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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS

**2353 WEST BELDEN
CHICAGO, ILLINOIS 60647**

BOX 15

FIDELITY NATIONAL TITLE

51006698

This instrument was prepared by and after recording mail to: Gregory A. Braun, Esq. McCormick Braun Friman, LLC 2 N. LaSalle St., #1250 Chicago, Illinois 60602	Property Addresses: 2353 West Belden Chicago, Illinois 60647 P.I.N.: 14-31-105-001-0000, 14-31-105-002-0000
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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS (this "**Agreement or Operating Agreement**") is made and entered into as of the _____ day of September, 2012 by KSW Development, LLC, an Illinois limited liability company (the corporation is collectively referred to as "**Declarant**").

RECITALS:

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

B. Declarant is the Owner of the Parcel, which is situated in Chicago, Cook County, Illinois and is legally described in Exhibit A, (which may be amended by the Declarant from time to time to include additional parcels), attached hereto and made a part hereof.

C. The Parcel is presently improved with a three story building with five (5) residential units commonly known as 2353 West Belden, Chicago, Illinois, which is currently an apartment structure and is anticipated to be converted to condominiums (the "**Condominium Property**"), and a commercial space commonly known as 2255 N. Western Ave, Unit C1 Chicago, Illinois (the "**Commercial Property**") located on the first and second floor and more specifically called out in the plat of survey hereinafter described.

D. Declarant intends either to hold title to the Commercial Property itself or to convey title to the Commercial Property to one or more related or unrelated third parties but does not intend to submit the Commercial Property to the Act. Declarant intends to submit the Condominium Property to the Act.

E. The Condominium Property and the Commercial Property are functionally dependent on one another, to some extent, such as but not limited to, for structural support, enclosure, ingress and egress, utilities, or other facilities, services, expenses and components necessary for the efficient operation and intended use of the Condominium Property and the Commercial Property.

F. Declarant desires by this Agreement to provide for the efficient use and operation of each respective portion, estate and interest in the Total Property, to assure the harmonious relationship of the Owners of each such respective property, building, Condominium and Commercial Property portion, estate or interest in the Total Property, and to protect the respective values of each such portion, estate and interest in the Total Property by providing for, declaring and creating certain easements, covenants and restrictions affecting the Condominium Property and the Commercial Property, which will be binding upon each present and future Owner of the Condominium Property and of the Commercial Property or parts thereof, or of any portion thereof or interest or estate therein.

NOW, THEREFORE, Declarant hereby declares that the Total Property and any part thereof is and shall be owned, used, held, mortgaged, leased or otherwise encumbered, transferred, assigned, owned, sold, conveyed and accepted subject to this Agreement, and

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

ARTICLE 1 DEFINITIONS

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

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

1.2 "**Building**" means that certain building consisting of a four (4) story mixed use building including certain residential units and commercial space commonly known as 2255 N. Western Ave., Chicago, Illinois and 2353 West Belden, Chicago, Illinois.

1.3 "**Commercial Property**" means the improvements, facilities and space constructed, primarily on the ground floor of the Building and including limited roof-rights, signage rights and commercial signage, but excluding any Facilities primarily and or exclusively serving the Condominium Property, which Commercial Property is legally described in Exhibit C attached hereto and made a part hereof and more specifically called out upon the attached plat of survey. The Commercial Property is separate and apart from the Condominium Property and the Common Elements or any other part of the Building or Property or Total Property.

1.4 "**Common Elements**" means all portions of the Condominium Property, except the Units, when submitted to the Act from time to time pursuant to the Condominium Declaration.

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

1.6 "**Condominium Association**" means an Illinois not-for-profit corporation formed or to be formed for the purpose of administering the Condominium Property pursuant to the Act. If the Condominium Property is submitted to the Act, the Condominium Association shall be the agent and representative of the Owners of the Condominium Property whenever there is more than one Owner of the Condominium Property. In such instances, whenever this Agreement requires or allows for actions to be taken by the Owner of the Condominium Property, only the Condominium Association shall be the party to act for and on behalf of the Owners of the Condominium Property and all such owners shall act exclusively through the condominium association and shall bring no private or individual action or class action matter except through the Condominium Association and pursuant to the Act.

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1.7 "**Condominium Declaration**" means any declaration of condominium ownership and of easements, restrictions, covenants and by-laws which will submit the Condominium Property to the provisions of the Act, together with any amendments and supplements thereto.

1.8 "**Condominium Property**" means the portion of the Parcel containing the Residential Improvements, as legally described in Exhibit B, attached hereto and made a part hereof and more specifically delineated on the Commercial Survey attached hereto as Exhibit D (but, by way of example, specifically including Common Elements, Common Walls, Floors and Ceilings and the Building, but excluding the Commercial Property).

1.9 "**Declarant**" means KSW Development, LLC, an Illinois limited liability company, its successor or assigns.

1.10 "**Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements, including all exhibits, amendments, additions and supplement thereto (this "**Agreement or Operating Agreement**").

1.11 "**Depository**" means the person or entity from time to time acting pursuant to Article XVII of this Declaration.

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

1.13 "**Emergency Situation**" means a situation impairing or imminently likely to impair structural support of the Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Total Property or any material property in, on, under, within, upon or about the Total Property. The duration of an Emergency Situation shall be deemed to include the sooner of the time first reported, suspected or discovered to the time reasonably necessary to remedy the Emergency Situation or to secure such matters of the emergency as to safely contain or alleviate the emergency situation as herein described or reasonably believed until non-emergency matters may be effected to remedy the balance of the situation thereafter known or reasonably believed to be safe. If time and circumstances permit and in any instance which may involve a real or perceived emergency or involve an emergency responder (such as but not limited to police, fire, health, medical, security, attorney, municipal inspector, professional property manager, or official or agent or person of similar nature or licensed, authority or accredited 3rd party professional) then the opinion of such emergency responder as to an emergency situation or response shall be presumed to be reasonable at the time and heeded to the fullest extent practical and reasonable in each instance.

1.14 "**Facilities**" means all of the following components, if any, including, by way of example, of the chilled and heated hot water, condenser water (if any), public or quasi-public utilities or communications, domestic water, sanitary waste, storm water, electrical, gas, elevator cars and systems, and all other utility and/or systems forming a part of the Building and designed or utilized to furnish utility and other services to any portion of the Building, including, but not limited to, the following components of such systems: antennae, boilers, boxes, brackets,

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cabinets, cables, chutes, coils, conduits, controls, control centers, couplers, dampers, devices, ducts, elevator cars, elevator equipment, equipment, fans, fixtures, generators, hangers, heat exchangers, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, switches, systems, transformers, valves, wiring and the like.

1.15 "**Improvements**" means all improvements, including but not limited to the Residential Improvements and the Commercial Property but excluding personal property, trade fixtures and or improvements to individual residential Condominium Units made by Residential Condominium Owners to or solely for the benefit of their own Units and or in excess of or beyond the original construction of the Building.

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

1.17 "**Mortgage**" means a mortgage or trust deed in the nature of a mortgage on the Condominium Property or the Common Elements of the Condominium Property if submitted to the Act or on the Commercial Property but shall not include a mortgage or trust deed on a Unit in the Condominium Property.

1.18 "**Mortgagee**" means the holder of a Mortgage.

1.19 "**Owner**" means either an Owner of the Condominium Property or an Owner of the Commercial Property, as the context requires. "**Owners**" means Owners of the Condominium Property and Owners of the Commercial Property. If, and as long as any portion of the Condominium Property constitutes condominium property subject to the Act, the Owner of such Condominium Property shall mean collectively all of the Unit Owners in and to such Condominium Property and not individually, and the rights of such Owner(s) shall be exercised only by the Condominium Association according to the Act and its bylaws and through its Board of Managers and or officers and or board of directors, administering such Condominium Property on behalf of its Unit Owner(s), except for such rights or benefits expressly granted to a Unit Owner, and except for Easements which by their nature are exercisable only by a Unit Owner. In the event of any action taken by the Condominium Association's President, Board of Managers or Directors, all Unit Owners shall be bound as if such Unit Owners had expressly consented and agreed to such actions by the Condominium Association. If the Condominium Property is submitted to the Act, all obligations under this Agreement of Owners of the Condominium Property shall be obligations jointly and severally of both the Condominium Association and all Unit Owners in such Condominium Property and any lien arising against the Owner of the Condominium Property may be imposed against the Units of all such Unit Owners based jointly and severally up to 100% (and not only upon their percentages of interest in the Common Elements appurtenant to such Condominium Property).

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1.20 "**Owner of the Condominium Property**" means the person or entity (or persons or entities if more than one), at any time in question, holding fee simple title to the Condominium Property (or part thereof). If the Condominium Property is submitted to the Act and there is more than one Owner of the Condominium Property and actions are or must be taken by or on behalf of the Owners of the Condominium Property, the Condominium Association shall act for and on behalf of the Owners of the Condominium Property and shall be the sole authorized representative and agent of the Owners of the Condominium Property in connection with this Agreement.

1.21 "**Owner of the Commercial Property**" means the person or entity (or persons or entities if more than one), at any time in question, holding fee simple title to the Commercial Property (or part thereof).

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

1.23 "**Recorder**" means the Recorder of Deeds of Cook County, Illinois.

1.24 "**Residential Improvements**" means all improvements constructed or reconstructed upon and within the Parcel, including, by way of example, but without limitation, the Building, the Facilities, sidewalks, parkways and landscaping located in, on, to or under the Parcel, but excluding the Commercial Property.

1.25 "**Secured Property Lenders**" mean the holder of any mortgage or trust deed in the nature of a mortgage (as the same may be amended and/or replaced from time to time) on any portion of the Total Property, excluding, however, any mortgage or trust deed in the nature of a mortgage secured by a Unit.

1.26 "**Total Property**" means the Condominium Property and the Commercial Property.

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

1.28 "**Unit**" means any portion of the Condominium Property submitted to the Act described as a "**Unit**" in the Condominium Declaration.

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

1.30 **"Unit Ownership"** means a part of any portion of the Condominium Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

ARTICLE 2 EASEMENTS IN FAVOR OF COMMERCIAL PROPERTY

2.1 The following perpetual (except as otherwise noted) Easements in, to, under, over, upon, through and about portions of the Condominium Property in favor of the Commercial Property are hereby granted, reserved, declared and created (the term **"Granted"** or **"granted"** as hereinafter used in describing Easements shall be deemed to mean **"granted, reserved, declared and created"**):

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

(b) A non-exclusive Easement for access to, use for their intended purposes and Maintenance of all Facilities located in the Condominium Property and connected to Facilities located in the Commercial Property (and any replacement thereof) which provide or shall be necessary or desirable to provide the Commercial Property with any utilities or other services, including without limitation, the use of the roof, the use of the roof above the garage, or the use of the exterior of the Building for the installation, maintenance, replacement and removal of a satellite dish, antennae or other equipment, exhaust vents fire suppression systems, the water supply system, the HVAC systems serving the Commercial Property, the mechanical and electrical systems of the Building, the garbage facility area, cable, internet or other entertainment services and to the extent they exist, security intercom systems serving the Building. Access is also hereby granted to the meter rooms and or areas or other mechanical systems or rooms located on the lower level or the first, second, third or fourth floors of the Building, or the roof.

(c) A non-exclusive Easement for access to and use of the area located on the inside of the vestibule in the Condominium Property and common halls, doors, storage, stairways, and passageways, if any.

(d) A non-exclusive Easement, permitting encroachments in the event and to the extent that, by reason of the original construction, or any reconstruction or replacement authorized by the terms of this Agreement of any part of the Commercial Property or the subsequent settlement or shifting of any part of the Commercial Property, any part of the Commercial Property encroaches or shall hereafter encroach upon any part of the

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Condominium Property. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Commercial Property continues to exist.

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

(f) A non-exclusive easement for ingress and egress by persons, materials and equipment over, on, across and through the Elevator (including use of such elevator) Common Corridor (to the extent any portion is not part of the Commercial Property and as identified on the Plat of Survey attached hereto as Exhibit D), the residential exits and any perimeter doors, entrances, exits, stairs and hallways, which serve exclusively or non-exclusively the Condominium Property; and including a non-exclusive easement for ingress and egress through, across and over the lobby of the Condominium Property and the lower level floor areas, if any.

(g) Non-exclusive easements described on the Plat of Survey attached hereto and incorporated herein as Exhibit D, if any.

(h) A non-exclusive easement for access and use of the stairs serving the Building for access between the first floor and all upper floors of the Building and to the roof of the Building. Nothing contained herein is meant to, or shall be construed as, conferring upon the Commercial Property the right to use any roof decks, if at all, located on the roof of the Building, or the hallways and stairwells to the extent they secure the floors of the Total Property other than the first floor. The Owner of the Commercial Property is hereby granted the right to use the Common Elements located on the first floor of the Building for ingress, egress and access purposes to and from portions of the Commercial Property to other portions of the Commercial Property and to aid handicap access to the Commercial Property. In particular, but not by way of limitation, the Commercial Property owner, its agents, employees, tenants, guests and invitees, are granted the right to use those portions of the Common Elements which are contiguous to the Commercial Property, for access, ingress, and egress to and from adjacent areas of the Commercial Property denoted for utilities and/or storage, if any, as they may be described on the Plat of Survey attached hereto as Exhibit D.

(i) A non-exclusive Easement for ingress, egress and access by persons, material and equipment, to and from any loading zone, loading berth, service areas, service corridors and delivery entrances located in, on or about the first floor of the Building, if any.

(j) A non-exclusive Easement for pedestrian ingress and egress in an Emergency Situation to and from, over, on, across and through the Condominium Property including but not limited to Residential Condominium Units and any and all parts of the Property and or Building as needed.

(k) A non-exclusive Easement for ingress and egress and regress (and, where reasonably necessary, use) for persons, material and equipment over, on, across and

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through the Condominium Property to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of the Commercial Property as required or permitted pursuant to this Agreement, or to the extent reasonably necessary to exercise the Easements set forth in this Section 2.1 or to provide structural support required by Article 5 hereof or to assist in providing the services required under Section 4.2.

(k) A non-exclusive Easement for, if any or to provide for the completion of original construction or “punch-list” items.

(l) A non-exclusive Easement for the use and maintenance of future Facilities connecting Facilities or areas of the Commercial Property to any antennae or other communications devices or equipment on the roof, under-ground, over-head, through the walls and/or on the roof, rear, of the Condominium Property, if any, which future use may extend through space for such future use.

(m) A non-exclusive Easement for the use of the fire stairwells which connect the first floor with the roof and for access to and from the first floor of the Building to the roof of the Building.

(n) A non-exclusive Easement for the use of the exhaust shafts and ducts and related ventilation equipment serving the Commercial Property and located in or passing through the Condominium Property permitting exhaust ventilation.

(o) A perpetual exclusive Easement to construct, remove, install, reinstall and thereafter maintain lights and an exclusive easement for any and all signs, commercial advertising, and or awnings and or awnings with signs and or banners, and or lettering on the exterior of the Condominium Property (except for the Condominium Property Address in proximity of the Condominium entry) on the front, rear or side façade of the Building including the installation and use of automated teller machines or for machines for banking, dispensing of cash, tickets, or other similar machines (ATM). This Easement shall run in favor of the Owner of the Commercial Property, its successors and/or assigns and its tenants. Such lights and signs shall be commercially reasonable both in size and content in the sole determination of the Commercial Property Owner and as provided by Law or as may be regulated by the Declarant. Nothing in this Exclusive Easement for or relating to signs or awnings shall prevent the Commercial Property Owner or the Declarant from establishing a reasonably uniform policy governing the Commercial Property Owners, Tenants or users of the Commercial Space, Building or Property including adjacent properties to the extent that they are subject to this Agreement. Residents and Condominium Owners are prohibited from posting any sign, notice, flag (other than the flag of the United States of America, the State of Illinois or the City of Chicago) or in any to protest, picket, place public notices or announcements or political or other banners or messages or advertisements with the sole exception, in each instance, one at a time, the standard and customary sign of a licensed Real Estate Broker or a 2 foot by 3 foot sign stating “Condo for Sale” or “Condo for Rent” with a contact name and phone numbers.

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- (p) A non-exclusive Easement to install, maintain, remove and reinstall HVAC equipment or other mechanical equipment on the Building's roof or garage roof, as the case may be, which will serve all or a portion of the Commercial Property.
- (q) Any such Easements necessitated by the Plat of Survey.

2.2 Each Easement created under this Article 2 which, for its quiet use and enjoyment, provides or requires ingress and egress on, over, across or through the Condominium Property shall be subject (except in an Emergency Situation) to such reasonable limitations, including, rules and regulations, as the Owner of the Condominium Property and the Commercial Owner may, but are in no way obliged to agree upon, from time to time, which they may, upon written agreement wish to impose from year to year with respect to the use of such Easements including, without limitation, the establishment of limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Commercial Property or the Condominium Property and in order to assure the reasonable security of the applicable portion of the Commercial Property and the Condominium Property; provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement and any such limitations may be subject to the rights reserved to the Declarant.

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

ARTICLE 3 EASEMENTS IN FAVOR OF CONDOMINIUM PROPERTY

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

- (a) A non-exclusive Easement in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located in or constituting a part of the Commercial Property for the support and Maintenance of (i) the Residential Improvements and (ii) any Facilities located in the Commercial Property with respect to which the Owner of the Condominium Property is granted an Easement under this Agreement.
- (b) A non-exclusive Easement for access to, use for their intended purposes and Maintenance of all Facilities located in the Commercial Property and connected to Facilities located in the Condominium Property (and any replacement thereof) which provide the Condominium Property with any utilities or other services which may otherwise be necessary for the operation of the Condominium Property, including without limitation, the exhaust vent, garbage and fire suppression systems, including if necessary, the right to temporarily place dumpsters subject to the accommodation of the Commercial

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Property and its dumpster and or trash receptacle and the approval of the Owner of the Commercial Property in the garbage facility areas, the HVAC system serving the Condominium Property, the mechanical and electrical systems of the Building, and the security intercom systems serving the Building.

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

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

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

(f) A non-exclusive Easement for ingress and egress (with written notice and, where reasonably necessary and can be accommodated by the Commercial Space user or use) by persons, material and equipment over, on, across and through the Commercial Property to the extent reasonably necessary to permit the construction, Maintenance, repair, replacement, restoration or reconstruction of the Condominium Property as required or permitted pursuant to this Agreement, or to the extent reasonably necessary to exercise the Easements set forth in this Section 3.1 or to provide structural support required by Article V hereof.

(g) A non-exclusive Easement for the use of the fire stairwells which connect the Condominium Property with the First Floor for access to and from the roof of the Condominium Property.

(h) A non-exclusive Easement through and across the Commercial Property (With written notice and during normal business hours other than for Emergency Situations) for access to and Maintenance of the water meter, fire pumps, domestic water pumps, sprinkler risers (if any), water drain lines, lines in connection with the sprinkler system and ejector pumps (if any) located in or passing through the Commercial Property.

(i) A non-exclusive Easement through and across the Commercial property for access to and Maintenance of waste stacks and grease lines. (With written notice during normal business hours and other than for Emergency Situations).

(j) An non-exclusive Easement for the use of the exhaust shafts and ducts and related ventilation equipment serving the Condominium Property and located in or passing

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through the Commercial Property permitting exhaust ventilation. (With written notice during normal business hours and other than for Emergency Situations.)

(k) Any such Easements necessitated by the Plat of Survey.

3.2 Each Easement created under this Article 3 which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Commercial Property shall be subject (except in an Emergency Situation) to such reasonable limitations, including, without limitation, rules and regulations, as the Owner of the Commercial Property may but is not required to, from time to time, impose yearly with respect to the use of such Easements, including, without limitation, the establishment of limited hours of the day or days of the week during which such Easement may be used to prevent any unreasonable interference with the use and operation of the Commercial Property and in order to assure the reasonable security of the Commercial Property, provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any such Easement.

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

ARTICLE 4 SERVICES TO OWNER OF COMMERCIAL PROPERTY AND CONDOMINIUM PROPERTY

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

- (a) **Facade.** Maintenance, repair, improvement, water sealing, painting and replacement of the Building façade, in good repair upon the terms and conditions set forth in Exhibit 4.1(a).
- (b) **Exterior & Interior Lighting.** Maintenance, repair and replacement of all exterior and interior lighting and bulbs of the Building on the terms and conditions set forth in Exhibit 4.1(b).
- (c) **Snow and Ice Removal.** Removal of snow and ice (and laying down of salt or similar ice-melting or other removal methods) from sidewalks, walkways, and public parkways leading to and from all street level entrances to the Building, pursuant to Exhibit 4.1(c).

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- (d) Landscaping. Maintenance, repair and replacement of exterior landscaping pursuant to Exhibit 4.1(d).
- (e) Domestic Water Supply System. To the extent not directly available to the Commercial Property, supply of domestic water reasonably required by the Owner of the Commercial Property from city mains through the water supply and maintenance of all water lines from the city mains and water supply system up to and including the equipment located in the Building water pump room upon the terms and conditions and as more particularly described in Exhibit 4.1(e).
- (f) Roof. Maintenance, repair and replacement of the roof of the Building and the roof drains and parapets (if any) upon the terms and conditions set for in Exhibit 4.1(f).
- (g) Sanitary Waste System: Maintenance of all drain lines and risers serving the Building in a manner consistent with the operation of a first-class, mixed-use building (including regular and periodic roding and cleaning or clearing) upon the terms and conditions set forth in Exhibit 4.1(g).
- (h) Electrical Supply System: Electrical requirements (but not the cost of electrical service for electrical power from the public utility itself) for use in the Commercial Property and Maintenance of the local utility company such as ComEd, the electrical equipment and distribution equipment and the Electrical Room, upon the terms and conditions set forth in Exhibit 4.1 (h)
- (i) Telephone and/or Communications and/or Internet System(s): Maintenance of the systems, such as but not limited to lines and wires for Television, Phone, Data, Pictures, and such equipment such as antennas, dishes, switches, switch-boxes, wireless systems, networks, or related systems for distribution system servicing the Building pursuant to Exhibit 4.1(i).
- (j) Elevator: Maintenance and replacement where and when necessary of the Elevator, all shafts, equipment and other equipment related thereto pursuant to Exhibit 4.1(j).
- (k) Sidewalks: Maintenance, repair and replacement of the sidewalks contiguous to the Building, as and when necessary, consistent with the standards of a first-class, mixed use building upon the terms and conditions set forth in Exhibit 4.1 (k). Including all customary Insurance for the Public Way.

Notwithstanding the foregoing services listed above, the Owners of the Condominium Property shall provide or contract to provide the following services for the benefit of themselves with no reimbursement from the Owner of the Commercial Property. The failure to provide these services shall constitute a breach under the terms of this Operating Agreement:

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(l) Management: Management by the members or Condominium Association, themselves, the Board, or such professional management company as the Condominium Association may so elect (with the reasonable approval of the Owner of the Commercial Property and a copy of any management agreement provided to the Owner of the Commercial Property).

(m) Cleaning: Cleaning Service for all parts of the Building and the Property, except for the Commercial Property, from time to time, as needed, but not less than once per every ninety days (including vacuuming and carpet cleaning not less than once every two years and paint touch up not less than every three years).

(n) Taxes: Accounting and tax preparation and filing for the Associations tax obligations, as required by the Internal Revenue Service.

(o) Condominium Association Declarations: All of the obligations stipulated in and contemplated by the Condominium Association, the Condominium Declaration and the Act, if any.

4.2 The Owner of the Commercial Property shall furnish the following: no services. To the extent that services are contemplated or required and provided that they are a direct benefit to and an obligation of the Owner of the Commercial Property and not contested then the only obligation of the Owner of the Commercial Property would be to re-pay its required share subject to any set-off, or reduction and subject to the actual third party expenses previously paid and for value, goods or services received.

4.3 Each Owner shall make a good-faith effort to operate its Facilities and cooperate to secure and furnish all services and information: (a) at the lowest possible costs (including competitive third party bids from time to time to qualified vendors or service providers for similar developments in similar neighborhoods in Chicago) reasonably available without degrading the quality of any services furnished and to maintain the reputation and condition as a first-class, mixed-use building, and (b) in a manner so as to provide the Owner of the Condominium Property and the Owner of the Commercial Property with comfortable occupancy and enjoyment of the Condominium Property and the Commercial Property for their respective intended uses.

4.4 Statements for services rendered pursuant to Article 4 hereof, provision for payment thereof and provisions for additional payments incurred in connection with such services shall be made in accordance with the terms and provisions of Exhibit 4.4 and include such additional verification and back-up and source documentation as is requested from time to time by either party..

4.5 If any Owner shall fail to perform as required by the terms and conditions of Sections 4.1, 4.2, or 4.3 of the Agreement (except when such failure is caused by another Owner or Unavoidable Delay) and such failure shall continue for a period of ten (10) days after written notice thereof to the Defaulting Owner, such other Owner to whom such services are to be provided shall have the right to take possession and control of and to operate, maintain, repair

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and replace the Facilities (wherever located) required for the furnishing of such service (with prior written notice and with out material disruption to the quiet use and enjoyment of the defaulting owner) until such time as the Defaulting Owner cures its failure to perform. Such notice shall not be required in an Emergency Situation resulting from such failure but shall be provided promptly in arrears. For any period in which a Creditor Owner is performing pursuant to Section 4.5, the Defaulting Owner shall pay the Creditor Owner the actual out-of-pocket direct 3rd party costs and expenses paid or incurred by the Creditor Owner in connection with such performance (but excluding legal fees, costs of enforcement and or management fees).

4.6 If, at any time, a Defaulting Owner shall fail to pay any Creditor Owner any sum of money payable to the Creditor Owner pursuant to the provisions of Section 4.5 hereof for ten (10) days after written notice from the Creditor Owner demanding payment of said sum of money, then the Creditor Owner may upon an additional ten (10) day written notice and posting in a conspicuous location on the building for not less than ten (10) days, discontinue furnishing of the services for which payment has not been received until said sum of money is paid; provided, however, that if the Defaulting Owner in good faith disputes the Defaulting Owner's obligation to pay said sum of money and diligently contests any action or proceeding brought to collect said sum of money or to enforce any lien therefor, the Defaulting Owner shall not be deprived of any such services unless and until it shall finally be determined by court proceedings, arbitration or otherwise that the Defaulting Owner is obligated to pay said sum of money and thereafter said sum of money remains unpaid.

4.7 In addition to the foregoing provisions of this Article 4, and except as provided above, the Owner of the Commercial Property shall be solely responsible for all of the cost of the maintenance, repair, and replacement of any retail awnings, store-front doors, and store-front windows, adjacent to and serving exclusively the Commercial Property, or other costs directly and exclusively attributable to the Commercial Property.

ARTICLE 5 STRUCTURAL SUPPORT

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

5.2 Except in the case in which Article 9 is applicable, if substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or the structural safety of any portion of the Improvements is endangered, then the Condominium Owner shall be responsible for construction in accordance with plans and specifications approved by (except insofar as the provisions of Article 13 would not require such approval) the Owner of the Commercial Property, and, subject to the provisions of Article 10 hereof, the Owner or Owners responsible for such reduction or endangerment shall pay all costs and expenses, including any architect's and other fees, in connection with construction of substitute or additional support. However, (a) if the responsible Owner cannot be determined, the Owner benefited by such structural support shall pay such costs and expenses and (b) if the reduction in structural support giving rise to the need for such construction results

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from ordinary wear and tear, the Owner responsible pursuant to Article 9 for maintaining the Improvements requiring such repair shall pay such costs and expenses.

The Owner of the Commercial Property is expressly permitted to create, maintain or remove openings, passageways, doorways or other interruptions to the exterior front or side-walls of the building structure in order to combine the commercial property with similar commercial property in adjacent buildings and/or between the ground floor Commercial Space. Nothing in this provision, nor any part of this Agreement will prevent the Owner of the Commercial Property from traversing, combining, linking, or creating doorways, hallways or passageways between the Commercial Property within or between adjacent Commercial Property.

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

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

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

ARTICLE 6 COMPLIANCE WITH LAWS; REMOVAL OF LIENS; ZONING

6.1 The Owners shall each comply with all laws, statutes, codes, rules, orders, decrees, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, State of Illinois, County of Cook, City of Chicago, and any other entity or agency now or hereafter having jurisdiction of the Total Property or any portion thereof, if noncompliance by it with respect to its portion of the Total Property or any part thereof would

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subject the other Owner to civil or criminal liability, or would jeopardize the full force or effect of any certificate of occupancy issued to the other Owner or for the Improvements themselves or would jeopardize the other Owner's quiet use and enjoyment, right to occupy or use beneficially its portion of the Total Property or any part thereof, or would result in the imposition of a lien against any of the property of the other Owner or would impose any threat or danger to any person or property. Neither Owner shall take any action or omit to take any action which could adversely affect (including, without limitation, increase the cost of) any of the insurance maintained by the other Owner (except, the use, by way of the lawful use of the Commercial Property owner or any tenant thereof). Such rules and regulations of the Condominium Association shall not interfere with the rights and privileges granted hereunder.

6.2 No Owner shall permit the filing of any mechanic's, materialmen's or any other like lien on any other Owner's portion of the Total Property, or on its portion of the Total Property if the existence or foreclosure of such lien on its portion of the Total Property would adversely affect any Easement hereunder or services to be furnished pursuant to Article 4 hereof, arising by reason of its act or any work or materials which it has ordered. In the event an Owner fails to remove any such lien or provide the other owner with title insurance over any such lien or post an amount equal to such claim with a third party professional escrow agent within thirty (30) days after the filing thereof, the other Owner may (but is not required to) take such action as the other Owner may deem necessary to remove such lien or insure over said lien. Such Owner shall be entitled to reimbursement from the Owner who has failed to remove such lien for all costs and expenses incurred by such Owner in removing or attempting to remove such lien or obtaining such title insurance over said lien. However, the Owner who has not paid such lien shall not be required to remove such lien within said thirty (30) day period (and the other Owner shall not be entitled to remove such lien), provided that (i) the continuance of such lien shall not constitute a default under the documents securing a Mortgagee under a Mortgage; (ii) within said thirty (30) day period foreclosure proceedings relating to such lien cannot be completed; and (iii) the Owner responsible for the filing of such lien (A) shall in good faith diligently proceed to contest the same by appropriate proceedings and shall give written notice to the other Owner, and to a Mortgagee if required by applicable loan documents, of its intention to contest the validity or amount of such lien and (B) shall deliver to the other Owner and/or, if loan documents so provide, to a Mortgagee, either: (i) cash or a surety bond from a responsible surety company acceptable to the other Owner and a Mortgagee, if applicable, in an amount equal to one hundred percent (100%) of the lien claim and all interest and penalties then accrued thereon or such greater amount as may reasonably be required to assure payment in full of the amount claimed, plus all penalties, interest and costs which may thereafter accrue by reason of such lien claim or (ii) other security reasonably acceptable to the other Owner and each Mortgagee, if applicable. The rights of an Owner under the preceding sentence to contest such lien without discharging the same shall terminate if (i) the Owner fails to contest diligently and continuously, (ii) final judgment is entered on behalf of the lien claimant or (iii) the existence of such liens shall constitute a default under the Mortgage and in such event the Owner responsible for the filing of such lien shall cause such lien to be discharged or removed within ten (10) days after the occurrence of any of the events in clauses (i) or (ii) or (iii) in this sentence and the other Owner shall have the right (but not the obligation) at any time after said ten (10) day period to remove such lien and in such event be entitled to reimbursement in accordance with the applicable

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provisions hereunder. The costs and expenses referred to in this Section 6.2 shall include, but not be limited to, reasonable attorneys' fees.

6.3 Each Owner (hereinafter in this Section 6.3, the "**Indemnifying Owner**") covenants and agrees, at its sole cost and expense, to indemnify and hold harmless the other Owner (hereinafter in this Section 6.3, the "**Indemnitee**") from and against any and all claims against the Indemnitee for losses, liabilities, damages, judgments, costs and expenses and any action or proceedings arising therefrom, by or on behalf of any person firm, corporation or governmental authority, other than the Indemnitee, arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's portion of the Total Property or activities therein or arising out of the Indemnifying Owner's use, exercise or enjoyment of an Easement and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, the Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee and to pay all reasonable fees and expenses of such counsel. Any counsel for the insurance company providing Insurance against such claim, action or proceeding shall be presumed reasonably satisfactory to Indemnitee. Indemnitee shall have the right to employ separate counsel in any such actions brought against Indemnitee, and the fees and expenses of such counsel shall be paid by Indemnitee.

6.4 Without limiting the provisions of Section 6.1, neither Owner shall make any Alterations (as that term is defined in Section 13.1) (except to allow for the combining with any adjacent commercial property or for the construction of the commercial space or addition of commercial space awnings, signs or storefront design or interior remodeling as needed from time to time) or allow any use of their respective portions of the Total Property or take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance, as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Total Property or any portions thereof. The Condominium Property and Commercial Property shall continue to be combined and treated as one zoning lot for the purposes of complying with the Chicago Zoning Ordinance. Without limiting the generality of the foregoing, the Owner of the Commercial Property may seek any change in the Chicago Zoning Ordinance which changes the character or permitted use of any portion of the Commercial Property without the express written consent of the Owner of the Condominium Property. The Owner of the Condominium Property shall not seek any change in the Chicago Zoning Ordinance which changes the character or permitted use of any portion of any commercial property located within the Condominium Property without the express written consent of the Owner of the Commercial Property.

ARTICLE 7 REAL ESTATE TAXES

7.1 The Owners shall make good faith efforts and cooperate with each other so that the Condominium Property and the Commercial Property shall, when and as soon as possible, be

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assigned separate real estate tax index numbers and receive separate real estate tax bills from the Assessor of Cook County, Illinois (the "Assessor"). From and after submission of the Condominium Property to the Act, separate real estate tax numbers and separate real estate tax bills will be applied for with respect to each Unit of the Condominium Property.

7.2 The Total Property currently comprises of one property index number as set forth on the first page of this Agreement. At such time as the Condominium Property and the Commercial Property are separately assessed and taxed, each Owner shall pay the real estate taxes and special assessments for the portion of the Total Property owned by such Owner. Until the Condominium Property and Commercial Property are separately taxed, the Owner of the Condominium Property shall pay all of the tax bills for the Total Property prior to their due date; prior to such due date, however, the Owner of the Commercial Property shall pay to or as directed by the Owner of the Condominium Property its share of the bill for the Total Property as provided in Section 7.3 below. The obligation of the Owner of the Commercial Property to pay the Owner of the Condominium Property as set forth in the immediately preceding sentence does not relieve the Owner of the Commercial Property of the obligation to pay taxes as required by its Secured Property Lender.

7.3 Until such a tax division has been completed, the assessed valuation respecting the Total Property and the taxes computed thereon, and the cost of tax counsel and appraisal fees, if any, shall be allocated between the Owners and paid by the respective Owners as follows: **75%** by the Owner of the Condominium Property and **25%** by the Owner of the Commercial Property, and the Owner of the Commercial Property shall be responsible for and shall pay to or as directed by, or shall reimburse the Owner of the Condominium Property (within thirty (30) days after the demand of the Owner of the Condominium Property therefor) for its share of the total real estate taxes levied and assessed in the tax bill for the Total Property, prorated on an accrual basis from the date of the conveyance of the Commercial Property to the Owner of the Commercial Property.

7.4 If, at any time prior to the Condominium Property and the Commercial Property being separately assessed and taxed, any Owner shall fail to pay any tax or other charge, or share thereof, which is due and which such defaulting Owner is obligated to pay pursuant to this Article 7, then the other Owner may, upon ten (10) days' prior written notice to the defaulting Owner (the "**Defaulting Owner**") pay such tax or charge, or share thereof, together with any interest and penalties thereon, and the defaulting Owner shall, upon demand, reimburse such paying Owner for the amount of such payment, including the amount of any interest or penalty payments incurred by the Owner making such payments together with interest as set forth in Section 10.4 hereof, and the paying Owner shall also have a lien against the portion of the Total Property owned by the defaulting Owner in accordance with Article 10 hereof.

ARTICLE 8 INSURANCE

8.1 The Owner of the Condominium Property and the Commercial Property shall procure and maintain the following insurance:

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(a) The Owner of the Commercial Property shall keep the Commercial Property insured for no less than "all risk" or "special form" coverage on real property and personal property which exclusively serve that part of the property owned by the commercial owner for an amount not less than 100% of the insurable replacement cost thereof and building ordinance coverage in an amount not less than \$1,000,000. The Owner of the Condominium Property and the Condominium Association shall keep the Condominium Property insured for no less than "**all risk**" or "**special form**" coverage on real property and personal property for an amount not less than 100% of the insurable replacement cost thereof and for the entire building and building ordinance coverage in an amount not less than \$1,000,000. Such policies shall be endorsed with replacement coverage and code changes endorsement and an agreed amount clause and no co-insurance penalty shall be applicable.

The commercial owner shall not pay for such insurance directly related to the condominium property or owners such as but not limited to officers, director's liability insurance, automobile insurance, individual condominium unit owners or renter's insurance, excess liability insurance or umbrella policies.

(b) The Owner of the Condominium Property and the Owner of the Commercial Property shall maintain comprehensive general liability insurance with broad form extensions covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon, or about the respective portions of the Total Property, or as a result of operations thereon, in such amounts as may be required by law and as from time to time shall be carried by prudent owners of similar type buildings in the City of Chicago, but in all events, for limits of not less than \$1,000,000 combined single limit per occurrence with a general policy aggregate or \$2,000,000 for personal and bodily injury or property damage with at least additional \$1,000,000 umbrella coverage.

(c) Unless all Owners otherwise agree in writing, but in any event subject to any required approval of any Secured Property Lender, if applicable, with respect to each of the insurance policies required hereunder, the interest of the Owner of the Condominium Property and the Owner of the Commercial Property shall be insured by the same insurance companies and through the same insurance broker both as competitively bid by the owner of the Condominium Property. Such policies may be issued in combination with respect to each Owner, but shall be separate policies for each Owner covering one or several items, to the extent practicable. Notwithstanding the foregoing, if either or both Owners determine that obtaining policies from the same insurance company is impracticable, the Owners may purchase policies from separate companies but will use their best efforts to obtain the separate policies through the same insurance agent. The cost of such insurance excluding such costs as ascribed solely for the Condominium Property (officers, directors liability, auto, individual owners and the like), shall be allocated as follows: **75%** by the Owner of the Condominium Property and **25%** by the Owner of the Commercial Property, and the Owner of the Commercial Property shall be responsible for and shall pay to or as directed by, or shall reimburse the Owner of the Condominium Property (within thirty (30) days after the payment thereof and issuing of a certificate of insurance and a copy of the policy demand of the Owner of the

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Condominium Property therefore) for its share of the insurance for the Total Property pursuant to paragraph 8.1(a). Insurance policies required herein 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/VII according to Best Insurance Reports or substantially equivalent rating from a nationally recognized insurance rating service. If and so long as any portion of the Total Property is 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 applicable Condominium Declaration as being responsible for such insurance, and any Unit Owners policies shall be subject to and consistent with the provisions of this article. Each of the Owners hereby agree to cooperate to procure and maintain insurance policies which jointly cover the interests of all of the Owners and to name any or all Owner or tenant as additionally insured upon reasonable request and at no additional cost to the policy holder.

(d) Each policy described herein shall (i) provide, if available, that the knowledge or acts or omissions of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under any such policy; (ii) insure as additional insureds the Owner of the Condominium Property and Owner of the Commercial Property (including but not limited to their tenants, officers, directors and principal owners) respectively, and their respective beneficiaries and agents there under and the Secured Property Lenders, provided, however that so long as any portion of the Total Property shall be subject to the Act, the Condominium Association and not the individual Unit Owners of that part of the Total Property so submitted shall be insured as an additional insured; (iii) shall provide, except for liability insurance described herein, by endorsement or otherwise, that the insurance shall not be invalidated should any of the insureds under the policy waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the property insured under the policy, if such provisions or endorsements are available and provided that such waiver by the insureds does not invalidate the policy or diminish or impair the insured's ability to collect under the policy, or unreasonably increase the premiums for such policy unless the party to be benefited by such endorsement or provision pays such increase; (iv) shall provide for a minimum of thirty (30) days' advance written notice of cancellation, non-renewal or material modification thereof to all named insureds and additional insureds thereunder including the Secured Property Lenders on the Property, unless such cancellation is for non-payment of premium, in which case ten (10) days' advance written notice shall be sufficient; and (v) shall, if available, provide except for the liability insurance required herein, that all amounts payable thereunder shall be paid to the Depository in accordance herewith. Nothing contained in this Section shall prevent the naming of any persons (in addition to those mentioned in clause (ii) hereinabove), as an additional insured in any policy or as prohibiting the inclusion in any policy of a usual and customary form of standard mortgage endorsement for Secured Property Lenders on the Property; provided, however, that the mortgagee under any mortgage upon any part of the Total Property receiving any proceeds of any insurance policy described herein shall deposit the insurance proceeds with the Depository in accordance to the extent that the Owner of the mortgaged property receiving such proceeds would be required to do so,

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except that such obligation for such deposit by a mortgagee shall be subject to the following conditions: (a) that at the time of deposit there shall be no then uncured default under the mortgage; (b) that at the time of such deposit, there shall be in the hands of the Depository a sufficient amount, which when added to the proceeds to be deposited by the mortgagee, will be at least equal to the cost, as estimated by the mortgagee, to complete the work; and (c) the insurers do not deny liability as to the insureds. The Parties hereto agree that the provisions of this Section 8.1 (d) are subordinate and subject to the terms of Secured Property Lender's loan documents.

(e) Limits of liability or types of insurance specified in this Article or carried by the Owners shall be reasonable and prudent for an Owner of a similar facility and shall be jointly reviewed by the Owners from time to time to determine if such limits, deductible amounts and types of insurance are reasonable and prudent in view of the type, place and amount of risk to be transferred, and to determine whether such limits, deductible amounts and types of insurance comply with the requirements of all applicable statutes, laws, ordinances, codes, rules, regulations or orders and whether on a risk management basis, additional types of insurance or endorsements against special risks should be carried or whether required coverages or endorsements should be deleted. Deductible amounts for insurance required hereunder shall be in such amounts as are customary or prevalent for an Owner of a similar facility. Such limits shall be increased or decreased, deductible amounts increased or decreased or types of insurance shall be modified, if justified, based upon said annual review, and upon any such increase, decrease or modification, the Owners shall, if mutually agreeable and subject to the right of Secured Property Lenders on the Property to approve any such changes, execute an instrument in recordable form evidencing such increase, decrease or modification, which any Owner may record with the Recorder as a supplement to this Declaration. The Owners shall employ an insurance consultant(s) or agent(s) to perform such review periodically on their behalf and the cost of employing any such consultant shall be shared by the Owners in the ratio their annual insurance premiums for insurance required hereunder bear to each other. Such consultant may be the same insurance broker or any employee thereof, through which the insurance policies are obtained hereunder.

(f) Copies of all original insurance policies and all renewal insurance policies or certified binders delineating all forms of coverage and endorsements required hereunder shall be delivered by each Owner to the other Owner and to the Secured Property Lenders on the Property, at least twenty (20) days prior to the expiration date of any such expiring insurance policy if market conditions so permit. Should an Owner fail to provide and maintain any policy of insurance required under this Article or pay its share of the premiums or other costs for any joint policies, then the other Owner may purchase such policy and the costs thereof (or the Owners share of such costs for the Owner failing to perform) shall be due from the Owner failing to perform upon the other Owner's written demand therefor plus interest at the rate set forth herein from the date of payment of the paying Owner to the date of reimbursement to the paying Owner. The annual premiums shall be allocated between the Owners and paid by the respective Owners as follows: **75%** by the Owner of the Condominium Property and **25%** by the Owner of the Commercial Property, and the Owner of the Commercial Property shall be responsible

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for and shall pay to or as directed by, or shall reimburse the Owner of the Condominium Property (within thirty (30) days after the procurement and payment for the Insurance, and providing proof of such insurance complying herewith and a written demand of the Owner of the Condominium Property thereof to the Commercial Property) for its share of the total insurance premium for the Total Property. The Commercial Property will not be obligated to pay any part of the insurance provided by the Condominium Property not directly related to the Commercial Property, including but not limited to by way of example, officers & directors liability coverage, hired or other automobile insurance, excess coverage or umbrella policies over the required amount or such insurance which does not specifically name the Commercial Property, its owners, tenants, or lenders as reasonably requested by the Commercial Property Owner.

(g) Provided that such a waiver does not invalidate the respective policy or policies or diminish or impair the insured's ability to collect under such policy or policies or unreasonably increase the premiums for such policy or policies unless the party to be benefited by such waiver pays such increase, and without limiting any release or waiver of liability or recovery contained elsewhere in this Declaration, each Owner hereby waives all claims for recovery from other Owner for any loss or damage to any of its property insured (or required hereunder to be insured) under valid and collectible insurance policies to the extent of any recovery actually collected under such insurance policies plus deductible amounts. Failure for the Owner of the Condominium Property to provide for or timely and diligently notify any insurance carrier of any material claim can, at the Commercial Owner's discretion relieve the Owner of the Commercial from any payment of loss or for said insurance which is not pursued with reasonable care and diligence.

ARTICLE 9 MAINTENANCE, REPAIR & DAMAGE TO THE COMMERCIAL PROPERTY AND RESIDENTIAL IMPROVEMENTS

9.1 The Owner of the Commercial Property, at its sole cost and expense, shall keep the Commercial Property and all of its Facilities located therein (excluding the Facilities and equipment outside the Commercial Property, pipes, ducts and related equipment and other Facilities located in the portion of the Commercial Property or below the bottom of the slab forming the floor of the Commercial Property and above the ceiling of the Commercial Property and running in the walls which serve primarily or only the Condominium Property, which Facilities shall be maintained, repaired and replaced by the Owner of the Condominium Property) or for which it is assigned Maintenance responsibility in this Agreement in good and safe order and condition, and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by code, law, violation, wear, tear, obsolescence, defects, fire or other casualty, or otherwise. The plans and specifications for such repair and reconstruction shall provide for the Commercial Property to be rebuilt as nearly as commercially practicable to the Commercial

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Property as constructed prior to the damage unless prohibited by law or unless the Owner of the Condominium and Commercial Property otherwise agree. Provisions concerning modifications, alterations, or improvements to the interior or exterior of the Commercial Property are set forth in Article 13 of this Agreement and shall not be unreasonably withheld or delayed.

9.2 Except as expressly provided in Section 9.1, the Owner of the Condominium Property shall, at its sole cost and expense, keep all Facilities located in the Condominium Property and all portions of the Condominium Property necessary to provide Facilities, structural support, Easements and other services to the Commercial Property required in this Agreement in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether such said repairs or replacements are to the interior or exterior thereof or structural or non-structural components or esthetic or finishes such as but not limited to, fixtures, flooring, drywall and paint) thereof, or involve ordinary or extraordinary repairs or replacements necessary to keep the same in safe, first-class working order and condition, howsoever the necessary or desirability thereof may arise, and whether or not necessitated by code, law violation, wear, tear, obsolescence, defects, fire or other casualty or otherwise. Each Owner shall be responsible for reimbursing the other Owner for any costs and expenses incurred with respect to Maintenance for which such Owner is responsible pursuant to this provision to the extent that such Maintenance results from damage caused by the other Owner or failure of the other Owner to reasonably respond and act under this provision.

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

9.4 If the Improvements are damaged by fire or other casualty and (a) to the extent such damage occurs in, on, under, within, upon or about the Condominium Property only or (b) to the extent such damage occurs in, on, under, within, upon or about the Commercial Property only, then any such damage shall be repaired and restored by the Owner of the portion of the Total Property in which any such damage occurs in as timely a manner as practicable under the circumstances, and such Owner shall, in accordance with the provisions of Article XVII hereof, be entitled to withdraw any insurance proceeds held by the Depositary by reason of any such damage, for application to the cost and expense of the repair and restoration of any such damage. If at any time any Owner so obligated to repair and restore such damage shall not proceed diligently with any repair or restoration of damage adversely and materially affecting an Easement in favor of the other Owner or services to be furnished by the other Owner, then (i) the

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Owner may give written notice to the Debtor Owner, as hereinafter defined, specifying the respect or respects in which such repair or restoration is not proceeding diligently and, if, upon expiration of thirty (30) days after the receipt of such notice, any such repair or restoration work is still not proceeding diligently, then the Owner may perform such repair and restoration and may take all appropriate steps to carry out the same; or (ii) in an Emergency Situation the Owner may immediately perform such repair or restoration and may take all appropriate steps to carry out the same. The Owner in so performing such repair and restoration shall, in accordance with Article XVII hereof, be entitled to withdraw any insurance proceeds and any other monies held by the Depository as a result of any such damage, for application to the cost and expense of any such repair or restoration and shall also be entitled to reimbursement upon demand from the Debtor Owner for all costs and expenses incurred by the Owner in excess of said insurance proceeds plus reasonable general contractor and administrative fees and interest at the Default Rate from the date of payment by the Creditor Owner, as hereafter defined, of the costs and expenses to the date of reimbursement to the Creditor Owner plus reasonable costs to collect.

9.5 If the Improvements are damaged by fire or other casualty and if the provisions of the preceding section are not applicable because the nature of the damage is such that it does not fall within any of the categories set forth in clause (a) or (b) of the preceding section, then the repair and restoration of such damage shall be the joint responsibility of the Owners whose portions of the Total Property are in need of such repair or restoration. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable. The plans and specifications for said repair and restoration shall be prepared on the behalf of those Owners which are responsible for such repair and restoration pursuant to the foregoing provisions. Said repair and restoration shall be performed on behalf of such Owners by a contractor or contractors jointly selected by such Owners, subject to the approval of the Secured Property Lenders on the Property, if required. In the event such Owners, and the Secured Property Lenders on the Property, if required, fail to agree upon the selection of a contractor, then the selection thereof shall be made by arbitration. The plans and specifications for such repair and reconstruction shall provide for the improvements to be rebuilt as nearly as commercially practicable as constructed prior to the damage unless further required or prohibited by law or unless the Owners otherwise agree, subject to the approval of the Secured Property Lenders on the Property, if required.

9.6 If the cost and expense of performing any repair or restoration to any Owner's Improvements provided for in the preceding section hereof shall exceed the amount of insurance proceeds, if any, paid by reason of the damage to such Owner's Improvements, then such excess cost and expense shall be borne equitably by each respective Owner to the extent that the respective Owner's insurance proceeds on its Improvements are inadequate to pay the cost and expense of repairing or restoring to their former condition their respective portions of the Improvements.

9.7 In any instance of repair or restoration pursuant to the preceding two sections hereof, any Owner may require that bids and estimates of the cost of expense of performing such repair or restoration be made by a reputable independent professional construction cost-estimating or general contracting firms, except if a construction contract providing for the performance of such repair and restoration for a stipulated sum shall theretofore have been

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executed. If said estimate or stipulated sum, or if the actual amount incurred in performing repair or restoration, exceeds the amount of insurance proceeds, if any, paid or payable by reason of the damage, then any Owner may at any time give notice to the other Owner demanding that each Owner deposit with the Depository 110% of the amount of such excess cost and expense attributable to each Owner pursuant to this Article. In lieu of depositing its share of such excess amount based upon said estimate or stipulated sum, or actual cost and expense of performing such repair or restoration, any Owner may deliver to the Depository security for payment of its share reasonably acceptable to the other Owner, the Depository and the Secured Property Lenders on the Property. Such security may be in the form of, but shall not be limited to, an irrevocable and unconditional letter of credit in favor of the Depository in the face amount of the share owned or a loan commitment, reasonably satisfactory to the other Owner and the Secured Property Lenders on the Property, if required, issued by a responsible lending institution, to disburse an amount equal to 110% of such Owner's share of such excess amount to the Depository to pay the cost and expense of any such repair or restoration as the work progresses in proportion to such Owner's share of the cost and expense of any such repair or restoration. If the amount of the security required is based on an estimate of the cost and expense of repair and restoration, then the amount of security required to be deposited or available shall be readjusted upward or downward as the work progresses based on actual costs and expenses of the work. If any Owner shall fail to pay, or, as the case may be, deposit, such Owner's share of the cost and expense (or estimated cost and expense) of performing any repair or restoration in accordance with this Section, or fails to deliver the security provided for herein within thirty (30) days after receipt of another Owner's written demand therefor, then the Creditor Owner may (but shall not be obligated to) pay the Defaulting Owner's share and the Defaulting Owner shall, upon written demand, reimburse the Creditor Owner 105% for such payment and the Creditor Owner's reasonable costs and expenses incurred in connection with collecting such payment plus interest at the Default Rate from the date of payment by the Creditor Owner to the date of reimbursement to the Creditor Owner.

9.8 Upon completion of the repair and restoration of any damage to the Improvements, any remaining insurance proceeds paid by reason of such damage and attributable to a particular portion of the Total Property shall be refunded to the respective Owner or, if applicable, to the holder of a mortgage encumbering the Owner's respective portion of the Total Property in accordance with the terms of such encumbrance, to the extent that such sum exceeds the actual repair or restoration of such Owner's Improvements. Such funds which are paid to each respective Owner or, if applicable, to the aforescribed mortgage holder, shall be payable only from each Owner's respective insurance proceeds.

9.9 If the Improvements are destroyed or substantially damaged and the Owners agree not to rebuild, repair or restore the Improvements, subject to the written approval of the Secured Property Lenders on the Property, if required, then the Improvements shall be demolished to the extent necessary to comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders or requirements of any governmental entity or agency thereof having jurisdiction of the Improvements. In such event, the available insurance proceeds allocated to each respective Owner's improvements, other than insurance proceeds used to cause said demolition to be performed, shall be refunded to such Owner pursuant to the terms and the amounts stated in each Owner's policy, subject to the rights of the Secured Property Lenders.

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Such demolition shall be deemed to be a repair or restoration to which the provisions of Sections 9.4, 9.5, 9.6, 9.7 and 9.8 hereof are applicable except that demolition, and not construction, shall be performed. Each Owner shall restore his portion of the Total Property after demolition, to a slightly and safe condition (including weatherproofing any exposed portions thereof) and in such a manner as to safeguard the other portions of the Total Property, to preserve the use of the Easements granted hereunder and to prevent any violations of the applicable ordinances of the City of Chicago caused by the other party's failure to rebuild. In the event all Owners of the Total Property agree not to rebuild where the Improvements are totally destroyed, the land underlying the improvements shall be deemed to be owned by the Owners of the Condominium Property as to an undivided 75% interest and the Owners of the Commercial Property as to an undivided 25% interest as Tenants in Common. Any Owner shall have the right to sue for partition, but for purposes of such partition the land shall be deemed not susceptible of division. The above percentages were calculated based on the ratio of an original good-faith estimated market value and/or pricing of the Commercial Property to the original good-faith estimated market value or pricing of the Condominium Property. Each such valuation or pricing did not include buyer or tenant extras or change orders or market forces, supply or demand or inflation or other subsequent price changes, or actual sale prices or values.

9.10 For purposes of this Article 9, licensed general contractor, architects' and engineers' fees, attorneys' fees, consultants' fees, title or other insurance premiums and other similar costs and expenses relating to repair or restoration shall be included in the costs and expenses of any such repair or restoration.

ARTICLE 10 LIENS, RIGHTS AND REMEDIES

10.1 If, at any time, either Owner (for purposes of this Section 10.1, a "**Debtor Owner**") fails within ten (10) days after notice or demand to pay any sum of money due the other Owner (for purposes of this Section 10.1, a "**Creditor Owner**") under or pursuant to the provisions of this Agreement, then, in addition to any other rights or remedies the Creditor Owner may have, the Creditor Owner shall have (i) in the event of a default under Articles 9 or 11, a lien against any condemnation award or insurance proceeds payable to the Debtor Owner for loss or damage to the portion of the Total Property owned by the Debtor Owner or otherwise under insurance policies carried pursuant to Article 8 hereof, or (ii) in the event of a default under any other Section of this Agreement, a lien against the portion of the Total Property owned by the Debtor Owner, to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article 10 or to secure performance of a covenant or obligation. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full or the performance has been completed. The liens provided for in this Section 10.1 shall be subordinate to the original loan(s) any related prior mortgage, (including, without limitation, the prior mortgage made by the Declarant in favor of Ottawa Savings Bank as mortgagee or such other lenders for the original construction of the building(s)) prior trust deed or other encumbrance constituting a prior lien on the portion of the Total Property owned by the Debtor Owner or other interest of the Debtor Owner including mortgages of Units. Each Owner waives any and all rights to trial by jury in any suit, action or

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proceeding brought by the other Owner to enforce collection of any monies owed under this Agreement to such other Owner and each Owner.

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

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

10.4 Interest shall accrue on any sums owed by an Owner to the other Owner pursuant to this Agreement, and shall be payable, after failure to cure, from the date which is thirty (30) days after demand for any such payment is made until paid in full, at a rate (the "Default Rate") of interest equal to the lesser of: (a) the floating rate which is equal to two percent (2%) per annum in excess of the annual rate of interest from time to time announced by the average of any three major national lenders (such as but not limited to Chase, Bank of America, CitiBank, ABN Amro/LaSalle Bank, 5/3rd Bank, Cole-Talyor), as its/their "prime rate" of interest or a reasonably equivalent money center bank's published substitute thereof in the event a prime base rate is no longer announced, or (b) the then maximum lawful rate of interest in Illinois applicable to the defaulting Owner and the nature of the debt. If a "prime rate" or reasonable equivalent thereof is not announced and no maximum lawful rate applies, then interest shall accrue at the annual Default Rate of ten percent (10%).

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

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

10.7 Actions to enforce any right, claim or lien under this Agreement shall be commenced within two (2) years immediately following the date the cause of action occurred, or such other shorter period as may be provided by law or statute; provided, however, that if prior to expiration of the period in which such action must be commenced, each Mortgagee is diligently proceeding to foreclose the Mortgage, then such period in which an action by the Owner of the Condominium Property or Owner of the Commercial Property must be commenced shall be further extended for such additional time as may reasonably be necessary in order for each Mortgagee to obtain possession of the applicable Property.

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

ARTICLE 11 CONDEMNATION

11.1 In the event of a taking by the exercise of the power of eminent domain or deed in lieu of condemnation of all or any part of the Total Property by any competent authority for any public or quasi-public use, the award, damages or just compensation (hereinafter in this Article 11, the "Award") resulting from any such taking shall be allocated and disbursed, and any repair and/or restoration of the Improvements shall be performed, in accordance with the requirements of this Article 11.

11.2 In the event of a taking (whether or not a temporary taking) of a part of the Total Property, the Owner of the portion of the Total Property taken shall repair and restore the remainder of such Owner's Improvements to form an architectural and functional whole. Such repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable under the circumstances and shall be at the sole cost and expense of the Owner whose portion of the Total Property is taken. The Owner of the portion of the Total Property taken shall be entitled to receive directly from the taking authority any Award resulting from such taking within such Owner's portion of the Total Property for application to the cost of said repair and restoration and to retain any excess not required for such repair and restoration.

11.3 Notwithstanding any other provision of this Agreement to the contrary, if, as a result of a taking (other than a temporary taking), an Owner and its Secured Property Lender reasonably determines that such Owner's portion of the Total Property no longer can be operated on an economically feasible basis, then such Owner shall not be obligated to repair or restore that Owner's Improvements as may otherwise be required by this Agreement. However, in such case, such Owner shall demolish, repair or restore such Owner's Improvements to the extent, if any, as

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may be necessary to provide essential services or structural support for the other portions of the Total Property, but only if the Owner of the other portion of the Total Property affected thereby requests that it perform such demolition, repair or restoration. Furthermore, such Owner shall weatherproof any exposed portions of such Owner's portion of the Total Property and shall restore such Owner's portion of the Total Property to a sightly and safe condition and in such a manner as to safeguard the other Owner's portion of the Total Property, and to preserve the use of the Easements granted hereunder.

11.4 In the event of taking of all or substantially all of the Total Property, the Award for such taking shall be allocated to the Owners in accordance with the apportionment made in any final judicial or administrative proceedings in connection with the taking and paid to the Owners in accordance with said apportionment.

ARTICLE 12 ESTOPPEL CERTIFICATES

12.1 Each Owner shall, from time to time, within ten (10) days after receipt of written request from the other Owner, execute, acknowledge and deliver to the requesting Owner or to any existing or prospective purchaser or mortgagee designated by the requesting Owner, a certificate (each, an "**Estoppel Certificate**") in such form as may be reasonably requested (including, but not limited to names of owners, tenants, persons in possession, residents, lenders, property identification number(s), recent payments, amounts due, defaults, claims, notice addresses, liens, suites, or any matter reasonably effecting the Property). The Owner of the Commercial Property, if requested to issue an Estoppel Certificate in connection with the purchase and sale or financing of a Unit Ownership, may limit the statements made in the Estoppel Certificate to (i) the existence of any defaults hereunder and (ii) the amount of any liens capable of being asserted hereunder. Failure to reasonably respond to the demand for an Estoppel Certificate within 10 days notice will be deemed either a material default hereunder and may be presumptively construed that there are no outstanding claims or payments due.

12.2 If any portion of the Condominium Property is subject to the provisions of the Act, an Estoppel Certificate requested from the Owner of the Condominium Property shall be issued by the Unit Owner(s) and the Condominium Association on behalf of the Unit Owners and the Condominium Association and any Estoppel Certificate so issued shall be binding on the Unit Owners and such Condominium Association, and an Estoppel Certificate requested by the Owner of the Condominium Property from the Owner of the Commercial Property may only be requested by the Condominium Association on behalf of the Owner of that portion of the Condominium Property submitted to the Act and may also be required of or requested by the Owner of the Condominium Property for that portion of the Condominium Property not submitted to the Act.

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ARTICLE 13 ALTERATIONS

13.1

(a) No changes, modifications, alterations, or improvements to the interior or exterior of the Commercial Property ("**Alterations**") shall be made without the prior written consent of the Owner of the Condominium Property and its Secured Property Lender if such Alterations will:

- i. affect the benefits afforded to the Owner of the Condominium Property by any Easement or unreasonably interrupts the Owner of the Condominium Property's use or enjoyment of any Easement (except as may be reasonably needed for construction during normal hours and in a workmanlike fashion);
- ii. affect Facilities benefiting the Condominium Property; or
- iii. affect the zoning status of the Building or Total Property

(b) If, at any time, an Owner of the Commercial Property proposes to make any Alterations which require or could possibly require the consent of the Owner of the Condominium Property, then before commencing or proceeding with such Alterations, the Owner of the Commercial Property shall deliver to the Owner of the Condominium Property, a copy of the preliminary and final issued permit plans and specifications showing the proposed Alterations and a reference to this Section 13.1. If the Owner of the Condominium Property consents in writing to such Alterations, the Owner of the Commercial Property may proceed to make its Alterations in accordance with said plans and specifications. The Owner of the Condominium Property shall make a good faith effort to respond to the Owner of the Commercial Property within ten (10) days after its receipt of said plans and specifications from the Owner of the Commercial Property showing proposed Alterations. If the Owner of the Condominium Property fails to timely respond within ten (10) days from receipt of the request, the plans and specifications for such Alterations shall be deemed approved. If the Owner of the Commercial Property has not requested the Owner of the Condominium Property's consent to the proposed Alterations, and if, in the good faith opinion of the Owner of the Condominium Property, the Owner of the Commercial Property has violated or will violate the provisions of this Section 13.1, the Owner of the Condominium Property shall notify the Owner of the Commercial Property of its opinion that the Alterations or proposed Alterations violate or will violate the provisions of this Section 13.1 hereof, and shall specify the respect or respects in which its provisions are or will be violated. If the Owner of the Condominium Property in good faith asserts a violation of this Section 13.1, then the Owner of the Commercial Property shall not commence with the Alterations or proceed with the Alterations, if already commenced, until the matter has been resolved. In addition to any other legal or equitable rights or remedies to which the Owner of the Condominium Property may be entitled by reason of the Owner of the Commercial Property's violation or likely violation of the provisions of this Section 13.1, the Owner of the Condominium Property shall be entitled to seek and obtain injunctive relief to enjoin any such violation. Failure of a Mortgagee to approve such plans and

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specifications, if such consent is required pursuant to a Mortgage, shall be grounds for the Owner of the Condominium Property to reject such request.

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

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

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

13.4 No Alterations shall be made to the Condominium Property which will: (i) unreasonably diminish the quiet use and enjoyment of or benefit afforded to the Owner of the Commercial Property by any Easement (ii) materially adversely affect Facilities benefiting the Commercial Property; or (iii) affect the zoning status of the Commercial Property.

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ARTICLE 14 ADDITIONAL RESTRICTIONS

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

- (a) The Owner of the Commercial Property shall not use or occupy the Commercial Property or permit the use or occupancy of the Commercial Property for any purpose or in any manner which (i) is unlawful or in violation of any applicable legal or governmental requirement, ordinance or rule, (ii) may be dangerous to persons or property (iii) may invalidate any policy of insurance affecting the Building, and if any additional amounts of insurance premiums are incurred, the Owner of the portion of the Total Property causing such increase shall pay to the Owner of the other portion of the Total Property the additional amounts on written notice and 10 day demand. The Owner of the Commercial Property or its tenants shall obtain and maintain at all times all licenses and permits necessary for the operation and use of the Commercial Property and shall post or display in a prominent place in the Commercial Property such permits and/or notices as required by law.
- (b) The Commercial Property's business operations shall be of a quality not less than similar facilities and operations in other buildings in the immediate vicinity of the Building. The Owner agrees to conduct their business or to lease to tenants who will conduct their business at all times in a first-class and reputable manner, maintaining at all times a full staff of experienced and qualified employees for efficient operation of its facility in a proper, workmanlike and dignified manner. The Owners shall at all times maintain the Condominium Property and the Commercial Property in a first-class, clean and sanitary condition, and shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Condominium Property and the Commercial Property and the cleanliness, safety, occupancy and use of same. The Owners shall comply with all of the requirements of all governmental authorities and the insurance carriers now or hereafter in force pertaining to the use of the Commercial Property or the Condominium Property. The Commercial Property, and only the Commercial Property, may contain automated teller machines or for machines for banking, dispensing of cash, tickets, or other similar machines (ATM). The rights to own, operate, license, lease or allow any such ATM is expressly reserved to the Declarant or its successors or assigns. The Owners shall comply with all of the requirements of all governmental authorities and the insurance carriers now or hereafter in force pertaining to the use of the Commercial Property or the Condominium Property. The Owners agree that all receiving of goods and merchandise and all removal or delivery of merchandise, supplies, equipment, trash and garbage shall be made only by way of the area specifically designated for use by the Owners, their agents, employees, and invitees and in accordance with procedures and at the hours specified, from time to time, by the Owner of the Commercial Property. The Owners may remove trash and garbage through the alley or street exit located appurtenant to the Total Property and in accordance with procedures and at the hours specified, from time to time, by the Owner of the Commercial Property.

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

(d) The Owner of the Commercial Property shall only place signs on the exterior portion of the Building of the Commercial Property and the interior windows of the Commercial Property. Installation, repair, replacement and maintenance of any signs shall be at the sole cost and expense of the Owner of the Commercial Property. No signs on the inside or outside of the Building shall contain any neon or similar lighting, strobe lights, moving parts or day-glow colors. Signs located as of the date hereof are approved.

ARTICLE 15 NOTICES

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

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If to the Owner of the Condominium Property:	2353 West Belden Condominium Association 2353 West Belden Chicago, IL 60647 and/or Such other addresses that may be added or amended hereto.
with a copy to:	President 2353 West Belden Condominium Association 2353 West Belden Chicago, IL 60647 and/or such other addresses and or Condominium associations that may be added or amended hereto.
Notices to the Owner of the Commercial Property:	KSW Development, LLC c/o 556 Randall Road South Elgin, Illinois 60177
with a copy to:	C/O: McCormick Braun Friman, LLC 2 N. LaSalle St., #1250 Chicago, Illinois 60602 Attention: Gregory A. Braun

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

15.3 If any Owner ("**Notifying Owner**") gives notice to another Owner ("**Notified Owner**") that the Secured Property Lender of the Notifying Owner is to receive a copy of any notices given to the Notifying Owner in the same manner as provided in this Article 15.

ARTICLE 16 LIMITATION OF LIABILITY

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

16.2 In the event of any conveyance or divestiture of title to any portion of or interest in any portion of the Total Property: (1) the Owner who is divested of title shall be entirely freed

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and relieved of all covenants and obligations thereafter accruing hereunder but only with respect to any such portion or interest conveyed or divested; and (2) the grantee or the person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner of such portion or interest thereafter accruing hereunder, until such grantee or successor is itself freed and relieved therefrom as hereinabove provided in this Section 16.2, and then any such grantee's or successor's grantee or successor shall thereafter be so bound.

16.3 The enforcement of any rights or obligations contained in this Agreement against an Owner of any portion of the Total Property shall be limited to the interest of such Owner in the Total Property. No judgment against any Owner of any portion of the Total Property shall be subject to execution or be a lien on any of the assets of such Owner other than Owner's interest in the Total Property.

ARTICLE 17 DEPOSITARY

17.1 A depositary (the "**Depositary**") shall be appointed in the manner hereinafter provided to receive from the payor or payee thereof insurance proceeds and condemnation awards, to disburse such monies and to act otherwise in accordance with the terms and provisions of this Declaration. Except as otherwise provided hereunder, all insurance proceeds under the insurance policies required to be carried pursuant to Article 8 hereof and condemnation awards arising in connection with this Declaration shall be paid to the Depositary. Except as otherwise provided herein, the Depositary appointed hereunder shall be one of the then three (3) largest title companies, banks or trust companies (measured in terms of capital funds) with principal offices in Chicago, Illinois.

17.2 As used hereinafter in this Article, the phrase "**Damaged Parcel**" shall refer to any of the Condominium Property and/or the Commercial Property, or any combination thereof if applicable, as to which a casualty loss shall have occurred. In the event of any casualty loss which affects only the Commercial Property or the Condominium Property, then those Secured Property Lenders having a first mortgage lien with respect to the Damaged Parcel shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, to elect either to act as Depositary or to appoint the Depositary with regard to such funds. If such right of election is not exercised within said thirty (30) day period, then the Owner of the Damaged Parcel shall have the right to appoint the Depositary with regard to such funds.

17.3 In the event of any casualty loss which affects more than one portion of the Total Property and if each Damaged Parcel is subject to a mortgage or trust deed held by Secured Property Lenders, then those Secured Property Lenders having a first mortgage lien with respect to the Damaged Parcels shall have the right, within thirty (30) days after such casualty loss has been finally adjusted, acting jointly, to appoint the Depositary with regard to such funds.

17.4 In the event of any casualty loss which affects more than one portion of the Total Property and if one or more but less than all of the Damaged Parcels is or are encumbered by a mortgage or trust deed held by Secured Property Lenders, then such Secured Property Lenders

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and the Owner or Owners of the unencumbered Damaged Parcel or Parcels shall have the right, within thirty (30) days after such casualty loss, acting jointly, to appoint the Depository with regard to such funds.

17.5 If none of the provisions of Section 17.3 or 17.4 are applicable, or if none of the rights of election or appointment conferred by said Sections are exercised within thirty (30) days after the casualty loss has been finally adjusted, then the Owners of the Damaged Parcels shall mutually appoint the Depository. Upon the failure of such Owners to appoint the Depository within thirty (30) days after the casualty loss has been finally adjusted, then the matter shall be submitted to arbitration and the arbitrator shall appoint the Depository.

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

17.7 The Depository shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation award or awards unless the Depository shall have been given an express written authorization from the Owners provided that if only one Owner claims said insurance proceeds or condemnation awards, then said Owner alone may authorize the Depository to so proceed; provided further, however, that if the Commercial Parcel and/or the Condominium Property is in any material way affected by the disbursement of any such insurance proceeds or condemnation award or awards, then the consent of the holder of the appropriate Secured Property Lenders shall be required.

17.8 The monies on deposit shall be held in an interest bearing account pursuant to an agreement among the Depository and the Owners whose portion of the Total Property has been the subject of any casualty loss or condemnation. The Depository, within thirty (30) days after receipt of funds, shall purchase with such monies, to the extent feasible, United States Government securities payable to bearer and maturing within one (1) year from the date of purchase thereof, except insofar as it would, in the good faith judgment of the Depository, be impracticable to invest in such securities by reason of any disbursement of such monies which the Depository expects to make shortly thereafter, and the Depository shall hold such securities in trust in accordance with the terms and provisions of this Declaration. Any interest paid or received by the Depository on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by the Depository. Unless the Depository shall have undertaken to pay interest thereon, monies received by the Depository pursuant to any of the provisions of this Declaration shall not be mingled with the Depository's own fund and shall be held by the Depository in trust for the uses and purposes herein provided.

17.9 The Depository may resign by serving written notice on the Owners. Within thirty (30) days after receipt of such notice or in case of failure or inability to act, the Owners shall

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jointly, with the consent of the Secured Property Lenders, appoint a substitute who qualifies under Section 17.1 hereof, and the Depositary, to such substitute, at which time its duties as Depositary shall cease. If the Owners shall fail to appoint a substitute within said thirty (30) days, then the Secured Property Lenders shall appoint a substitute who qualifies under Section 17.1 hereof within thirty (30) days thereafter, and the Depositary shall transfer all funds, together with copies of all records held by it as Depositary, to such substitute, at which time its duties as Depositary shall cease. If the Secured Property Lenders shall fail to appoint a substitute within said additional thirty (30) day period, then the Depositary may deposit such funds with either a court of competent jurisdiction or with a bank or trust company in Chicago, Illinois who qualifies under Section 17.1 hereof

17.10 Notwithstanding anything contained herein to the contrary, any insurance proceeds arising out of the policies required to be carried pursuant to Article 8 hereof or condemnation awards of less than \$50,000.00 shall be paid directly to the party so entitled rather than to the Depositary unless the insurance proceeds or condemnation award are to be paid to more than one Owner.

17.11 Notwithstanding anything to the contrary contained herein, in the event a Secured Property Lender does not allow funds to be held and/or disbursed pursuant to the terms of this Agreement, the parties hereto agree that the provision of Articles 17 and 18 are subordinate to and subject to the terms and conditions of the Loan by the Secured Property Lender and the terms of the secured Property Lender's loan documents shall govern the disposition of such funds.

ARTICLE 18 DISBURSEMENTS OF FUNDS BY DEPOSITARY

18.1

(a) Each request by an Owner acting pursuant to the provisions of this Declaration for disbursement of insurance proceeds, any condemnation award or other funds for application to the cost of repair, restoration or demolition (the "Work") shall be accompanied by a certificate of the applicable Owner, and with respect to the information described in Section 18.1(a)(ii) below, verified by the Architect, dated not more than ten (10) days prior to the date of the request for any such disbursement, setting forth the following:

i. That the sum requested has either (a) been paid by or on behalf of one of the Owners (in which event the certificate shall name such Owner) or by or on behalf of all Owners (in which event the certificate shall specify the amount paid by each respective Owner), or (b) is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work; such certificate shall also give a brief description of such services and materials and the principal subdivisions or categories thereof, the respective amounts so paid or due to

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each of said persons in respect thereof and shall state the progress of the Work up to the date of said certificate and any other information required by the Illinois Mechanics' Liens Act set forth in 770 ILCS 60/0.01 et seq. (the "**Mechanics' Liens Act**") and any title insurer affording coverage against mechanic's liens;

ii. That the sum requested, plus all sums previously disbursed, does not exceed the cost of the Work actually in place up to the date of such certificate plus the cost of materials supplied and actually stored on site (which materials shall be adequately insured against fire, theft and other casualties);

iii. That no part of the cost of the services and materials described in the certificate has been the basis of the withdrawal of any funds pursuant to any previous request or is the basis of any other pending request for funds; and

iv. That the cost to complete the unfinished Work will not exceed the funds or security therefor held by the Depository after payment of then current request.

(b) Upon compliance with the provisions of Section 18.1(a) (but not more frequently than once in each calendar month (thirty (30) day period)) and

i. upon receipt of contractors' and subcontractors' sworn statements required under the Mechanics' Liens Act accompanied by partial or final waivers of lien, as appropriate, and any other information required by any title insurer affording coverage against mechanics' liens from the persons named in the sworn statement; and

ii. approval by the title insurer, the Owners, the Secured Property Lenders holding mortgages on portions of the Total Property on which or for the benefit of which will be performed, of the lien waivers and other documentation, and the willingness of the title insurer to issue an endorsement (satisfactory to such parties) insuring over possible mechanics' lien claims relating to Work in place and the continued priority of the lien of the mortgage securing the Secured Property Lenders whose approval is required above, the Depository shall, out of the monies so held by the Depository and subject to such reasonable retention as may be reasonably required in the circumstances and is customary in similar construction matters, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects, and other persons named in the Owner's certificate and contractors' and subcontractors' sworn statements the respective amounts stated in said certificate and statements due them. Notwithstanding the foregoing, any or all of the Owners of the Secured Property Lenders or the Depository may require that disbursements be made through the usual form of construction escrow then in use in Chicago, Illinois, with such changes as may be required to conform to the requirements or provisions of this Declaration. The Depository may rely conclusively, with respect to the information contained therein, on any certificate furnished by the Owner to the Depository in accordance with the provisions of Section 18.1(a) hereof and shall not be liable or

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accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

ARTICLE 19 GENERAL

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

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

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

19.4

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

(b) KSW Development, LLC reserves the right and power to record a special amendment (a "**Special Amendment**") to this Agreement at any time and from time to time which amends this Agreement to correct clerical or typographical errors in this Agreement. Only with the consent of the Owner of the Condominium Property may a Special Amendment be made to contain such complementary and supplemental grants and reservations of Easements as may be necessary in order to effectuate the Maintenance, operation and administration of the Total Property. KSW Development,

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LLC also reserves the right to include within Special Amendment revisions to the legal descriptions of the Condominium Property and Commercial Property to correct scrivener's errors, including, but not limited to, clerical or typographical errors in this Agreement or Survey or legal description errors contained in any exhibits to this Agreement.

19.5 The covenants, conditions and restrictions contained in this Agreement shall be enforceable by the Owners and their respective successors and assigns for a term of forty (40) years from the date this Agreement is recorded, after which time said covenants, conditions and restrictions shall be automatically extended without further act or deed of the Owners, except as may be required by law and as provided below, for successive periods of ten (10) years, subject to amendment or termination as hereinabove set forth in Section 19.4; provided, however, that this Agreement, and all Easements, covenants, conditions and restrictions contained herein, shall terminate and be deemed abrogated (i) as may be provided in Section 9.5 or (ii) upon the demolition or destruction of all of the Improvements and the failure to restore or rebuild the same within five (5) years after such demolition or destruction. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) any rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise in posing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the date of the last to survive of the class of persons consisting of all of the lawful descendants of George W. Bush, the President of the United States of America, living at the date of this Agreement.

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

19.7 The provisions of this Agreement shall be construed to the end that the Total Property shall remain a mid-rise, mixed use property. The Owners agree to maintain the Building's present standard and condition.

19.8 All the Easements, covenants, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Total Property and their grantees, mortgagees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Total Property or any part thereof.

19.9 Easements created hereunder shall not be presumed abandoned by nonuse or the occurrence of damage or destruction of a portion of the Improvements subject to an Easement

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unless the Owner benefited by such Easement states in writing its intention to abandon the Easement or unless the Easement has been abandoned for a period in excess of two (2) years.

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

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

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

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

19.14 In the event the ownership of the Commercial Property is divided the sharing ratio as between the two owners of the Commercial Property for all costs incurred by the Commercial Section under this Agreement shall be as follows: By the proportion of commercial square footage as described in Exhibit C or depicted in Exhibit D to the amount of square footage of the divided commercial space, as measured by BOMA standards.

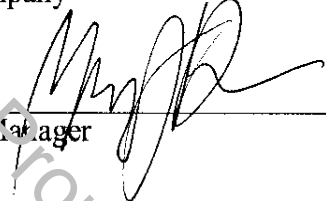
ARTICLE 20 ARBITRATION

20.1 Any controversy between the Owners or any claim between the Owners of the Commercial Property, if more than one, arising out of or relating to the this Operating Agreement Declaration, By-Laws or rules and regulations of the Association may be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. If more there is more than one Owner of the Commercial Property, their respective liabilities shall be several and shall be apportioned according the their respective square footage ownership of the Commercial Property, unless specifically agreed otherwise in writing.

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IN WITNESS WHEREOF, the Manager has caused his name to be signed to this instrument, this 27th day of September, 2012.

KSW Development, LLC , an Illinois limited liability company


By: 
Its Manager

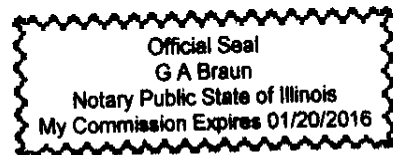
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Fregory Whipple, the manager of KSW Development, LLC personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company.

GIVEN under my hand and Notarial Seal this 27th day of September, 2012

My Commission Expires: 1-20-16


Notary Public



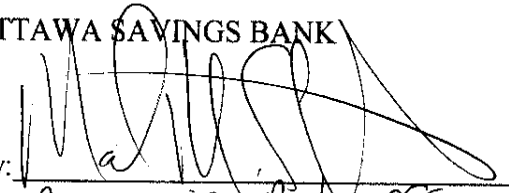
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CONSENT OF MORTGAGEE

OTTAWA SAVINGS BANK, as Mortgagee under Mortgage dated July 11, 2012 and filed with the Recorder's Office of Cook County, Illinois, on July 18, 2012, as Document No. 1220010045 hereby consents: (1) to the execution and recording of the above and hereby subordinates said Mortgage to the provisions of foregoing Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements ("Declaration"), and (2) to any Amendments to the Declaration.

IN WITNESS WHEREOF, the said Mortgagee has caused this instrument to be signed on its behalf at ~~Chicago~~, Illinois, on this 4 day of October, 2012.

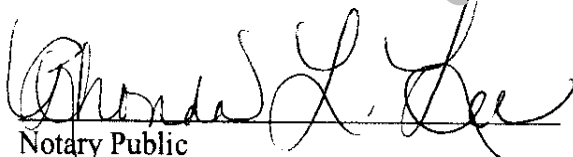
OTTAWA SAVINGS BANK

By: 
Its: Commercial Bank Officer

STATE OF ILLINOIS)
 LaSalle) SS.
COUNTY OF ~~COOK~~)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Mark Stanot, as Commercial Bank Officer of Ottawa Savings Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his or her own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth

GIVEN under my hand and Notarial Seal this 4 day of October, 2012.


Notary Public

My commission expires 12/16/14



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EXHIBIT A LEGAL DESCRIPTION OF TOTAL PARCEL

THAT PART OF LOTS 1 AND 2 (EXCEPT THOSE PARTS OF SAID LOTS 1 AND 2 LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 31 AS CONDEMNED FOR THE WIDENING OF WESTERN AVENUE) , IN BLOCK 6 IN HOLSTEIN, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

ALSO

LOT 3 (EXCEPT THOSE PARTS OF SAID LOT 3 LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 31 AS CONDEMNED FOR THE WIDENING OF WESTERN AVENUE) , IN BLOCK 6 IN HOLSTEIN, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-31-105-001-0000 AND 14-31-105-002-0000

ADDRESS: 2255 N. WESTERN AVE., AND 2353 WEST BELDEN, CHICAGO, ILLINOIS
60647

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EXHIBIT B LEGAL DESCRIPTION OF THE CONDOMINIUM PARCEL

See Attached

PIN: 14-31-105-001-0000 AND 14-31-105-002-0000

ADDRESS: 2353 WEST BELDEN, CHICAGO, ILLINOIS 60647

Property of Cook County Clerk's Office

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RESIDENTIAL PROPERTY

LOT 3 (EXCEPT THOSE PARTS OF SAID LOT 3 LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 31 AS CONDEMNED FOR THE WIDENING OF WESTERN AVENUE), IN BLOCK 6 IN HOLSTEIN, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

EXCEPTING THEREFROM COMMERCIAL PARCELS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMERCIAL 1:

THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +16.79 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +31.19 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT 0.29 FEET SOUTH AND 19.48 FEET EAST OF THE NORTHWEST CORNER OF A TRACT; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 21.37 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 4.00 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 1.09 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 17.25 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 1.03 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 5.08 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 7.41 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 0.37 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 10.42 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 8.86 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 5.93 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 7.88 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 5.99 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 9.04 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 18.64 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 7.39 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 6.02 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 25.40 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 7.20 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 2.00 FEET; THENCE A DISTANCE OF 10.96 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTHWEST HAVING A RADIUS OF 7.35 FEET AND WHOSE CHORD 9.97 FEET BEARS NORTH 21°53'20" WEST; THENCE NORTH 44°57'58" EAST, A DISTANCE OF 6.02 FEET; THENCE A DISTANCE OF 10.96 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTHWEST HAVING A RADIUS OF 7.35 FEET AND WHOSE CHORD 9.97 FEET BEARS SOUTH 68°04'47" EAST; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 2.00 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 7.16 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMERCIAL 2:

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THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +31.19 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +42.34 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT 0.29 FEET SOUTH AND 19.48 FEET EAST OF THE NORTHWEST CORNER OF A TRACT; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 21.37 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 4.00 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 11.90 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 27.56 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 7.92 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 5.93 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 19.41 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 9.09 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 6.03 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 0.15 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 18.74 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 15.93 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 7.20 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 2.00 FEET; THENCE A DISTANCE OF 28.13 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTHWEST HAVING A RADIUS OF 7.35 FEET AND WHOSE CHORD 13.85 FEET BEARS NORTH 44°59'52" EAST; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 2.00 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 7.16 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY ILLINOIS.

COMMERCIAL 3:

THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +16.79 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +24.79 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT 1.50 FEET SOUTH AND 1.50 WEST OF THE NORTHEAST CORNER OF A TRACT; THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 16.00 FEET; THENCE NORTH 89°38'10" WEST, A DISTANCE OF 18.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 16.00 FEET; THENCE SOUTH 89°38'10" EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMERCIAL 4:

THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +16.79 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +24.79 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

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BEGINNING AT THE SOUTHWEST CORNER OF A TRACT; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 44.86 FEET; THENCE NORTH 42°55'45" EAST, A DISTANCE OF 7.60 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 46.31 FEET; THENCE SOUTH 89°38'10" EAST, A DISTANCE OF 11.87 FEET; THENCE SOUTH 00°05'20" EAST, A DISTANCE OF 72.25 FEET; THENCE NORTH 89°38'15" WEST, A DISTANCE OF 62.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

KNOWN AS: 2353 W. BELDEN AVENUE, CHICAGO, ILLINOIS

PERMANENT INDEX NUMBERS:

14 - 31 - 105 - 001 - 0000

14 - 31 - 105 - 002 - 0000

Property of Cook County Clerk's Office

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COMMERCIAL PROPERTY

THAT PART OF LOTS 1 AND 2 (EXCEPT THOSE PARTS OF SAID LOTS 1 AND 2 LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 31 AS CONDEMNED FOR THE WIDENING OF WESTERN AVENUE) , IN BLOCK 6 IN HOLSTEIN, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

ALSO

LOT 3 (EXCEPT THOSE PARTS OF SAID LOT 3 LYING WEST OF A LINE 50 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 31 AS CONDEMNED FOR THE WIDENING OF WESTERN AVENUE) , IN BLOCK 6 IN HOLSTEIN, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMERCIAL 1:

THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +16.79 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +31.19 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT 0.29 FEET SOUTH AND 19.48 FEET EAST OF THE NORTHWEST CORNER OF A TRACT; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 21.37 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 4.00 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 1.09 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 17.25 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 1.03 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 5.08 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 7.41 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 0.37 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 10.42 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 8.86 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 5.93 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 7.88 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 5.99 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 9.04 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 18.64 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 7.39 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 6.02 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 25.40 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 7.20 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 2.00 FEET; THENCE A DISTANCE OF 10.96 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTHWEST HAVING A RADIUS OF 7.35 FEET AND WHOSE CHORD 9.97 FEET BEARS NORTH 21°53'20" WEST; THENCE NORTH 44°57'58" EAST, A DISTANCE OF 6.02 FEET; THENCE A DISTANCE OF 10.96 FEET ALONG THE ARC OF A CIRCLE,

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CONVEX TO THE NORTHWEST HAVING A RADIUS OF 7.35 FEET AND WHOSE CHORD 9.97 FEET BEARS SOUTH 68°04'47" EAST; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 2.00 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 7.16 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMERCIAL 2:

THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +31.19 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +42.34 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT 0.29 FEET SOUTH AND 19.48 FEET EAST OF THE NORTHWEST CORNER OF A TRACT; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 21.37 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 4.00 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 11.90 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 27.56 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 7.92 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 5.93 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 19.41 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 9.09 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 6.03 FEET; THENCE SOUTH 00°01'38" EAST, A DISTANCE OF 0.15 FEET; THENCE NORTH 89°59'02" WEST, A DISTANCE OF 19.74 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 15.93 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 7.20 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 2.00 FEET; THENCE A DISTANCE OF 28.13 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTHWEST HAVING A RADIUS OF 7.35 FEET AND WHOSE CHORD 13.85 FEET BEARS NORTH 44°59'52" EAST; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 2.00 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 7.16 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY ILLINOIS.

COMMERCIAL 3:

THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +16.79 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +24.79 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT 1.50 FEET SOUTH AND 1.50 WEST OF THE NORTHEAST CORNER OF A TRACT; THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 16.00 FEET; THENCE NORTH 89°38'10" WEST, A DISTANCE OF 18.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 16.00 FEET; THENCE SOUTH 89°38'10" EAST, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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COMMERCIAL 4:

THE FOLLOWING PARCEL OF LAND LYING ABOVE A HORIZONTAL PLANE AT ELEVATION +16.79 FEET (CHICAGO CITY DATUM) AND LYING BELOW A HORIZONTAL PLANE AT ELEVATION +24.79 FEET (CHICAGO CITY DATUM) DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF A TRACT; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 89°59'02" EAST, A DISTANCE OF 44.86 FEET; THENCE NORTH 42°55'45" EAST, A DISTANCE OF 7.60 FEET; THENCE NORTH 00°01'38" WEST, A DISTANCE OF 46.31 FEET; THENCE SOUTH 89°38'10" EAST, A DISTANCE OF 11.87 FEET; THENCE SOUTH 00°05'20" EAST, A DISTANCE OF 72.25 FEET; THENCE NORTH 89°38'15" WEST, A DISTANCE OF 62.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

KNOWN AS: 2255 N. WESTERN AVENUE, CHICAGO, ILLINOIS

PERMANENT INDEX NUMBERS:

14 - 31 - 105 - 001 - 0000

14 - 31 - 105 - 002 - 0000

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DEFINITIONS OF TERMS USED IN ARTICLE 4 EXHIBITS

1. "ORP" means Owner of the Condominium Property.
2. "OCP" means Owner of the Commercial Property.
3. "Labor Costs" means all base wages, over-time, social security and payroll taxes, unemployment compensation and worker's compensation contributions, union dues, pension, welfare, insurance and other fringe benefits and related costs (such as the cost of bonding employees) incurred by an Owner during a calendar year in connection with the Maintenance of the Facilities or other portions of the Total Property in question and expended by said Owner in accordance with generally accepted accounting principles, consistently applied.
4. "Material Costs" means: (a) the costs incurred by an Owner during a calendar year of all material, parts, components, chemicals, water, lubricants, tools, testing and diagnostic equipment, filters, refrigerants, uniforms, cleaners and other similar costs incurred by said Owner in connection with the Maintenance of the Facilities or other portions of the Total Property in question and expended by said Owner in accordance with generally accepted accounting principles, consistently applied, plus (b) the costs incurred during a calendar year by an Owner for Maintenance of Facilities or other portions of the Total Property in questions performed by individuals or organizations in connection with the Maintenance of the system involved and expended by such party in accordance with generally accepted accounting principles, consistently applied, and not included under definition of Labor Costs above.
5. "Utilities Costs" or "Utility Costs" means the total cost of electricity, water, sewer, fuel or common telephone incurred as expenses by an Owner during a calendar year in connection with the Facilities in question (excluding Utility Costs separately metered and or for private Residential Units except for water).
6. "Net Capitalized Cost" of a replacement means the excess of (a) the installed cost of a replacement of Facilities incurred by an Owner and required to be capitalized in accordance with generally accepted accounting principles, consistently applied, over (b) the Net Salvage Value of the Capital Item Being Replaced . The installed cost of a capital item is the sum of the cost of such item, general contractor's fee, design fee, development planning and administration and interest during construction. The Net Capitalized Cost of replacement shall not include the cost of replacement of Facilities in connection with a fire or casualty described in Sections 9.4 or 9.5 of this Declaration, which replacement is insured or required to be insured pursuant to Article 8 hereof, except to the extent of the deductible thereof.
7. "Net Salvage Value of the Capital Item Being Replaced" means the amount received for an item replaced less any expenses incurred in connection with the sale or preparation of the item for sale, or, if not sold, but retained, the amount at which the material recoverable is chargeable to materials and supplies or other appropriate account.
8. "RP" means the Condominium (Residential) Property.
9. "CP" means the Commercial Property.

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LIST OF EXHIBITS TO ARTICLE 4

DEFINITION OF TERMS

EXHIBIT 4.1	DESCRIPTION
a	FAÇADE
b	EXTERIOR & INTERIOR LIGHTING
c	SNOW AND ICE REMOVAL
d	LANDSCAPING
e	DOMESTIC WATER SUPPLY SYSTEM
f	ROOF
g	SANITARY WASTE SYSTEM
h	ELECTRICAL SUPPLY SYSTEM
i	TELEPHONE SYSTEM
j	ELEVATOR
k	SIDEWALKS
EXHIBIT 4.2	NONE
EXHIBIT 4.4	BILLING, PAYMENT, OVERHEAD REIMBURSEMENT

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EXHIBIT 4.1(a) FACADE

1. Maintenance. The ORP shall perform Maintenance of the exterior facade of the Building (including the portions used or owned by the OCP) as and when necessary, including the inspection, cleaning, painting and tuckpointing thereof. OCP will maintain its own signs, canopies, banners, entry-door (and lighting in the sole control and use of OCP).
2. Net Capitalized Cost of Replacement. The ORP shall bear 75% and the OCP shall bear 25% of the Net Capitalized Costs of replacement of the façade.
3. Annual Variable Charge. In the event the ORP performs the services described in Section 4.1(a) of this Agreement, the ORP shall be entitled to be reimbursed by the OCP for 25% of the Actual Annual Charges for Labor Costs and Material Costs, including, without limitation, costs of inspections. Notwithstanding the foregoing, ORP shall not be entitled to reimbursement for Labor Costs or Material Costs for work performed adding improvements to the Building not in existence as of the date hereof.

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EXHIBIT 4.1(b) EXTERIOR & INTERIOR LIGHTING

1. Maintenance: Description of Facilities. The ORP shall perform Maintenance of the interior, common area, hallway, stair, emergency and exterior lighting fixtures, bulbs, batteries, glass housings, covers and accessories, if any, and Facilities and related equipment inside or on the exterior of the Building and related areas ("**Lighting Facilities**") as and when required or typical to light the Building.
2. Net Capitalized Cost of Replacements. The ORP shall bear 75% and the OCP shall bear 25% of the Net Capitalized Cost of replacements to the Exterior Lighting Facilities for the ground floor only, excluding the Lighting Facilities serving exclusively the ORP.
3. Annual Variable Charges. The actual annual variable charge to the ORP for the services described herein shall be 75% of the sum of the costs and the actual annual variable charge to the OCP for such services shall be 25% of such costs.

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EXHIBIT 4.1(c) SNOW AND ICE REMOVAL

1. Maintenance. The ORP shall perform snow and ice removal for the sidewalks, public parkways, paths, trash or garbage spaces, snow and ice-build-up in gutters & downspouts, freezing drains and all other such cold and winter effects of the building as and when necessary.
2. Annual Variable Charge. In the event the ORP performs the services described in Paragraph 1 above, the actual annual charges to the OCP for such services by the ORP will entitle the ORP to be reimbursed by the OCP for 25% of the Actual Annual Charges for Labor Costs and Material Costs for those aspects affecting the ground floor.

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EXHIBIT 4.1(d) LANDSCAPING

1. The ORP shall perform the Maintenance and replacement where and when necessary of the Landscaping, parkway trees, stone gardens, weeding, leaf and debris removal, planting and gardening, if any. The ORP shall bear 100% of such costs.

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EXHIBIT 4.1(e) DOMESTIC WATER SUPPLY SYSTEM

1. Operation. The ORP shall operate, maintain, repair and replace when necessary the Facilities located within the Total Property required to supply the city water (“**Building’s Water Supply System**”) to connection to the domestic water systems serving the CP and the RP. The ORP shall operate, maintain, repair and replace when necessary, the Facilities located within the Building required to distribute the RP and CP’s city water requirements within the RP and CP.
2. Metering. The amount of water being utilized in connection with the RP and CP shall to the extent that water meters have been installed, be measured and determined by water meters located in the Building. It is not anticipated that the RP and the CP will each have separate meters and will pay for their individual usage pursuant to individual bills issued by the City of Chicago. However, to the extent that the CP or OCP provides for its own sub-meter then the OCP will pay only that part of the total water bill reasonably attributable to OCP or CP per the OCP’s sub-meter as determined from time to time.
3. Charges. In the event separate meters are not installed, the OCP shall pay to the ORP of the water bill respecting the Building’s Water Supply System.
4. Net Capitalized Cost of Replacements. The ORP and OCP each shall bear a share of the Net Capitalized Cost of replacements to the Building’s Water Supply System in the following ratios:
ORP – 75%
OCP – 25%
5. Annual Variable Charges. The actual annual variable charge to the ORP and OCP for the services described in Paragraph 1 of this Exhibit 4.1(e) shall be the sum of the following costs incurred by the ORP in providing such services and shall be allocated on the basis set forth below:
ORP – 75%
OCP – 25%

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EXHIBIT 4.1(f) ROOF, STORM DRAINS, AND PARAPETS

1. **Maintenance.** The ORP shall perform Maintenance when necessary of the roof of the Building, the storm drains, and parapets, if any.
2. **Net Capitalized Cost of Replacements.** The ORP shall bear 75% and the OCP shall bear 25% of the net Capitalized Cost of replacements to the roof, storm drains, parapets and satellite dish.
3. **Annual Charge.** The ORP shall pay the actual annual charges for the services described in this Exhibit 4.1(f) and in Section 4.1(f) and shall be entitled to be reimbursed by the OCP for 25% of the actual annual charges for Labor Costs and Materials Costs, including, without limitation, costs of inspections.

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EXHIBIT 4.1(g) SANITARY WASTE SYSTEM (“SWS”)

1. Description of System. The ORP shall perform Maintenance of those Facilities making up the sanitary waste system for the Building including all sewer lines leading to City of Chicago sewers, all risers, sewers, settling basins, pumps and related equipment (the “SWS”).
2. Net Capitalized Cost of Replacements. The Net Capitalized Cost of replacements of the SWS shall be allocated among the Owners as follows:
 - ORP – 75%
 - OCP – 25%
3. Annual Variable Charges. The annual variable charges to the OCP for Maintenance of the SWS shall be determined by multiplying the sum of the cost of the actual annual charges for labor and materials times the applicable percentage for each Owner set forth below:
 - ORP – 75%
 - OCP – 25%

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EXHIBIT 4.1(h) ELECTRICAL SUPPLY SYSTEM

1. Maintenance: Description of Facilities. The ORP shall perform Maintenance of the Facilities, including meters, required to supply the electrical requirements of the Total Property and in particular the existing Electric Room and the ComEd Vault located in the lower level of the Building. ORP and OCP each shall maintain the Facilities, including meters, required to operate the electrical distribution system located within such Owner's portion of the Total Property or in the common designated meter rooms per the original design and construction of the Building.
2. Net Capitalized Cost of Replacements. Except with respect to the Net Capitalized Cost of replacements of electrical meters, which shall be paid by the Owner who owns such meters, or, if such meters are shared between or among Owners, by the Owners who share such meters on an equitable basis, each Owner shall bear a share of the Net Capitalized Cost of replacements of the Facilities furnishing the electrical requirements of the Total Property on the following basis:
 - ORP – 75%
 - OCP – 25%
3. Metering. To the extent practicable, the amount of electricity being utilized in connection with each of the RP and CP shall be measured and determined by separate meters. Electricity utilized by the OCP or tenants of the CP and the RP and Units shall be measured and determined by separate meters and all bills issued in connection therewith shall be paid by such tenants, CCI or the RP and Unit Owners.

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EXHIBIT 4.1 (i) TELEPHONE SYSTEM

Maintenance: Description of Facilities. The ORP shall perform Maintenance of the Facilities required to supply the telephone distribution system and in particular the existing Panel. ORP and OCP shall each maintain the Facilities required to operate the lines and the telephone distribution system located within such Owner's portion of the total Property.

Net Capitalized Cost of Replacement. Except with respect to the Net Capitalized Cost of replacements of telephone lines and equipment which shall be paid by the Owner who owns such lines and equipment, or if such lines and equipment are shared between or among Owners, by the Owners who share such lines and equipment on an equitable, each Owner shall bear a share of the Net Capitalized Cost of replacement of the Facilities furnishing the telephone distribution system of the total Property on the following proportional basis:

ORP – 75%

OCP – 25%

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EXHIBIT 4.1 (j) ELEVATOR SYSTEM

The ORP shall perform the Maintenance and replacement where and when necessary of the Elevator, all shafts, equipment and other equipment related thereto. The ORP shall bear 100% of such costs.

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EXHIBIT 4.1(k) SIDEWALKS

1. Maintenance: Description. The ORP shall perform Maintenance, repair and replacement as and when necessary of the sidewalks, paths, public parkways, on, over, and adjacent to the Building.
2. Net Capitalized Cost of Replacements. The OCP shall bear 25% and the ORP shall bear 75% of the Net Capitalized Cost of replacement of the sidewalks.
3. Annual Variable Charge. The OCP shall reimburse the ORP for 25% of the cost of the Maintenance, repair and replacement of the sidewalks identified in Paragraph 2 above.

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EXHIBIT 4.4 BILLING; PAYMENT; OVERHEAD REIMBURSEMENT

1. Charges. Each quarter, each Owner shall submit to the other Owner a statement to the other Owner for the aggregate charges incurred in the previous quarter and due to the Owner submitting such statement pursuant to Sections 4.1 or 4.2 of this Agreement.
2. Net Capitalized Cost of Replacements. Whenever any Owner ("**Replacing Party**") replaces Facilities (except where such replacement is in connection with a fire or other casualty described in Section 9.4 or 9.5 of the Agreement and such replacement is insured or required to be insured pursuant to Article VIII of the Agreement) and another Owner ("**Contributing Party**") is required by this Agreement to bear part or all of the cost of such replacement, Replacing Party first shall submit a budget for such costs to be approved in advance by all parties and then, upon completion, shall submit a statement (with back-up and proof of payment and final waiver of all liens) to Contributing Party showing each Contributing Party's share of such cost thereof within thirty (30) days but not more than 120 days after the installation or completion of such replacement or improvements, as such date is determined by the Replacing Party and requesting reimbursement in one of the following ways:
 - a. by payment in full within sixty (60) days after date of such statement, or
 - b. by payment of the Contributing Party's pro rata cost of such replacement on the same basis as the Replacing Party is paying for such replacement beginning with the first day of the first full month sixty (60) days after the date of such statement, or
 - c. upon such other terms as the Owners may agree.
3. Variable Charges. Each Owner shall make quarterly payments in arrears on the first day of each calendar quarter (January, April, July and October) on account of aggregate annual variable charges for each calendar year (the "**Annual Variable Charge**") for services rendered to such Owner (herein the "**Benefited Owner**") under Article IV by another Owner (herein the "**Operating Owner**") during such calendar year (each such monthly payment hereinafter referred to as "**Progress Payment**"), as follows:

The Operating Owner may, prior to the commencement of each calendar year or from time to time during the calendar year in which it provides services, deliver to the Benefited Owner a written notice or notices ("**Projection Notice**") setting forth (1) the Operating Owner's reasonable estimates, forecasts or projections (collectively, the "**Projections**") of aggregate variable charges for its services for such calendar year, and (2) the amount of the Benefited Owner's Progress Payment. The amount of each Progress Payment need not be equal but may reflect reasonably anticipated variable charges for a particular month. For example, variable charges under Exhibit 4.1(c) for winter months may be higher than variable charges for summer months, and the amount of each Progress Payment required for winter months may therefore be higher than for winter months.

Until such time as the Operating Owner furnishes a Projection Notice for a calendar year, Benefited Owner shall pay to Operating Owner a quarterly Progress Payment equal to

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the greater of the latest quarterly Progress Payment or one-quarter (1/4) of the previous calendar year's aggregate variable charges. On or before the first day of the next calendar quarter following the Operating Owner's service of a Projection Notice, and on or before the first day of each quarter thereafter, the Benefitted Owner shall pay to the Operating Owner the Progress Payment shown in the Projection Notice for such month. Within fifteen (15) days following Operating Owner's service of a Projection Notice to bring payments on account of Projections current, Benefitted Owner shall also pay Operating Owner a lump sum equal to the Projections less (1) any previous Progress Payments made for such calendar year and (2) monthly Progress Payments due for the remainder of such calendar year not yet due and payable.

Within ninety (90) days following the end of each calendar year and from time to time after the Operating Owner shall have determined the actual amounts of any or all components of the Annual Variable Charges for such calendar year, the Operating Owner shall deliver to the Benefitted Owner a detailed, written statement (the "**Statement**") of such aggregate Annual Variable Charges for such calendar year containing copies of all relevant work sheets and supporting data from which the amount of such Annual Variable Charges were derived. If the actual Variable Charges owed for such calendar year exceed the total of the Progress Payments paid by the Benefitted Owner for such calendar year, then the Benefitted Owner shall, within thirty (30) days after receipt of the Statement pay to the Operating Owner an amount equal to the excess of the Annual Variable Charges over the Progress Payments paid by the Benefitted Owner for such calendar year. If the Progress Payments paid by the Benefitted Owner for such calendar year exceed the aggregate Annual Variable Charges owed for such calendar year, then the Operating Owner shall, within thirty (30) days after receipt of the Statement pay such excess to the Benefitted Owner or shall, upon the prior written consent of the Benefitted Owner, credit such excess to aggregate Annual Variable Charges payable after the date of the Statement until such excess has been exhausted.

No interest shall be payable on any Payments paid by the Benefitted Owner. Interest may be payable on excess funds not refunded by an Owner as and when required as provided in clause (c) above. Interest shall accrue on such overdue amount from the due date until paid at the rate set forth in Section 10.4 of the Agreement.

4. Submission and Payment of Statements. Except as otherwise provided herein, each statement hereunder: (a) shall be submitted on the first day of the following quarter involved, (b) contain copies of invoices, and other documents in support of the statement rendered and (c) shall be paid within thirty (30) days after receipt (herein called "**Due Date**").
5. Operation. During any period in which the OCP or ORP pursuant to Section 4.5, has taken possession of and is operating the Facilities described therein, the entire cost incurred by the Owner possessing the Facilities in connection with the operation of, and repair or replacement of, such Facilities, (less the amounts payable by said Owner for such service under the Agreement), shall be payable by the other Owner on demand.

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6. Inspection of Books. OCP and ORP and their authorized representatives shall have the right at all reasonable times to review and examine the books and records of the other party pertaining to services and the amount and allocation of charges for services under Article 4 hereof and to inspect and examine the Facilities located in such other party's portion of the Total Property. Each Owner shall maintain detailed books and records which shall include time records of all employees of such Owner. So long as the RP is submitted to the Act, such review or examination may only be performed by the Association on behalf of the Unit Owners and not by an individual Unit Owner or Unit Owners. OCP and ORP shall treat such books and records as confidential and shall not divulge the contents thereof to third parties except where required in the event of litigation or arbitration or otherwise pursuant to an order of a court of competent jurisdiction. The costs of such review or examination shall be borne by the Owner requesting such review, unless such review discloses that charges for services by an Owner with respect to any annual period exceeded the proper charges by more than five percent (5%), in which event the Owner overcharging for services shall bear such cost.
7. Reading and Testing of Meters. A representative of the OCP and ORP shall be entitled to be present at the reading of any meter used in connection with the services described herein. Any Owner may from time to time request or cause any meter to be tested. The expenses of such testing will be included in the charge for the service involved. Meters shall be read during normal business hours. Wherever a charge is adjusted as a result of such tests or meters owned and maintained by Com Ed, the Peoples Gas Company or the City of Chicago, an equitable adjustment in the billing by one Owner to the other Owner will be made. Whenever a test of a meter not owned and maintained by Com Ed, the Peoples Gas Company or the City of Chicago establishes that such meter has an average error of four percent (4%) or less, no adjustments in one Owner's billing to the other Owner will be made. Whenever a test of such meter establishes that it has an average error in excess of four percent (4%), the billing will be adjusted by the amount of the actual error of the meter in question: if the period of time during which the meter was in error can be shown, the adjustment will be made for such period; otherwise, the adjustment will be made for the period ending with the date of the test and commencing with the later of the following: (a) the date the meter was installed, (b) the date the meter was last tested, or (c) the date three months prior to the date of the test.
8. Bidding. If any Owner is required to pay any other Owner more than 50% of the cost of Maintenance of any Facility or the Annual Variable Charge or Net Capitalized Cost of Replacement of such Facility or of any portion of the Building, and if the cost to be charged to such Contributing Owner or Benefitting Party exceeds \$25,000, the Creditor Owner shall notify the Contributing Party or Benefitting Party in writing and at the written request of the Contributing Owner or Benefitted Party, shall furnish a copy of the plans and specifications for the proposed work. The Contributing Owner or Benefitted Party shall have the right, but not the obligation, by delivering written notice to the Creditor Owner within ten (10) business days after delivery of such notice, to obtain a written proposal from a qualified company of good reputation and sound financial ability to perform such work in accordance with such plans and specification and on terms and conditions reasonably acceptable to the Creditor Owner. If such proposal shall meet the foregoing criteria and provide for a cost or fee more than 10% less than the cost or fee obtained by the Creditor Owner for such work, the Creditor Owner may either (a) accept such proposal or (b) reject such proposal and accept a different proposal, provided, however, that if the Creditor Owner rejects such proposal and accepts a different proposal, the Creditor Owner may only charge to the Contributing Owner or Benefitted

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Party an amount equal to the amount the Contributing Owner or Benefitted Party would have been required to pay had the Creditor Owner accepted the proposal of the Contributing Owner or Benefitted Party.

9. Reallocation of Costs. If any Owner (hereinafter in this Exhibit 4.4, the “**Protesting Owner**”) in good faith believes that the cost of any service or item of Maintenance under Article IV hereof is not reasonably allocated between the OCP and the ORP whether as a result of (a) obsolescence of any Facilities and their replacement by more technologically advanced Facilities, (b) replacement of labor by Facilities, (c) any permanent substantial decrease or increase in use of Facilities by any Owner, (d) substantial alteration of the Building as a result of rebuilding following casualty or condemnation or (e) any other similar circumstance or set of circumstances substantially changing the assumptions forming the basis of the cost allocations set forth herein, or otherwise, then the Protesting Owner, between April 1 and June 1 of any calendar year, may give to the other Owners written notice of objection to any such allocation. Such notice shall specify the cost allocation to which the Protesting Owner objects, the reason or reasons why the Protesting Owner believes that such cost is not reasonably allocated and the Protesting Owner’s proposed revision. If within ninety (90) days after receipt of such notice, the Owners affected by such proposed reallocation shall not have agreed upon the allocation or reallocation of any such cost or costs, and the Protesting Owner has not withdrawn its objection to the allocation, then at the request of any such Owner, the Protesting Owner’s objection shall be referred to (i) the Architect, if such objection relates to any matter in which the Architect is expert, or (ii) other generally recognized experts, if such objection relates to other matters. If the Architect or other expert finds that the Protesting Owner has clearly and convincingly proved that such costs are not reasonably allocated, then the Architect or expert shall advise what would be the most reasonable allocation of such cost and shall set forth such finding in writing. The Architect or expert shall advise whether, and if so, to what extent, the new cost-sharing allocation shall be retroactive; provided, however, that said new cost-sharing allocation shall not be made retroactive to a date prior to the first day of January of the calendar year in which the Protesting Owner shall have been written notice of objection to the prior allocation. If the parties agree to such new cost-sharing allocation and agree that such new allocation is to be made retroactive under the provisions of the immediately preceding sentence, then appropriate reimbursement shall be made between the affected Owners to give retroactive effect to such finding of the Architect or expert with respect to retroactivity; provided, however, that such reimbursement may be made, at the option of the paying Owner, in equal monthly installments, over a period of time equal to the length of time for which the new allocation is made retroactive, with interest on the unpaid balance thereof payable monthly and accruing at the rate set forth in Section 10.4 hereof. In determining whether allocation of a cost is reasonable or whether the cost should be the subject of an allocation formula, certain expenses which are minor or relatively minor, except on a cumulative basis, shall be disregarded, it being understood that certain expenses which would otherwise be borne by the Owner benefitting from a service of Facility should, for the purpose of administrative simplicity and avoidance of additional metering, labor, accounting or attorney’s fees and costs, be absorbed by the other Owner without reimbursement so long as an unfair result is not caused to such other Owner. If, pursuant

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to this Exhibit 4.4, the Owners agree that allocation of any cost shall be revised, then the Owners shall execute, acknowledge and deliver to each other an instrument, in recordable form, modifying this Agreement to conform to any such revision.

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EXHIBIT

ATTACHED TO

72 PS
2 EX

Doc#: 1230429110 Fee: \$348.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/30/2012 03:20 PM Pg: 1 of 74

74 TOTAL

DOCUMENT

SEE PLAT INDEX

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