard (taking into account the unique characteristics of the operation of the observatory business) and that such features shall not (i) be heard from in an unreasonably loud manner, (ii) shall not otherwise pose an unreasonable nuisance or disturbance to the Commercial Permittees (the Retail Owner acknowledging that the fact that such features have been installed does not in and of itself constitute an unreasonable nuisance) and (iii) are permitted by Law. Upon the request of the Observatory Owner and the prior approval of the Office Owner and the Retail Owner (which consent shall not be unreasonably withheld), a portion of the Commercial Property Public Common Area located adjacent to the Observatory Patron Queue Area will be permitted, from time to time, to be used by the Observatory Owner to the extent reasonably necessary to accommodate the queuing of Observatory patrons due to increased attendance to the Observatory Parcel. The Observatory Owner, the Office Owner and the Retail Owner agree to work together reasonably and in good faith to implement the Observatory Owner's use of Observatory Patron Queue Area and, if applicable, the Commercial Property Public Common Area in a manner reasonably acceptable to each of the Owners affected thereby so as to so that such use minimizes disturbance (including blocking public view of any of the stores or shops located in the Retail



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Parcel) to Tenants and Commercial Permittees and complies with the restrictions set forth in clauses (i), (ii) and (iii) above; provided that specifically such use of the Commercial Property Public Common Area shall in no event materially restrict or limit the access to any of the shops of the Retail Owner's Tenants or to the Office Parcel. The Observatory Owner shall only use the Observatory Patron Queue Area during those days and those hours that the ticket office and/or the Observatory Parcel is open for business to the public (or open for scheduled private parties or events), and such use shall be subject to Laws and the reasonable Rules and Regulations promulgated by the Office Owner with respect to the use of such area. The Observatory Owner acknowledges and agrees that the other Owners and their Commercial Permittees shall have reasonable access from time to time over and through the Observatory Patron Queue Area to the extent reasonably required, provided, however, that each Owner agrees (a) not to use the Observatory Patron Queue Area for any business operations and (b) to use commercially reasonable efforts not to materially adversely disrupt or interfere with the Observatory Owner's use, enjoyment, operation or access to the Observatory Patron Queue Area or materially increase the operating costs of the Observatory Owner with regards to the Observatory Patron Queue Area.

(D) In furtherance of this covenant and understanding, the following uses are expressly prohibited at the Commercial Property:

- (i) an indoor flea market;
- (ii) a secondhand store, thrift store, dollar store, swap shop, liquidation outlet or used clothing, used appliance or other second hand merchandise store, including any business that regularly sells merchandise referred to as "odd lot", "cancellation", "second", "factory reject", "sample", "floor model", "floor demonstrator", "obsolescent", "distressed", "salvage" or "damaged";
- (iii) a massage parlor;
- (iv) a funeral parlor;
- (v) a so-called "head shop" or facility for the sale, rental, distribution or display of drug paraphernalia such as roach clips, bongs, water pipes, coke spoons, cigarette wrapping papers, pipes and/or syringes;
- (vi) a facility for the sale, rental, display or distribution of pornographic, lewd, sexually explicit or so-called adult material;
- (vii) an off-track betting parlor;
- (viii) a coin operated laundry or dry cleaner with a cleaning plant located in the Commercial Building;
- (ix) the sale of fireworks;

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(x) churches, temples or other houses of worship, other than administrative and general activities associated with such uses;

(xi) a pawn shop;

(xii) a bingo hall;

(xiii) a business which creates strong, unusual or offensive odors, fumes, dusts or vapors, is a public nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness (specifically prohibiting black light window displays), or creates a hazardous condition;

(xiv) the conduct of any auction, loss of lease, fire, bankruptcy or going out of business sale;

(xv) a currency exchange;

(xvi) a "tattoo parlor" or "piercing parlor," so called;

(xvii) an "Adult Use" as such phrase is defined in the Chicago Zoning Ordinance as of the date hereof;

(xviii) a veterinary clinic or animal care or accommodations;

(xix) a fast food or quick service restaurant or food service at street level on the west side of the Retail Parcel, but a Retail Tenant will be permitted to sublease or sublicense a portion (which shall not exceed 15% of the square footage) of its leased space that is not located immediately adjacent to the North Michigan Avenue windows of the Building for such use if such restaurant or food service is ancillary to the Retail Tenant's operations, provided that in no event shall any signage for such fast food or quick service restaurant or food service be inconsistent with a First Class Standard, be illuminated or be placed within ten (10) feet of the North Michigan Avenue side exterior windows (which signage restrictions shall also apply to the North Michigan Avenue windows on the second floor of the Building); or

(xx) any use which, in the reasonable judgment of the Office Owner exercised in a manner consistent with a First Class Standard, exercised in good faith, is not in keeping with the quality and nature of the Commercial Property and its location on North Michigan Avenue.

If a dispute exists as to whether an Owner has breached its covenant regarding the use of its portion of the Commercial Building (including any of the exclusives or prohibitions set forth in **Section 11.5(C) and (D)**), any Owner objecting to such use may submit the dispute for resolution in accordance with **Article XVII**. In addition, the Office Owner, or any other Owner adversely impacted by a violation of this **Section 11.5(D)** shall be

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entitled to pursue injunctive relief without the need for posting a bond or may pursue at the same time any other remedies at law or in equity to redress such breach, without being deemed to have elected any remedy.

(E) **Change of Use.** Except as other permitted or restricted by this **Section 11.5**, an Owner seeking to change a use, or to adopt a new use, may seek clarification regarding compliance with the provisions of this **Section 11.5**, including specifically whether such change in use or new use constitutes a Fundamental Use Change, from the other Owners before implementing such use. Before commencing any Fundamental Use Change, the changing Owner shall first notify all other Owners of the proposed Fundamental Use Change and provide a description of the proposed change and the reasons that such a change complies with the provisions of this **Section 11.5**. Each Owner shall have thirty (30) days to consider the request and may solicit additional information. On or before the expiration of such thirty (30) day period, the other Owners shall give written notice to the changing Owner, notifying the changing Owner whether consent is given or denied. If an Owner fails to respond to the notice by the required deadline, then the changing Owner shall give any Owner which has failed to respond a second notification and a request for response within ten (10) days from such second notification. If an Owner fails to respond to the second notice by the required deadline, then the proposed change in use shall be deemed approved by such Owner. If approved by all of the other Owners in writing or if otherwise deemed approved in accordance with this subsection, such changed or new use shall be permitted, unless expressly prohibited by this Section. As described in **Section 11.5(C)**, a request for approval of a Fundamental Change in Use shall not be unreasonably withheld by any Owner. If not approved by all of the Owners, then the request for a Fundamental Use Change in use shall be denied.

(F) **Closing Program.** An Owner may cease using (but not abandon) all or part of its Parcel so long as it continues to provide adequate security and monitoring, continues to comply with the provisions of this Declaration and continues to Maintain the relevant portions of the Parcel and the Component Facilities in such portion of the Parcel. Although no Owner has an obligation to operate a business within its respective portion of the Commercial Property and an Owner may even cease to operate at any time, all Owners acknowledge and agree that it is in their mutual interest, and in the interest of their respective occupants, to maintain a consistent standard of design, exterior appearance, architectural elements and signage. Whenever an Owner plans to cease operations in a portion of such Owner's Parcel which is visible from the exterior of the Building or from the Commercial Property Public Common Areas (an "**Exterior Appearance Review Event**"), such Owner shall enter into good faith discussions with the Office Owner to mitigate the negative effect that a closed operation would have on the other Owners by reason of the failure to maintain a consistent standard of exterior design or exterior appearance or by reason of ensuring the continued Maintenance and repair of the unit and compliance with the other obligations of this Declaration. Upon the occurrence of an Exterior Appearance Review Event, the Owner (the "**Closing Owner**") causing the event shall, at least ninety (90) days prior to closing and ceasing operations to the extent practicable, but in no event less than thirty (30) days prior to closing and

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ceasing operations, submit to the Office Owner a program (the "Closing Program") which reasonably minimizes the adverse effect on the other Parcels and Owners (the "Impacted Owners"), and which Closing Program takes into account, amongst other considerations, aesthetic and view considerations resulting from the closing. The Office Owner shall submit comments within thirty (30) days after receipt of the Closing Program. If the Office Owner has objections or refinements to the Closing Program, the Office Owner and the Closing Owner shall consult with each other, in good faith, with due diligence, to reach consensus. Any dispute between the Office Owner and the Closing Owner regarding the Closing Program may be submitted by either Owner for resolution in accordance with Article XVII. Approval of the Closing Program by the Office Owner shall not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor shall such approval create any liability or responsibility for compliance with applicable Laws. Upon approval of the Closing Program by the Office Owner, the Closing Owner shall then have full responsibility for implementation of the Closing Program. Whenever operations cease in a portion of an Owner's Parcel which is visible from the exterior of the Building or from the Commercial Property Public Common Areas, and such cessation of operations was unexpected or unscheduled, such Owner shall, as soon as is reasonably possible, enter into good faith discussions with the Office Owner to mitigate the negative effect that a closed operation would have on the other Owners by reason of the failure to maintain a consistent standard of exterior design or exterior appearance or by reason of ensuring the continued Maintenance of the unit and compliance with the other obligations of this Declaration. The Office Owner and the Closing Owner shall work together to prepare a Closing Program as set forth above on an accelerated basis, and the Closing Owner shall promptly implement such Closing Program. Whenever an Owner plans to cease operations for a period of less than one (1) month in a portion of such Owner's Parcel which is visible from the exterior of the Building or from the Commercial Property Public Common Areas while such Owner is transitioning such space for a new Tenant, then such Owner shall, comply with the requirements set forth above for the preparation of a Closing Program, but the Office Owner shall only require such action as is reasonable necessary under the circumstances, taking into account the limited duration of any such closing. The Retail Owner agrees that other than due to unexpected or unscheduled circumstances, all windows of unoccupied retail space shall be covered using materials and designs consistent with a First Class Standard.

(G) **Rights and Remedies.** If an Owner ceases operations and does not implement a Closing Program (either by not implementing a Closing Program at all, or by implementing a Closing Program that has not been approved by the Office Owner), then the Office Owner may deliver to the Closing Owner notice thereof, and if the Closing Owner has ceased operations and does not implement a Closing Program within thirty (30) days after such notice, then the Office Owner shall be entitled to enter upon the Closing Owner's Parcel without being deemed to have committed a forcible entry and may make changes to the exterior appearance of the closed operation reasonably necessary to mitigate the negative effect on the other Owners. In such event, the Office Owner may deliver to the Closing Owner invoices for Actual Costs incurred to implement the Closing Program, and the Closing Owner shall reimburse the Office



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Owner upon written demand for the amount of such invoices. Invoices not paid after written demand shall bear interest at the Default Rate, from the date due until paid, and the Office Owner shall have all of the rights of a Creditor Owner in pursuing collection of such invoices and enforcement of these provisions. In exercising its rights and remedies hereunder, the Office Owner shall act reasonably and in good faith at all times.

(H) **Joint Zoning Application.** Applications for special uses, variations, site plan approvals (if applicable), changes, modifications or amendments to the provisions of the Chicago Zoning Ordinance and the Existing Zoning applicable to the a Parcel which conform to the provisions of this **Section 11.5** and do not restrict the uses under such ordinances or this Declaration existing within the Commercial Property as of the date hereof permitted, may be filed and pursued jointly by the Office Owner and by the Owner of the portion of the Building directly affected by such application. Such applications shall not require the joinder of the other Owners. The Owner pursuing the variation, change, modification or amendment shall pay all costs and expenses, including the Actual Costs of the Office Owner.

(I) **Vault Space; Vault Permits.** Subject to the Rules and Regulations, the Office Owner grants the other Owners a non-exclusive license to use the Vault Space as is reasonably necessary for access to, and the use, enjoyment and operation of, the respective Parcels. The Office Owner shall have the exclusive right to interface directly with the City Council of Chicago and the applicable government authority or alderman with regards to the Vault Space and Vault Permits. Upon the next renewal of the Vault Permit or as otherwise determined to be necessary by the Office Owner, the Office Owner shall request the City to reissue the Vault Permit in Office Owner's name. The Office Owner shall have full and exclusive discretion (to be exercised reasonably and in good faith) regarding usage, Maintenance, and all policies and practices affecting the scheduling and use of the Vault Space.

## **ARTICLE XII**

### **REAL ESTATE TAXES**

12.1 **Joint Bill.** Until such time as each Owner's Parcel is separately assessed and taxed, all Taxes levied and assessed against the Commercial Property shall continue to be paid on an undivided basis. Consequently, during the time prior to the separate assessment and taxation of each Owner's Parcel, each Owner shall deposit with the Office Owner such Owner's share of Taxes into a Tax Escrow Fund, which shall be used by the Office Owner to pay, prior to delinquency, all Taxes levied and due and payable against the Commercial Property, as more specifically set forth in this **Article XII** and the Tax Escrow Agreement. The allocation and payment of Taxes levied with respect to the Commercial Property shall be allocated among the Owners in accordance with the following percentages (to be referred to for each Owner as their "Real Estate Tax Percentage"):



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<u>Owner</u>	<u>Real Estate Tax Percentage</u>
Office Owner	82.14 %
Retail Owner	9.48 %
Observatory Owner	2.18%
Restaurant Owner	3.06 %
Broadcast Owner	3.14 %

12.2 **Tax Escrow Fund.** On the date of the first conveyance of a Parcel to an entity other than the Declarant (or an Affiliate of the Declarant) each Owner (including the Office Owner) shall (i) deposit cash or a letter of credit in accordance with **Section 12.5**, and (ii) make an initial deposit into a segregated escrow fund (the "**Tax Escrow Fund**") equal to the Owner's share of the Taxes due on the Commercial Property on the next tax payment date. The Tax Escrow Fund shall be held by an escrowee, which shall be Deutsche Bank Trust Company Americas, or a Person selected by the Office Owner and which satisfies the criteria for a "Depository" under **Article XXII** (the "**Tax Escrow Agent**"). The Office Owner shall enter into an escrow agreement to effectuate the obligations of the Tax Escrow Agent and the Owners under this **Article XII**, which agreement shall contain terms and obligations which are consistent with the terms and obligations set forth in this **Article XII** (the "**Tax Escrow Agreement**"), and each Owner hereby authorizes and irrevocably appoints the Office Owner as their attorney-in-fact to execute such Tax Escrow Agreement on each Owner's behalf, to execute any amendments to the Tax Escrow Agreement which the Office Owner reasonably determines are necessary, and to take such actions on behalf of each Owner as the Office Owner reasonably determines are necessary to effectuate the terms of this **Article XII** (it being agreed that the Owners shall have rights of contribution against the other Owners to the extent of their responsibilities in the event the Tax Escrow Agreement provides for joint and several liability). So long as the Tax Escrow Agreement is in effect, each subsequent Owner of a Parcel shall be deemed automatically to assume the obligations and rights under the Tax Escrow Agreement of the prior fee Owner of that Parcel and acquire such Parcel subject to such obligations and rights. The Office Owner will deliver to the other Owners copies of the executed Tax Escrow Agreement and amendments thereto upon request. Deposits by an Owner into the Tax Escrow Fund are defined in this Declaration as "**Tax Escrow Deposits**". For the tax payment due on the Commercial Property on the subsequent tax payment date following the tax payment date for which the initial deposit was made into the Tax Escrow Fund, and for each tax payment date thereafter while the Tax Escrow Fund remains in effect, the Office Owner shall provide an estimate of the amount of the required monthly payments payable by each Owner which will provide for an aggregate amount on deposit in the Tax Escrow Fund sufficient to pay all of such Owner's share of the Taxes due on the Commercial Property, calculated as of a date which is at least thirty (30) days prior to the anticipated due dates for any relevant tax bill. Beginning in the

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month in which the first tax payment following the recordation of this Declaration is due, and on the first day of each month thereafter, each Owner shall make the monthly payment for deposit into the Tax Escrow Fund. The obligation to make Tax Escrow Deposits and to keep the Tax Security in place shall continue for each calendar year until the occurrence of both (i) the date on which each Owner's Parcel is separately assessed which, based on existing rules and regulations of the Assessor of Cook County, Illinois as of the date hereof, is expected to be sometime in 2013), and (ii) the date upon which all outstanding Taxes due and owing on the Commercial Property for calendar years prior to such tax bill separation as described in (i) above have been paid in full. The Tax Escrow Agent will establish a separate account for the Tax Escrow Fund, which shall be free from the claims of any creditors or claimants of an Owner, other than for payment of Taxes pursuant to this Declaration, and shall not be subject to lien or attachment by the creditors of an Owner, any Mortgagee or other holder of a Mortgage, any secured party or other lender or, except as set forth in the Tax Escrow Agreement, the Tax Escrow Agent. The Tax Escrow Agent shall not commingle such Tax Escrow Fund with any of its other funds or funds of any third party. The Tax Escrow Agent shall apply the funds deposited in the Tax Escrow Fund to payments of Taxes required to be made by each Owner pursuant to this Declaration. Any interest earned on the Tax Escrow Fund shall be added to the balance and held for the benefit of Owners in accordance with their Real Estate Tax Percentage and shall be used to reconcile any amount due from an Owner. In withdrawing deposits from the Tax Escrow Fund to pay Taxes, the Tax Escrow Agent may do so according to any bill, statement or estimate obtained from the appropriate public office (with respect to Taxes), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax Escrow Fund shall exceed the amounts due for Taxes pursuant to this Declaration, the Office Owner may, in its sole discretion, cause any excess deposit to be returned to the entitled Owner by either paying such excess as directed by an Owner or by crediting such excess against future Tax Escrow Deposit payments to be made by such Owner to the Tax Escrow Fund. Any amount remaining in the Tax Escrow Fund, after separate tax bills have been issued as provided in **Section 12.3** have been paid in full, shall be returned to each Owner in accordance with its Real Estate Tax Percentage, to the extent previously paid by such Owner. The Office Owner may, in its reasonable discretion and on an ongoing basis, adjust the amount of the required monthly payments due in response to known information about underlying assessments, tax rate data and other components of the Commercial Property's property tax liability. The Office Owner is hereby authorized to direct the Tax Escrow Agent to take any action that the Tax Escrow Agent is authorized or permitted to take under the Tax Escrow Agreement or this **Article XII**. If at any time the Office Owner reasonably determines that the Tax Escrow Fund is not or will not be sufficient to pay all Taxes by the dates set forth above, the Office Owner shall notify each Owner of such determination and each Owner shall increase its monthly payment of Tax Escrow Deposits by the amount that the Office Owner reasonably estimates (for the avoidance of doubt allocated among the Owners based on their Real Estate Tax Percentages) is needed to make up the deficiency so that each Owner has on deposit in the Tax Escrow Fund an amount sufficient to pay its entire share of Taxes, calculated as of a date which is thirty (30) days before the anticipated due dates for payment of Taxes. For the avoidance of doubt, all of the Owners acknowledge and agree that all funds in the Tax Escrow Fund shall not be the property of any Person's bankruptcy estate within the meaning of 11 U.S.C. §541(a).

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12.3 **Separate Tax Bill.** It is the intention of the Owners that in the first possible calendar year following the execution of this Declaration, each Owner's Parcel shall be separately assessed and taxed and shall receive separate tax bills. To this end, the Owners of the Commercial Property, acting jointly, shall sign and file a tax division petition with the Assessor of Cook County, Illinois (the "Assessor") by the filing date which is legally required to obtain separate real estate tax parcel identification numbers and separate real estate tax bills for their respective portions of the Commercial Property. By way of example only, based on existing rules and regulations of the Assessor as of the Effective Date, to achieve separate tax bills for the calendar year beginning January 1, 2013, the tax division petition would have to be filed and accepted by the Assessor for processing on or before October 31, 2012. Each Owner shall be required to sign and return the tax division petition within ten (10) days after written request from the Office Owner, in accordance with the terms of this Section. After such petition has been filed, when separate real estate tax parcel identification numbers have been established by the Assessor and separate real estate tax bills are issued, the Office Owner shall pay all Taxes of every kind or nature levied upon the Office Parcel, the Retail Owner shall pay all Taxes of every kind or nature levied upon the Retail Parcel, the Broadcast Owner shall pay all Taxes of every kind or nature levied upon the Broadcast Parcel, the Restaurant Owner shall pay all Taxes of every kind or nature levied upon the Restaurant Parcel, and the Observatory Owner shall pay all Taxes of every kind and nature levied upon the Observatory Parcel. In the event any portion of the Commercial Property is submitted to the Act, each Unit Owner shall pay all Taxes of every kind and nature levied upon its Unit Ownership. Until each Owner's Parcel is separately assessed and taxed, the provisions of **Section 12.1 and 12.2** shall continue to apply. In furtherance of the intent of this **Section 12.3**, if an Owner fails to sign and return the tax division petition or other applicable tax parcel division application or submission in a timely fashion, each Owner hereby authorizes and irrevocably appoints the Office Owner as their attorney-in-fact to execute such tax division petition or other applicable tax parcel division application or submission, which appointment shall be deemed an appointment with an interest and shall be irrevocable. Each Owner may divide its Parcel into as many separate tax parcels as it so wishes (subject to any restrictions imposed by Laws).

12.4 **Tax Protests.** After separate tax bills have been issued for each Owner's Parcel, each Owner shall have the independent right to protest Taxes and challenge any assessed valuation of such Owner's Property only. Until such time, the Office Owner may, in good faith and with reasonable diligence, attempt to obtain a lowering of the assessed valuation of the Commercial Property, protest Taxes or take other action for the purpose of reducing Taxes with respect to any period that each Owner's Parcel is not separately assessed and taxed. In such event, all Owners shall reasonably cooperate with the Office Owner in such attempt and shall share in the Actual Costs (including the Actual Costs of attorneys' fees) incurred in pursuing a challenge or protest on the same basis as each Owner's Real Estate Tax Percentage.

12.5 **Tax Security.** On the date of the first conveyance of a Parcel to an entity other than the Declarant (or an Affiliate of the Declarant) each Owner (including the Office Owner) shall, as security for their tax obligations under this Declaration, deliver to the Tax Escrow Agent either (i) cash in the following amounts for each Owner (each amount a "Tax Security Obligation"): for Office Owner, \$6,908,419.00; for the Retail Owner, \$797,319.00; for the Observatory Owner, \$183,350.00; for the Restaurant Owner, \$257,363.00; and for the Broadcast

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Owner \$264,091.00 (each a, and collectively, the "Tax Cash Security"), or (ii) an irrevocable unconditional letter of credit in a form reasonably acceptable to the Office Owner with (a) an expiry date not sooner than twelve (12) months from the date of issuance, (b) with provision for automatic renewal or extension for a subsequent term of twelve (12) months unless written notice of non-renewal is given to beneficiary at least sixty (60) days prior to the then expiry date, and (c) a face amount at least equal to the Tax Security Obligation (the "LoC Tax Security," together with the Tax Cash Security, the "Tax Security"). Any Tax Cash Security shall be held by the Tax Escrow Agent in a segregated account and the Tax Security shall be free from the claims of any creditors or claimants of an Owner (including claims of the Escrow Agent other than as set forth in the Tax Escrow Agreement or this Article XII) and shall not be subject to lien or attachment by the creditors of an Owner, any Mortgagee or other holder of a Mortgage, any secured party or other lender (including in each case claims of the Escrow Agent other than as set forth in the Tax Escrow Agreement or this Article XII). The Escrow Agent shall not commingle such Tax Escrow Fund with any of its other funds or funds of any third party. The Tax Security shall be held by the Tax Escrow Agent until the occurrence of both (i) the date on which the second installment for 2012 taxes is paid (which date shall occur in the fall of 2013), and (ii) the date upon which all outstanding Taxes due and owing on the Commercial Property for calendar years prior to such tax bill separation have been paid in full, at which time each Tax Security will be returned to the respective Owner, less any amounts used by the Tax Escrow Agent in accordance with this Section 12.5. If any Owner shall fail to make any required payments for deposit into the Tax Escrow Fund or to pay any other amounts due under Article XII or otherwise fail to comply with any material term of this Article XII, and does not correct that failure within ten (10) Business Days after written notice thereof, then the Tax Escrow Agent shall have the right and obligation to withdraw and use the Tax Cash Security of such Owner, or to draw on the LoC Tax Security of such Owner and deposit the proceeds into the Tax Escrow Fund as Tax Cash Security, in order to maintain an adequate amount of funds in the Tax Escrow Fund with which to pay Taxes as and when they become due, in which event the Owner or Owners whose Tax Security was drawn upon shall, within ten (10) Business Days of receipt of demand from either the Office Owner or the Tax Escrow Agent, deposit such additional Tax Cash Security, or shall have posted such replacement LoC Tax Security, into the Tax Escrow Fund as is necessary so that the Tax Security provides adequate funds to pay Taxes as and when they become due and payable as reasonably determined by the Office Owner. Provided an Owner has made the initial deposit required by Section 12.2, and has deposited the full amount of the Tax Security Obligation in the form of Tax Cash Security, in lieu of such Owner making the monthly payments into the Tax Escrow Fund, the Tax Escrow Agent shall apply the Tax Cash Security on a monthly basis to the Tax Escrow Fund in the amount of the required monthly deposit, provided such Owner shall remain obligated to make any required additional payments or increase the amount of the Tax Cash Security as required herein. If any Owner fails to make any Tax Escrow Deposit as required under this Article XXII, then any other Owner, or the Tax Escrow Agent, may, after ten (10) Business Days' written notice to the Defaulting Owner, make such Tax Escrow Deposit, and the Defaulting Owner shall, upon demand, reimburse such other Owner or Tax Escrow Agent for the amount of such payment, including the amount of any interest or penalty amounts accrued thereon, and the Tax Escrow Agent, or the Owner who makes such payment, shall have all the rights and remedies of a Creditor Owner in pursuing enforcement thereof against the Defaulting Owner. After each



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payment of Taxes is made by the Tax Escrow Agent, the Tax Security may be reduced to an amount that is sufficient, in the Office Owner's reasonable discretion, to pay all remaining Taxes which will become due prior to such time as separate tax bills have been issued for the Commercial Property in accordance with Section 12.3. Until the termination of the Tax Escrow Agreement, in the event that any LoC Tax Security has not been extended or renewed, and/or all necessary extensions and/or renewals have not been delivered to the Tax Escrow Agent on a date that is no later than sixty (60) days prior to the expiration date of such LoC Tax Security, then the Tax Escrow Agent shall have the right and obligation, upon written instructions from the Office Owner, to draw on the full amount of such LoC Tax Security and deposit the proceeds thereof into the Tax Escrow Fund as Tax Cash Security.

12.6 **Tax Security Alternative.** Notwithstanding the foregoing, each Owner shall have the option, in lieu of posting the Tax Security, to cause their senior institutional Mortgagee (provided such Mortgagee is a Qualified Institutional Lender and has a credit rating of A2 from Moody's or A from either Standard & Poor's or Fitch Ratings, or better, provided that if a Qualified Institutional Lender does not have a credit rating, then such Qualified Institutional Lender may provide a letter of credit that would satisfy the criteria set forth in Section 12.5 to secure its obligations to fund) to agree, in writing, that such Mortgagee will (1) collect the monthly payment such Owner is required to make under this Article XII and promptly pay such amounts no later than ten (10) Business Days prior to the date such Taxes are due to the Tax Escrow Agent, and (2) promptly fund, as a protective advance, any shortfalls or deficiencies in the Tax Escrow Fund which shortfalls or deficiencies have been caused by the failure of the respective Owner to make the monthly payments such Owner is required to make and otherwise comply with such Owner's obligations under this Article XII. For the avoidance of doubt, the Tax Security alternative set forth in this Section 12.6 shall be at the option of each Owner and its senior institutional Mortgagee.

12.7 **Tax Refund.** Any refund of Taxes which are applicable to calendar years 2011 and 2012 for the Commercial Property shall be refunded to the Owners in accordance with each Owner's Real Estate Tax Percentage based on their period of Ownership of their Parcels, but only to the extent such Owner actually made the deposits and payments as required under this Article XII. To the extent an Owner fails to make such deposit or payments and another Owner made such deposit or payment and became a Creditor Owner as provided herein, then such refund applicable to such Parcel for calendar year 2011 and 2012 shall first be paid to reimburse such Creditor Owner before any refund is paid to such Defaulting Owner. Any refund or credit for any Taxes attributable to calendar year 2010 and prior years, if any, shall be the sole property of the Office Owner.

## ARTICLE XIII INSURANCE

13.1 **Insurance Required.** The Owners shall procure and maintain the following insurance:

- (A) **Real and Personal Property.**



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(i) **Real Property.** It is in the best interest of the Commercial Property to have one property insurance policy covering the Commercial Property, except for Owner and Tenant Alterations and improvements, furniture, fixtures, equipment and other personal property located within each Owner's Parcel (the "**Owner's Insured Property and Fixtures**"), which shall be separately insured by an Owner pursuant to **Section 13.1(A)(ii)**, below. The property insurance policy insuring the Commercial Property and the Commercial Building (the "**Commercial Policy**") shall be comprehensive "all risk" special form insurance, including contingent liability from operation of building laws, demolition costs and increased cost of construction endorsements, (1) in an amount equal to one hundred percent (100%) of the full replacement cost, which shall mean the actual replacement value (exclusive of costs of excavation, foundations, underground utilities and footings), with a waiver of depreciation; (2) waiving all co-insurance provisions; (3) containing an "ordinance law coverage" or "enforcement" endorsement providing commercially reasonable amounts of insurance, if any of the improvements located on the Parcel and insured by the policy shall at any time constitute legal non-conforming structures or uses; (4) including full terrorism coverage to the extent it is available at commercially reasonable rates and terms; and (5) including flood and earthquake insurance with commercially reasonable amounts of insurance, and having a commercially reasonable deductible. The Office Owner shall procure such policy, with each Owner paying its respective share, as provided in **Section 13.2(B)**.

(ii) **Personal Property.** Each Owner shall separately insure any Owner's Insured Property and Fixtures within such Owner's Parcel and in any Easement areas in which such Owner has exclusive use, and all Owner's Insured Property and Fixtures located outside of such Owner's Parcel that exclusively serve such Parcel, together with any signage, awnings and other identification elements being used and operated by such Owner pursuant to **Article VII** except for items defined as a Facility and covered under the provisions of **Section 13.1(A)(i)**. Each Owner shall determine replacement cost by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement, waiving any applicable co-insurance clause, in accordance with such determination or appraisal, and shall contain similar coverages and endorsements to those required for the casualty insurance required under **Section 13.1(A)(i)** to the extent they are applicable.

(iii) **Business Income.** Each Owner shall separately obtain rental loss and/or business income interruption insurance (A) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (B) in an amount equal to one hundred percent (100%) of the projected gross revenues from the applicable Parcel for a period of at least eighteen (18) months and containing an extended period of indemnity endorsement which provides that after the physical loss to the Commercial Property and Owner's Insured Property and

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Fixtures has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Commercial Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period.

(B) **Liability.** Each Owner shall maintain commercial 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 Commercial Property owned by such Owner and any Easement areas granted to 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 contained herein to the extent they are customarily covered by such policies of insurance), or (ii) any other portion of the Commercial Property, to the extent caused by the actions of such Owner or its lessees, agents or employees. In addition, the Office Owner (or the Parking Garage Owner, if the Parking Garage is conveyed as provided in **Section 26.5(A)**, or any manager or operator of the Parking Garage engaged by the Office Owner or the Parking Garage Owner) shall maintain garage keepers legal liability insurance as to any vehicles in its control and garage liability insurance. All liability insurance shall be primary coverage as to claims for injury or damage resulting from the acts or failure to act of an Owner, with any insurance carried by the other Owners being excess coverage. Such insurance shall be in such amounts as may be required by law and as from time to time shall be carried by prudent owners and operators of high-rise mixed-use office, retail and commercial projects in downtown Chicago, but in all events with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal and bodily injury or property damage with an additional \$20,000,000 in umbrella coverage. The liability coverage required to be provided by the Restaurant Owner and the Observatory Owner may be a lower limit, if prudent under the circumstances. The Office Owner shall reasonably determine whether the limits requested by the Restaurant Owner or the Observatory Owner are reasonable, acceptable and prudent under the circumstances.

(C) **Boiler and Machine.** The Office Owner shall obtain insurance covering boiler and machinery risks, on a comprehensive, blanket basis covering all Commercial Building facilities 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. The amount of coverage obtained shall be in such amounts as may be carried by prudent owners and operators of high-rise, mixed-use office, retail and commercial projects in downtown Chicago.

(D) **Builder's Risk.** Each Owner shall carry "all risk" builder's risk insurance (including loss of income and "soft costs") or comparable coverage for not less than the completed value of the work then being performed by such Owner or Owners under

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**Article IX** or **XIV** or for any Alterations which require another Owner's consent under **Section 14.1**. Such insurance shall include coverage for items stored off-site and items in transit for an amount sufficient to cover fully any loss. Loss of income and "soft costs" occurring during this period covered by builder's risk insurance shall be insured in such amounts as may be carried by prudent owners of buildings comparable to the portion of the Commercial Building owned by an Owner in the City of Chicago. Coverage shall be required under this **Section 13.1(D)** only to the extent such coverage is not provided for within the property coverage described in **Section 13.1(A)**.

(E) **Worker's Compensation.** To the extent an Owner has employees, each Owner shall carry worker's compensation insurance in amounts as required by Law and employer's liability insurance in not less than the following amounts: bodily injury by accident, \$1,000,000 each accident; bodily injury by disease, \$1,000,000 each employee; bodily injury by disease, \$1,000,000 policy limit.

(F) **Liquor Liability.** Each Owner shall carry dram shop or host liquor liability insurance as may be required in order to conduct its business in its Parcel or as the Office Owner may reasonably require to protect itself and the other Owners from legal liability in connection with the sale or giving away of alcoholic beverages and in any event as may be required so as not to increase the rate of insurance on the other Owners' Parcel.

(G) **Fidelity and Professional Liability Insurance.** The Office Owner shall obtain and carry commercially reasonable fidelity/crime insurance including but not limited to employee dishonesty, money & securities depositors forgery, safe deposit boxes, and computer fraud and professional liability insurance providing coverage for damages arising out of wrongful acts, errors, and/or omissions, and other customary and reasonable insurance required of property managers in connection with the holding of funds and performance of the Commercial Property Maintenance Obligations. The premiums for such insurance shall be shared by each Owner as a Commercial Property Expense in accordance with the Commercial Property Expense Allocations.

## 13.2 **Insurance Companies.**

(A) Insurance policies required by **Section 13.1** hereof shall be purchased from insurance companies authorized and licensed to transact business in the State of Illinois who shall hold a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/VIII according to AM Best & Company Insurance Reports or a substantially equivalent rating from a nationally recognized rating service (or, in the event such a rating is no longer available, a substantially equivalent rating from a nationally recognized insurance rating service). Insurance policies required by **Sections 13.1(A)** and **13.1(C)** shall (a) be purchased from a single insurance company or group of companies designated by the Office Owner, which such insurance company shall have a AM Best rating of A/VIII or better (or, in the event such a rating is no longer available, a substantially equivalent rating from a nationally recognized insurance rating service) (the "Property Insurer") under a single policy (other than insurance for

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personal property pursuant to Section 13.1(A)(ii), which shall be under separate policies obtained by each Owner), and (b) provide for the adjustment of claims with the insurer by the Owner of the affected Parcels. If any portion of the Commercial Property is subjected to and remains 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.

(B) The Office Owner will exercise commercially reasonable efforts to obtain quotes for the insurance policy required by Sections 13.1(A) and 13.1(C) from not less than three insurance companies (it being acknowledged that for certain coverages or levels of coverage three quotes may not be available) that satisfy the requirements of Section 13.2(A) above; provided however that the Office Owner shall not be obligated to select the lowest quote in cases where the Office Owner reasonably determines that there are other considerations making another bidder preferable (provided that the sole fact that a party is an affiliate of the Office Owner shall not be deemed a reasonable consideration for any such selection). Notwithstanding anything to the contrary contained in this Section 13.2(B), in the event the Office Owner does not accept the lowest quote, the Office Owner shall provide the other Owners with the Office Owner's reason for rejecting such quote. The respective costs of the insurance policy required by Sections 13.1(A) and 13.1(C) to be paid by each Owner shall be based on the Commercial Property Expense Allocation for each Owner. Not less than ten (10) days prior to any replacement of the Property Insurer by the Office Owner, the Office Owner shall notify the other Owners in writing of the identities of the insurance companies from whom the Office Owner obtained quotes, the costs of those quotes, the proposed new Property Insurer and the terms upon which it has agreed to provide the required insurance (and, if applicable, any reasons for rejecting the lowest quote) (the "Casualty Insurance Notice"), which shall be consistent with the terms and conditions of this Article XIII.

13.3 Insurance Provisions. Each policy described in Section 13.1 hereof, to the extent reasonably commercially available (except for sub clause (ii), which it is agreed by all parties is reasonably commercially available): (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 such policy; (ii) shall insure as named insured and additional named insureds, as the case may be, the Retail Owner, the Broadcast Owner, the Restaurant Owner, the Observatory Owner and the Office Owner, 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 being primary to any other valid and enforceable insurance held by an additional insured; provided, however, if any portion of the Commercial Property is submitted to the Act, the Association for such portion of the Commercial Property 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 13.1(B), (E) and (F), by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds



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does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iv) shall provide, except for (a) insurance for loss of rental income or loss of income covered by business interruption or extra expense incurred to reduce such loss of income, (b) the insurance required under Sections **13.1(E), (F) and (G)**, and (c) liability insurance required by **Section 13.1(B)**, that all losses payable thereunder shall be paid to the Depository in accordance with the terms of **Article XXII** hereof (unless such loss only affects one component of the Commercial Property and is less than \$1,000,000, in which event such loss shall be paid to the Owner of such component of the Commercial Property for purpose of restoration); (v) shall provide for a minimum of thirty (30) days' advance written notice of cancellation or non-renewal thereof, or in the event the coverage is no longer in compliance with the terms of this **Section 13.3** (a "**Non-Compliant Coverage**") to all insureds thereunder and to the holders of the Mortgages; (vi) shall comply with the requirements of the Grant Deed and Residential Condominium Operating Agreement; and (vii) shall, subject to subsection (iv) immediately above, include a standard mortgagee endorsement or loss payable clause in favor of each Mortgagee. Notwithstanding anything in clause (v) above, to the extent a policy described in Section 13.1 does not provide for notice of Non-Compliant Coverage or non-renewal in the manner required above (and such a provision is reasonably commercially available), such a failure will not be a violation of this Section 13.3 but the applicable Owner will endeavor to provide written notice of such Non-Compliant Coverage to the other Owners.

**13.4 Limits of Liability.** Limits of liability or types of insurance specified in this **Article XIII** or carried by the Owners shall be reviewed by the Office Owner no less often than annually at least ten (10) days before the expiration of each policy to determine if such limits, deductible amounts and types of insurance are customary for, and consistent with, a First Class Standard and which 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 coverages or endorsements should be deleted, in all cases if available at commercially reasonable rates and terms. Initially, deductible or self-insured retention amounts for insurance required under **Sections 13.1(A)(i) and 13.1(C)** shall not exceed \$100,000.00 for each such policy (which shall be shared and paid by each affected Owner in proportion to their respective share of the loss.) Such limits shall be reasonably increased or decreased, deductible amounts increased or decreased or types of insurance and coverages shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, at the Office Owner's election, acknowledge such change in writing or execute an instrument in recordable form evidencing such increase, decrease or modification, which shall be recorded with the Recorder as a supplement to this Declaration. Such adjustments shall be customary for, and consistent with, a First Class Standard. Any disputes between the Owners regarding limits of liability or types of insurance required by this **Article XIII** shall be resolved in accordance with the provisions of **Article XVII**. Every two (2) years the Office Owner shall determine, using its reasonable discretion and taking into account similar requirements at Comparable Buildings, whether the amounts of insurance coverages and deductibles set forth in this **Article**